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A

Complete Collection

OF

STATE-TRIALS,

AND

PROCEEDINGS

FOR

HIGH-TREASON,

AND OTHER

CRIMES and MISDEMEANOURS;

THE FOURTH EDITION;

COMMENCING WITH

The Eleventh Year of the Reign of KING RICHARD II.

AND ENDING WITH

The Sixteenth Year of the Reign of KING GEORGE III.

WITH

TWO ALPHABETICAL TABLES TO THE WHOLE.

TO WHICH IS PREFIXED,

A NEW PREFACE,

By FRANCIS HARGRAVE, ESQUIRE.

VOLUME THE SEVENTH.

LONDON:

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MDCCLXXVIII.

LONDON:

A JOURNEY THROUGH SCOTLAND.

BY FRANCIS HARCKNAVE, ESQUIRE.

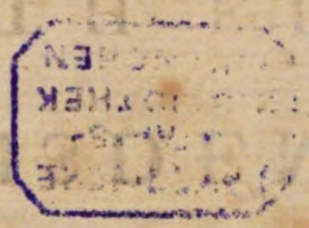
A NEW WORK IN TWO VOLUMES.

TO WHICH IS PREFIXED

TWO VALUABLE ENGRAVINGS, THE FIRST A PORTRAIT OF KING GEORGE III.

AND ENDING WITH

THE SEVENTH YEAR OF THE REIGN OF KING RICHARD II.



CURIOUS AND INTERESTING

NOTES

AND

PROCEEDINGS

OF

A Complete Collection

STADTS-
BIBLIOTHEK

THE

PREFACE.

AFTER the Publication of a Collection of *State-Trials*, which conſiſts of Six Volumes in Folio; the Reader may poſſibly be ſurpriz'd at the Appearance of two Volumes more of Collections on the ſame Subject. For this Reaſon it may be proper to premiſe ſome Particulars prefatory to the Work, concerning the Inducements there were to it, and the Method wherein it has been purſued.

And here we would by no means be underſtood to lay any Imputation on the Gentleman who prepar'd the laſt Edition of that Work for the Preſs. The judicious Preface he prefix'd to it, plainly ſhew'd him to be entirely Maſter of the Subject; and he perform'd, with eminent Sufficiency the Part he undertook, which was, to prepare and methodize ſuch Tracts, Printed or Manuſcript, as were brought to him; to inſert them in their proper Places, and to make Remarks and References wherever there was Occaſion. The Buſineſs of collecting the ſeveral Pieces was by no means his Province, nor was it to be expected from one who had daily Avocations in the way of his Profeſſion.

And tho' it were admitted that the then Undertakers did every thing they poſſibly could, to render the Work entire and complete, and ſpared neither Pains nor Expence to procure Materials fit for the purpoſe; yet it is no wonder, that in ſo fruitful a Field, they ſhould after all their Diligence leave ſome Gleanings to reward the Induſtry of thoſe that came after them.

They proceeded in the firſt Edition upon a very ſcanty Plan, propoſing to take in no Trials, but what were really *State-Trials*, and were taken at length and entire; and to this Plan they adhered ſtrictly, except in a few Inſtances: but in preparing the ſecond Edition, by the Advice of ſeveral Gentlemen of Learning and Curioſity, a greater Latitude was taken, and as well ſeveral Caſes heard before the Court of *Star-Chamber* were inſerted, as other Proceedings at Law, which could not properly be called *State-Trials*; and Trials which were well taken, tho' not of a Criminal Nature, were inſerted, together with the dying Behaviour and Speeches of ſuch unfortunate Perſons as ſuffer'd Death upon their Convictions.

In almoſt every of theſe Particulars, theſe Supplemental Volumes will appear to have received many Additions and Improvements. The Caſes here inſerted, which were debated in the *Star-Chamber*, are ſuch only as were conſiderable for the Curioſity of the Fact enquired into; as the Caſe of *Davidſon* for ſending down the Warrant for beheading the Queen of *Scots*, contrary to Queen *Elizabeth*'s Order; or for the Figure and Station of the Perſons concern'd, as Lord Chancellor *Bacon* and others. The Trial for a large Eſtate in *Shadwell*, wherein the Lady *Ivy* was a Party; that of Mr. *Denew* and others, for aſſaulting Mr. *Colepepper*; the Proceedings between the Duke and Dutcheſs of *Norfolk*, and his Grace's Trial with Mr. *Germaine*; and ſome others were taken from printed Pieces, which, for their Price and Scarcity, were almoſt equivalent to Manuſcripts: and we can with Truth ſay, that moſt of the printed Tracts here made uſe of, coſt above Ten times the Price, that an ordinary Piece of the ſame Size is commonly ſold for.

As for the Trials in theſe Volumes which were never before printed, we are not at liberty to give the Reaſons why we believe them to be Authentick; but we conceive the intrinſick Marks they bear will be ſo evident and convincing, to every one that reads them, of their being genuine, as to make any Proofs on that Head to be abſolutely unneceſſary.

We have been oblig'd in a few Places to tranſcribe here and there ſome Paſſages from larger Works: but in this Particular we have been as ſparing as poſſible, having inſerted no more than was abſolutely neceſſary to preſerve the Connexion, and to make the whole more intelligible. The greateſt Freedom taken in that kind has been in the Collection of Arguments and Debates upon the *Habeas Corpus* Act and Liberty of the Subject, between the Years 1627 and 1640; in which we were obliged to be ſometimes beholden (but as little as poſſible) to Mr. *Ruſhworth*'s Hiſtorical Collections. As theſe Conteſts, between the Crown and the Subject, were one of the greateſt Cauſes of the fatal Confuſions which afterwards followed, and of that ſurpriſing Revolution which was the Aſtoniſhment of all *Chriſtendom*, every Proceeding in that Affair, warranted by ſufficient Authority, was thought worth preſerving; eſpecially as it related to what, next to the Life of the Subject, is deemed moſt precious in the Eye of the Law, his *Liberty*.

Some Gentlemen may perhaps think that Mr. *Ruſhworth*'s Collection are ſo full on this Head, that it would be a Preſumption to add any thing to them: but it will appear that moſt of the Speeches and Proceedings here printed are not taken notice of by Mr. *Ruſhworth*. How they came to be omitted, we will not pretend to determine; only we cannot forbear obſerving, as a ſtrange Inſtance of Partiality in that Editor, that after inſerting the Articles againſt the Earl of *Strafford* at large in his Trial, he has abridg'd the Anſwer put in by him to his Articles, with this Introduction: *The Anſwer held three Hours, being above* 200 *Sheets of Paper, too long to be here inſerted; yet take an Abſtract of the ſaid Anſwer to the Articles exhibited againſt him, which are as followeth.* Which Abſtract is ſo vaſtly ſhort, as not to contain above Ten Pages.

For fear of being thought prolix, in order to ſwell the Price of the Book, we have omitted the Trial at large of the Earl of *Strafford*, it being to be had ſeparate at a moderate Price. We don't doubt but his Anſwer at large would have been a great Ornament to this Collection, and would have enabled the World to judge more clearly of his Caſe, than it is now likely to do. But as all the Proceedings againſt him were ſtrictly order'd to be obliterated; ſo, with the utmoſt Enquiry, we have been unable to find any Copy thereof remaining with the Deſcendants of his Family, or in any other Hands.

The Caſe of *Monoplies*, between the *Eaſt-India* Company and Mr. *Sandys*, does not, it muſt be confeſt, ſtrictly ſpeaking, come under the Deſcription of a *State-Trial*; but as the publiſhing the Proceedings between the King and the City of *London*, upon a *Quo Warranto*, in the laſt Edition of the *State-Trials*, met with general Approbation, we hope the like candid Conſtruction will be put upon the Step we have taken in this Caſe. The Queſtion of the Power of the Crown to grant an excluſive Charter, and the Diſtinction to be made between a criminal Monopoly, the regal Prerogative, and legal Property, are undoubtedly of the higheſt Importance. The Point is debated upon thi Occaſion by the moſt knowing and eminent Lawyers of the Time, and their Arguments are now firſt publiſhed from Manuſcripts, which have not been taken notice of in any of the Law-Books now extant, (except a very ſhort Abſtract of ſome of the Speeches, which is printed in Mr. Serjeant *Skinner*'s Reports) to which are added, the learned Arguments and Reaſons of the Lord Chief-Juſtice *Jeffreys*.

There are ſome Inſtances where we have not been able to procure complete Trials, and yet have obtained either Speeches made in them by Gentlemen of Note at that time, or large and particular Relations, though not in ſo minute and exact a manner, as in Trials taken in Short-hand in Court. Where any thing of this kind has occur'd, which we judg'd worth notice, we have choſe to preſerve them from the oblivion they would otherwiſe ſink under, by inſerting them in this Collection. And tho' they are not ſo valuable as entire Trials, yet they may ſerve to give a more clear Account of the Facts there tried, than is to be found in a general Hiſtory; which, as the learned Editor of the *State-Trials* well obſerves, is one conſiderable Benefit ariſing from Collections of this kind.

Concerning the other Pieces contained in this Collection, we need be the leſs particular in this place, as we have before moſt of the Articles, or in Notes at the Bottom, given our Reaſons for inſerting them: Only leſt it ſhould be thought that the remarkable Caſe of *Aſhby* and *White*, in the laſt Volume, contains no more than the ſmall Book, publiſhed under that Name in Octavo in the Year 1705, it may be proper to obſerve, That the whole Proceedings and Debates of that memorable Affair are deduced in order of Time from the firſt Complaint made in the Houſe of Commons; containing not only the Proceedings, Reports, Repreſentations, Conferences and Reſolutions, of both Houſes, as publiſh'd by their Order; but alſo the Proceedings and Arguments in the Court of *King's-Bench*.

In fine, as no Pains or Expence has been ſpared to make this Collection complete, uſeful and inſtructive; ſo we muſt ſubmit the whole to the Judgment of the Publick, and rely upon the Candour of the Readers, for a kind Acceptance of our Endeavours.

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A COMPLETE

COLLECTION

OF

TRIALS, &c.

I.

Proceedings in Parliament againſt Sir THOMAS SEYMOUR, Knt. Lord *Sudley*, for High-Treaſon, *Feb.* 25, 1549, 2 and 3 *Edw.* VI.

ABOUT the Year 1547 *, Sir *Thomas Seymour*, the Protector's brother, was brought to ſuch a Share of his fortunes, that he was made a Baron, and Lord Admiral. But this not ſatisfying his ambition, he endeavoured to have linked himſelf into a nearer relation with the Crown, by marrying the King's Siſter, the Lady *Elizabeth*. But finding he could not compaſs that, he made his addreſſes to *Catherine Parr*, the Queen Dowager, and they were married privately. Being by this match poſſeſſed of great wealth, he ſtudied to engage all about the King to be his friends. His deſign was, that ſince he was the King's Uncle as well as his Brother, he ought to have a proportioned ſhare with him in the Government. About *Eaſter* that year he firſt ſet about that deſign; and corrupted ſome about the King, who ſhould bring him ſometimes privately through the Gallery to the Queen Dowager's Lodgings; and he deſired they would let him know when the King had occaſion for Money, they ſhould not trouble the Treaſury, for he would furniſh him. Thus he gained ground with the King.

When the Protector was that year in *Scotland*, the Admiral began to act more openly, and was for making a party for himſelf, of which *Paget* charged him in plain terms, yet all was ineffectual; for the Admiral was reſolved to go on, and either get himſelf advanced higher, or periſh in the attempt. During the Seſſion, the Admiral got the King to write with his own hand a meſſage to the Houſe of Commons for making him Governor of his Perſon, and he intended to have gone with it to the Houſe, and had a party there, by whoſe Intereſt he was confident to have carried his buſineſs: he dealt alſo with many of the Lords and Counſellors to aſſiſt him in it. When this was known, before he had gone with it to the Houſe, ſome were ſent in his Brother's name to ſee if they could prevail with him to go no further; he refuſed to hearken to them, and ſaid, that if he were croſſed in his attempt, he would make this the *blackeſt Parliament* that ever was in *England*. Upon that he was ſent for by order from the Council, but refuſed to come; then they threatened him ſeverely, and told him, the King's writing was nothing in Law, but that he who had procured it, was puniſhable for doing an act of ſuch a nature, *&c.* ſo they reſolved to have him ſent to the *Tower*. But at laſt he ſubmitted himſelf to the Protector and Council; and his Brother and he *ſeem'd* to be perfectly reconciled †, though it was viſible he only put off his projects till a fitter conjuncture, and was on all occaſions infuſing into the King a diſlike of every thing that was done, perſuading him to aſſume the Government himſelf, and bribing his ſervants.

Thus he continued contriving and plotting for ſome time; the Protector had often been told of theſe things, and warned him of the danger into which he would throw himſelf. But his reſtleſs ambition ſeeming incurable, he was on the 19th of *January* (*Stow* ſayeth the 16th) ſent to the *Tower* ‡: and now many things broke out againſt him, particularly a conſpiracy of his with Sir *William Sharington*, Vice-Treaſurer of the *Mint* at *Briſtol*, who was to have furniſhed him with 10,000 *l.* and had already coined about 12,000 *l.* falſe money ‖, and had clipt a great deal more, to the value of 40,000 *l.* in all; for which he was attainted by a proceſs at common law, and that was confirmed in Parliament §. *Fowler* alſo, that waited in the Privy-Chamber, with others were ſent to the *Tower*; many complaints being brought againſt him, the Lord *Ruſſel*, the Earl of *Southampton* and Secretary *Petre* were ordered to receive their Examinations.

The Protector finding he could not perſuade him to ſubmit, on the 22d of *February* a report was made to the Council of all the informations againſt him; conſiſting not only of the particulars before-mentioned, but of many foul miſdemeanours in the diſcharge of the Admiralty, ſeveral pirates being concerned with him, *&c.* The whole charge againſt him, conſiſting of 33 articles, is as followeth, *viz.*

Articles of High-Treaſon, and other Miſdemeanours againſt the King's Majeſty and his Crown, objected to Sir Thomas Seymour, *Knt. Lord* Seymour *of* Sudley, *and High Admiral of* England.

Ex libro Concilii, fol. 236.

1. WHEREAS the Duke of *Somerſet* was made Governor of the King's Majeſty's Perſon, and Protector of all his Realms, and Dominions, and Subjects, to the which you yourſelf did agree, and gave your conſent in writing; it is objected and laid unto your charge, That this, notwithſtanding you have attempted and gone about, by indirect means, to undo this Order, and to get into your hands the Government of the King's Majeſty, to the great danger of his Highneſs's Perſon, and the Subverſion of the State of the Realm.

2. It is objected, and laid to your charge, That by corrupting with Gifts, and fair Promiſes, divers of the Privy-Chamber, you went about to allure his Highneſs to condeſcend and agree to the ſame your moſt heinous and perilous purpoſes, to the great danger of his Highneſs's Perſon, and of the Subverſion of the State of the Realm.

3. It is objected, and laid unto your charge, That you wrote a Letter with your own hand, which Letter the King's Majeſty ſhould have ſubſcribed, or written again after that Copy, to the Parliament-Houſe; and that you delivered the ſame to his Highneſs for that intent: With the which ſo written by his Highneſs, or ſubſcribed, you have determined to have come into the Commons-Houſe yourſelf; and there, with your fautors and adherents before prepared, to have made a broil, or tumult, or uproar, to the great danger of the King's Majeſty's Perſon, and ſubverſion of the State of this Realm.

4. It is objected, and laid unto your charge, That you yourſelf ſpake to divers of the Council, and laboured with divers of the Nobility of the Realm, to ſtick and adhere unto you for the alteration of the State, and order of the Realm, and to attain your other purpoſes, to the danger of the King's Majeſty's Perſon, now in his tender years, and ſubverſion of the State of the Realm.

5. It is objected, and laid unto your charge, That you did ſay openly and plainly, you would make the blackeſt Parliament that ever was in *England*.

6. It is objected, and laid to your charge, That being ſent for by the authority, to anſwer to ſuch things as were thought meet to be reformed in you, you refuſed to come; to a very evil example of diſobedience, and danger thereby of the ſubverſion of the State of the Realm.

7. It is objected, and laid to your charge, That ſince the laſt Seſſions of this Parliament, notwithſtanding much clemency ſhewed unto you, you have ſtill continued in your former miſchievous purpoſes; and continually, by yourſelf and others, ſtudied and laboured to put into the King's Majeſty's head and mind, a miſliking of the Government of the Realm, and of the Lord Protector's doings, to the danger of his Perſon, and the great peril of the Realm.

8. It is objected, and laid to your charge, That the King's Majeſty being of thoſe tender years, and as yet by age unable to direct his own things, you have gone about to inſtil into his Grace's head, and as much as lieth in you, perſuaded him to take upon himſelf the Government and managing of his own affairs, to the danger of his Highneſs's Perſon, and great peril of the whole Realm.

9. It is objected, and laid to your charge, That you had fully intended and appointed, to have taken the King's Majeſty's Perſon into your own hands and cuſtody, to the danger of his Subjects, and peril of the Realm.

10. It is objected, and laid to your charge, That you have corrupted, with money, certain of the Privy-Chamber, to perſuade the King's Majeſty to have a credit towards you; and ſo to inſinuate you to his Grace, that when he lacked any thing, he ſhould have it of you and none other body, to the intent he ſhould miſlike his ordering, and that you might the better, when you ſaw time, uſe the King's Highneſs for an inſtrument to this purpoſe, to the danger of his Royal Perſon, and ſubverſion of the State of the Realm.

* *Burnet*'s Hiſtory of the Reformation, vol. II.

† It is mentioned by ſome hiſtorians, that the firſt occaſion of the quarrel betwen the two Brothers, aroſe from the envy and malice of the Ducheſs of *Somerſet* againſt the Queen Dowager, wife to the Admiral, and that ſhe claimed the Precedency as the Protector's Lady; but this is very unlikely, that ſhe ſhould be ſo ignorant of the cuſtoms of *England*, as to diſpute precedency with the Queen Dowager. The whole ſtory ſeems to be forg'd by *Saunders*, in his Treatiſe *de Schiſmat. Anglican.* and copied by *Hayward*, &c. See the complete Hiſtory of *England*, vol. II. p. 301. and *Burnet*'s Hiſtory of the Reformation, vol. II. p. 54. *Rapin* in *Engliſh*, 8vo. Edit. vol. VIII. p. 53. and *Strype*'s Memorials, vol. II. p. 124 and 475. But *Strype* in the ſame volume, p. 133, ſaith, King *Edward*, in his invaluable Journal, preſerved in the *Cotton Library*, noteth, that the Protector was much offended with this marriage of his Brother to the Queen. See alſo *Strype*'s Animadverſions on *Hayward*'s Edw. the VI. *in his Memorials*, vol. II. p. 475. and *Burnet*'s Appendix to vol II. p. 392. concerning ſome errors and falſhoods in *Saunders*'s Book of the *Engliſh* Schiſm.

‡ In *Bibliotheca Harleyana*, 40. B. 29. 51. is the Duke of *Somerſet*'s and Council's Letter to Sir *Philip Hobby*, declaring to him "The traitorous proceedings of the Lord "High Admiral, the Duke's Brother, *viz.* That he attempted to take into his own hands the moſt noble Perſon of the King's Majeſty, and intended by handying himſelf "with divers perſons, to have moved plain ſedition in the Parliament, and otherwiſe to have put the whole Realm in trouble and danger. That ſuch his practices being "diſcovered, and he queſtioned, he ſeemed very penitent, whereupon he was forgiven, and his living advanced almoſt 1000 marks *per Ann.* That afterwards he practiſed, "and had almoſt compaſſed a ſecret marriage between himſelf and the Lady *Eliz.* the King's Siſter; and then intended to have taken into his hands, and order the Perſon of "the King's Majeſty, and the Lady *Mary*, and to have diſpoſed of his Majeſty's whole Council at his pleaſure: for all which he is put into the *Tower* of *London*."

‖ See Sir *William Sharington*'s Confeſſion in *Strype*'s Memorials, vol. II. pag. 81. in the Repoſitory.

§ See the Act for confirmation of the attainder of Sir *William Sharington*, Knt. in *Raſtal*'s Statutes, vol. I. pag. 951. and the act for the reſtitution in blood of Sir *William Sharington*, Knt. ibid. pag. 995.

11. It is objected, and laid unto your charge, That you promiſed the marriage of the King's Majeſty at your will and pleaſure.

12. It is objected, and laid unto your charge, That you have laboured, and gone about to combine and confederate yourſelf with ſome Perſons; and eſpecially moved thoſe Noblemen whom you thought not to be contented, to depart into their Countries, and make themſelves ſtrong; and otherwiſe, to allure them to ſerve your purpoſe by gentle promiſes and offers, to have a party and faction in readineſs to all your purpoſes, to the danger of the King's Majeſty's Perſon, and peril of the ſtate of the Realm.

13. It is objected, and laid unto your charge, That you have parted, as it were, in your imagination and intent, the Realm, to ſet Noblemen to countervail ſuch other Noblemen as you thought would lett your deviliſh purpoſes, and ſo laboured to be ſtrong to all your Devices; to the great danger of the King's Majeſty's Perſon, and great peril of the ſtate of the Realm.

14. It is objected, and laid unto your charge, That you had adviſed certain men to entertain and win the favour and good-wills of the head yeomen and ringleaders of certain countries, to the intent that they might bring the multitude and commons, when you ſhould think meet, to the furtherance of your purpoſes.

15. It is objected, and laid to your charge, That you have not only ſtudied and imagined how to have the rule of a number of men in your hands, but that you have attempted to get, and alſo gotten, divers ſtewardſhips of Noblemen's lands, and their mannoreds, to make your party ſtronger, for your purpoſes aforeſaid; to the danger of the King's Majeſty's Perſon, and great peril of the ſtate of the Realm.

16. It is objected, and laid to your charge, That you have retained young gentlemen, and hired yeomen, to a great multitude, and far above ſuch number as is permitted by the laws and ſtatutes of the Realm, or were otherwiſe neceſſary or convenient for your ſervice, place, or eſtate, to the fortifying of yourſelf towards all your evil intents and purpoſes; to the great danger of the King's Majeſty, and peril of the ſtate of the Realm.

17. It is objected, and laid to your charge, That you had ſo travailed in that matter, that you had made yourſelf able to make, of your own men, out of your lands and rules, and other your adherents, ten thouſand men, beſides your friends, to the advancement of all your intents and purpoſes; to the danger of the King's Majeſty's Perſon, and the great peril of the ſtate of the Realm.

18. It is objected, and laid unto your charge, That you had conferred, caſt, and weighed ſo much money as would find the ſaid ten thouſand men for a month; and that you knew how and where to have the ſame Sum; and that you had given warning to have and prepare the ſaid maſs of money in a readineſs; to the danger of the King's Majeſty's Perſon, and great peril to the ſtate of the Realm.

19. It is objected, and laid unto your charge, That you have not only, before you married the Queen, attempted and gone about to marry the King's Majeſty's Siſter, the Lady *Elizabeth*, ſecond Inheritor in remainder to the Crown, but alſo being then lett by the Lord Protector, and others of the Council, ſince that time, both in the life of the Queen, continued your old labour and love; and after her death, by ſecret and crafty means, practiſed to atchieve the ſaid purpoſe of marrying the ſaid Lady *Elizabeth*; to the danger of the King's Majeſty's Perſon, and peril of the ſtate of the ſame.

20. It is objected, and laid to your charge, That you married the late Queen ſo ſoon after the late King's death, that if ſhe had conceived ſtreight after, it ſhould have been a great doubt whether the child born ſhould have been accounted the late King's or yours; whereupon a marvellous danger and peril might, and was like to have enſued to the King's Majeſty's ſucceſſion and quiet of the Realm.

21. It is objected, and laid unto your charge, That you firſt married the Queen privately, and did diſſemble and keep cloſe the ſame; inſomuch, that a good ſpace after you had married her, you made labour to the King's Majeſty, and obtained a letter of his Majeſty's hand, to move and require the ſaid Queen to marry with you; and likewiſe procured the Lord Protector to ſpeak to the Queen to bear you her favour towards marriage: by the which colouring, not only your evil and diſſembling nature may be known, but alſo it is to be feared, that at this preſent you did intend to uſe the ſame practice in the marriage of the Lady *Elizabeth*'s Grace.

22. It is objected, and laid unto your charge, That you not only, ſo much as lay in you, did ſtop and lett all ſuch things as, either by Parliament or otherwiſe, ſhould tend to the advancement of the King's Majeſty's affairs, but did withdraw yourſelf from the King's Majeſty's ſervice; and being moved and ſpoken unto, for your own honour, and for the ability that was in you, to ſerve and aid the King's Majeſty's affairs, and the Lord Protector's, you would always draw back, and feign excuſes, and declare plainly that you would not do it.

Wherefore, upon the diſcourſe of all theſe foreſaid things, and of divers others, it muſt needs be intended, that all theſe preparations of men and money, the attempts and ſecret practices of the ſaid marriage; the abuſing and perſuading of the King's Majeſty to miſlike the Government, State, and Order of the Realm that now is, and to take the Government into his own hands, and to credit you; was to none other end and purpoſe, but after a title gotten to the Crown, and your party made ſtrong both by ſea and land, with furniture of men and money ſufficient to have aſpired to the Dignity Royal, by ſome heinous enterprize againſt the King's Majeſty's Perſon; to the ſubverſion of the whole ſtate of the Realm.

23. It is objected, and laid unto your charge, That you not only had gotten into your hands the ſtrong and dangerous iſles of *Scilly*, bought of divers men; but that ſo much as lay in your power, you travailed alſo to have *Londay*, and under pretence to have victualled the ſhips therewith, not only went about, but alſo moved the Lord Protector, and whole Council, that you might, by publick authority, have that, which by private fraud and falſhood, and confederating with *Sharington*, you had gotten; that is, the *Mint* at *Briſtol*, to be yours wholly, and only to ſerve your purpoſes, caſting, as may appear, that if theſe traitorous purpoſes had no good ſucceſs, yet you might thither convey a good maſs of money; where being aided with ſhips, and conſpiring at all evil events with pirates, you might at all times have a ſure and ſafe refuge, if any thing for your Demerits ſhould have been attempted againſt you.

24. It is alſo objected, and laid unto your charge, That having knowledge that Sir *William Sharington* Kt. had committed Treaſon, and otherwiſe wonderfully defrauded and deceived the King's Majeſty, nevertheleſs, you both by yourſelf, and by ſeeking Counſel for him, and by all means you could, did aid, aſſiſt, and bear him, contrary to your allegiance and duty to the King's Majeſty, and the good laws and orders of the Realm.

25. It is objected, and laid unto your charge, That where you owed to Sir *William Sharington* Kt. a great ſum of money, yet to abet, bear, and cloak the great falſhood of the ſaid *Sharington*, and to defraud the King's Majeſty, you were not afraid to ſay and affirm, before the Lord Protector and the Council, that the ſame *Sharington* did owe unto you a great ſum of money, *viz.* 2800*l.* and to conſpire with him in that falſhood, and take a bill of that feigned debt into your cuſtody.

26. It is objected, and laid unto your charge, That you by yourſelf and miniſters, have not only extorted and bribed great ſums of money of all ſuch ſhips as ſhould go into *Iſland*, but alſo as ſhould go any other where in merchandiſe, contrary to the liberty of this Realm, and to the great diſcouragement and deſtruction of the navy of the ſame, to the great danger of the King's Majeſty, and the ſtate of the Realm.

27. It is objected, and laid unto your charge, That where divers merchants, as well ſtrangers as *Engliſhmen*, have had their goods piratouſly robbed and taken, you have had their goods in your hands and cuſtody, daily ſeen in your houſe, and diſtributed among your ſervants and friends, without any reſtitution to the parties ſo injured and ſpoiled; ſo that thereby foreign Princes have in a manner been weary of the King's Majeſty's amity, and by their Ambaſſadors divers times complained, to the great ſlander of the King's Majeſty, and danger of the ſtate of the Realm.

28. It is obected, and laid unto your charge, That where certain men have taken certain Pirates, you have not only taken from the takers of the ſaid Pirates, all the goods and ſhips ſo taken, without any reward, but have caſt the ſaid takers, for their good ſervice done to the King's Majeſty, into Priſon, and there detained them a great time; ſome eight weeks, ſome more, ſome leſs, to the diſcouraging of ſuch as truly ſhould ſerve the King's Majeſty againſt his Pirates and Enemies.

29. It is objected, and laid unto your charge, That divers of the head Pirates being brought unto you, you have let the ſame Pirates go again free unto the ſeas; and taken away from the takers of them, not only all their commodity and profit, but from the true owners of the ſhips and goods, all ſuch as ever came into the Pirates hands, as though you were authorized to be the chief Pirate, and to have had all the advantages they could bring unto you.

30. It is objected, and laid unto your charge, That where order hath been taken, by the Lord Protector and the whole Council, that certain goods, piratically taken upon the ſeas, and otherwiſe known not to be wreck nor forfeited, ſhould be reſtored to the true owners, and Letters thereupon written by the Lord Protector and the Council; to the which Letters, you yourſelf, among the other, did ſet to your hand: Yet you, this notwithſtanding, have given commandment to your Officers, that no ſuch letters ſhould be obeyed; and written your private letters to the contrary, commanding the ſaid goods not to be reſtored, but kept to your own uſe and profit, contrary to your own hand before in the Council-Chamber written; and contrary to your duty and allegiance, and to the perilous example of others, and great ſlander and danger of the Realm.

31. It is objected, and laid unto your charge, That where certain ſtrangers, which were friends and allies to the King's Majeſty, had their ſhips, with wind and weather broken, and yet came unwrecked to the ſhore; when the Lord Protector and the Council had written for the reſtitution of the ſaid goods, and to the country to aid and ſave ſo much of the goods as might, you yourſelf ſubſcribing and conſenting thereto: yet this notwithſtanding, you have not only given contrary commandment to your Officers, but as a Pirate have written letters to ſome of your friends to help, that as much of theſe goods as they could, ſhould be conveyed away ſecretly by night farther off, upon hope that if the ſaid goods were aſſured, the owners would make no further labour for them, and then you might have enjoyed them, contrary to juſtice and your honour, and to the great ſlander of this Realm.

32. It is objected, and laid unto your charge, That you have not only diſcloſed the King's Majeſty's Secret Council, but alſo where you yourſelf, among the reſt, have conſented and agreed to certain things for the advancement of the King's affairs, you have ſpoken and laboured againſt the ſame.

33. It further is objected, and laid unto your charge, That your Deputy Steward, and other your Miniſters of the *Holt*, in the county of *Denbigh*, have now, againſt *Chriſtmas* laſt paſt, at the ſaid *Holt*, made ſuch proviſion of wheat, malt, beefs, and other ſuch things as be neceſſary for the ſuſtenance of a great number of men; making alſo, by all the means poſſible, a great maſs of money; inſomuch, that all the country doth greatly marvel at it, and the more, becauſe your ſervants have ſpread rumours abroad, that the King's Majeſty was dead; whereupon the country is in a great maze, doubt, and expectation, looking for ſome broil, and would have been more, if at this preſent, by your apprehenſion, it had not been ſtaied.

Theſe articles (as entered in the Council-Books) were ſo manifeſtly proved, not only by witneſſes, but by letters under his own hand, that it did not ſeem poſſible to deny them; yet he had been ſent to and examined by ſome of the Council, but refuſed to make a direct anſwer to them, or to ſign thoſe Anſwers that he had made. So it was ordered, that the next Day, all the Privy Council, except the Archbiſhop of *Canterbury*, and Sir *John Baker*, Speaker of the *Houſe of Commons*, who was engaged to attend in the Houſe, ſhould go to the *Tower*, and examine him. On the 23d the Lord Chancellor, with the other Counſellors, went to him, and read the Articles of his Charge, and earneſtly deſired him to make plain anſwers to them, excuſing himſelf where he could, and ſubmitting himſelf in other things; and that he would ſhew no obſtinacy of mind. He anſwered them, That he expected an open Trial, and his accuſers to be brought face to face. All the Counſellors endeavoured to perſuade him to be more tractable, but to no purpoſe. At laſt the Lord Chancellor required him, on his allegiance, to make his Anſwer. He deſired they would leave the Articles with him,

and

and he would conſider of them, otherwiſe he would make no anſwer to them. But the Counſellors reſolved not to leave them with him on thoſe terms *. On the 24th of *February* it was reſolved in Council, That the whole Board ſhould after dinner acquaint the King with the ſtate of that affair, and deſire to know of him whether he would have the Law to take place? and ſince the thing had been before the Parliament, whether he would leave it to their determination? When the Counſellors waited on him, the Lord Chancellor opened the matter to the King, and delivered his opinion for leaving it to the Parliament; then every Counſellor by himſelf ſpoke his mind all to the ſame purpoſe. Laſt of all the Protector ſpake. He proteſted this was a moſt ſorrowful buſineſs of him, that he had uſed all the means in his power to keep it from the coming to this extremity. But were it Son or Brother, he muſt prefer his Majeſty's ſafety to them, for he weighed his allegiance more than his blood; and that therefore he was not againſt the requeſt that the other Lords had made, and ſaid, if he himſelf were guilty of ſuch offences, he ſhould not think he were worthy of life, and the rather, becauſe he was of all men the moſt bound to his Majeſty; and therefore he could not refuſe Juſtice †. The King anſwered them in theſe words: "We perceive that there are great things objected and "laid to my Lord Admiral my Uncle, and they tend to Treaſon: And "we perceive that you require but juſtice to be done. We think it reaſon-"able, and we will, that you proceed according to your requeſt." However, the Lords reſolved that ſome of both Houſes ſhould be ſent to the Admiral before the Bill ſhould be put in againſt him, to ſee what he could or would ſay; ſo my Lord Chancellor, the Earl of *Shrewſbury*, *Warwick*, and *Southampton*, and Sir *John Baker*, Sir *Thomas Cheney*, and Sir *Anthony Denny* were ſent to him. He was long obſtinate, but after much perſuaſion was brought to give an anſwer to the firſt three Articles, *viz.*

The Lord Admiral's Anſwer to three of the former Articles.

TO the firſt, he ſaith, that about *Eaſter-Tide* was Twelve-months, he ſaid to *Fowler*, as he ſuppoſeth it was, that if he might have the King in his cuſtody, as Mr. *Page* had, he would be glad; and that he thought a man might bring him through the Gallery to his chamber, and ſo to his houſe: But this he ſaid he ſpoke merrily, meaning no hurt. And that in the mean time after he heard, and upon that, ſought out certain precedents, that there was in *England* at one time, one Protector, and another Regent of *France*, and the Duke of *Exeter*, and the Biſhop of *Wincheſter*, Governors of the King's Perſon: Upon that, he had thought to have made ſuit to the Parliament-Houſe for that purpoſe, and he had the names of all the Lords, and totted them whom he thought he might have to his purpoſe to labour them. But afterwards communing with Mr. Comptroller at *Elyplace*, being put in remembrance by him of his aſſenting and agreeing with his own Hand, that the Lord Protector ſhould be Governour of the King's Perſon, he was aſhamed of his doings, and left off that ſuit and labour.

To the ſecond, he ſaith, he gave money to two or three of them which were about the King. To Mr. *Cheek*, he ſaith, he gave at *Chriſtmas-Tide* was twelve months, when the Queen was at *Enfield* 40 *l.* whereof to himſelf 20 *l.* the other for the King, to beſtow where it pleaſed his Grace amongſt his ſervants. Mr. *Cheek* was very loth to take it, howbeit he would needs preſs that upon him; and to him he gave no more, at no time, as he remembreth, ſince the King's Majeſty was crowned.

To the Grooms of the Chamber he hath at *New-Year's-Tides* given money, he doth not well remember what.

To *Fowler*, he ſaith, he gave money for the King, ſince the beginning of this Parliament now laſt at *London*, 20 *l.*

And divers times, he ſaith, the King hath ſent to him for money, and he hath ſent it. And what time Mr. *Latimer* preached before the King, the King ſent to him to know what he ſhould give Mr. *Latimer*; and he ſent to him by *Fowler* 40 *l.* with this word, that 20 *l.* was a good reward for Mr. *Latimer*, and the other he might beſtow amongſt his Servants. Whether he hath given *Fowler* any money for himſelf, he doth not remember.

To the third, he ſaith, it is true, he drew ſuch a Bill indeed himſelf, and proffered it to the King, or elſe to Mr. *Cheek*, he cannot well tell; and before that he ſaith, he cauſed the King to be moved by Mr. *Fowler*, whether he could be contented that he ſhould have the Governance of him as Mr. *Stanhope* had. He knoweth not what Anſwer he had; but upon that he drew the ſaid Bill to that effect, that his Majeſty was content; but what Anſwer he had to the Bill, he cannot tell: Mr. *Cheek* can tell.

Then he on a ſudden ſtopt ſhort, and bade them be content, for he would go no further, and no intreaties would work on him, either to anſwer the reſt, or to ſet his hand to the Anſwers he had made. On *February* the 25th, was read in the Houſe of Lords the firſt time, The Bill for Attainder of the Lord Admiral: *Feb.* 26, read the ſecond time: *Feb.* 27, read the third time; and concluded with the common aſſent of all the Peers **. The ſame day, being *Wedneſday*, the Bill was ſent down to the Commons; when it was thought good by them to ſend down certain Members of their Houſe, to declare unto the Commons the manner after which the Lords had proceeded in that matter; and further to declare unto them, that in caſe they were minded to proceed in like ſort, certain Noblemen who had given evidence againſt the ſaid Lord Admiral, ſhould be ſent unto them to declare by mouth and preſence ſuch matters, as by their writing ſhould in the mean time appear unto them. The Maſter of the Rolls, Sir *James Hales*, and Serjeant *Molineux*, were the perſons ſent by the Lords. *March* the 2d, they were ſent again to the Lower Houſe, with the like Commiſſion in effect, as they were ſent the *Wedneſday* before. Anſwer was made, That they would conſult together, and thereupon they would with ſpeed ſend up their reſolution. But no haſte having been made therein by them of the Nether Houſe, the Lords having ſat ſo long, as it was thought the time now far ſpent, they concluded to depart; deſiring the Lord Protector, that it would pleaſe him to receive ſuch Anſwer as ſhould be ſent touching that purpoſe, and to make report thereof at their next Aſſembly, which ſhould be the next *Monday*. *March* the 5th, the Bill was brought from the Commons for the attainder of the Lord *Sudley*. Thus it is related in the Journal of the Houſe of Lords.

By the Journal of the Houſe of Commons it appears, that this Bill was read there the laſt day of *February* the firſt time; *March* the 1ſt read again; and *March* the 2d the Maſter of the Rolls, Serjeant *Molineux*, Serjeant *Hales*, and the King's Sollicitor, were ſent from the Lords to know the pleaſure of this Houſe, if it ſhould be reſolved there, to paſs upon the attainder of the Admiral in ſuch order as it paſſed in the higher Houſe? Whereupon it was ordered, that advertiſement thereof be ſent to the Lords by ſome of that Houſe: That it was reſolved, that the Evidence ſhould be heard orderly, as it was before the Lords: And alſo to require, that the Lords who affirmed that evidence, might come hither and declare it *viva Voce*. And this to be delivered to the Lord Protector by Mr. Speaker, and other the King's Privy Council of the Houſe. *March* the 4th, the Maſter of the Rolls, *&c.* declared the King's pleaſure to be, that the Admiral's preſence was not neceſſary in this Court; and therefore not to be there. And further declared, That if the Houſe would require to have the Lords to come and to ſatisfy the Houſe for the evidence againſt the Admiral, the Lords would come. Then it it was ordered, that Maſter Comptroller, and others of the King's Privy Council, ſhould hear the Lords; and require, that if it were judged neceſſary to have the Lords come down, that upon any further ſuit they might come down to the Houſe. And the Bill for the attainder of High-Treaſon of Sir *Thomas Seymour*, Lord *Sudley*, was read the third time. Thus far the Journal of the Houſe of Commons. On the 5th of *March* the Royal Aſſent was given to the Bill, which here followeth:

An Act for the Attainder of Sir Thomas Seymour, *Knt. Lord* Seymour *of* Sudley, *High Admiral of* England.

IN their moſt humble wiſe beſeeching your moſt Excellent Majeſty, the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled; That where Sir *Thomas Seymour*, Lord *Seymour* of *Sudley*, High-Admiral of *England*, not having God before his Eyes, nor regarding the Duty which by Nature, Benefits, and Allegiance he ought to your Highneſs, nor being content with his honourable State and Condition, whereunto your Majeſty hath called and indued him with; but repleniſhed and filled with the moſt dangerous, inſatiable, and fearful Vice of Ambition, and Greedineſs of Rule, Authority, and Dominion, did, in the firſt Year of your moſt noble and victorious Reign, determine and reſolve with himſelf to take into his hands your moſt Noble Perſon, and the ſame either by violence, ſtealth or other undue means, to have in his poſſeſſion, with the Order, Rule, and Government of your Majeſty's Realms, Dominions, and Affairs, which were before that time, as well by your Royal Aſſent, as by the conſent and liberate advice of all your Nobles and Council, whereof he the ſaid Lord Admiral was one, otherwiſe ordered, decreed, and determined; by the means whereof, and by the moſt prudent foreſight and direction of your Grace's deareſt Uncle the Duke of *Somerſet*, Governour of your Majeſty's moſt Royal Perſon, and Protector of your Highneſs's Realms, Dominions and Subjects, being the ſaid Admiral diſappointed of his malicious Enterpriſe. The ſame Admiral continuing nevertheleſs his great Ambition, and moſt deteſtable, malicious, and traitorous Purpoſe, thinking by Tumult and Violence openly to atchieve that thing which by ſlight he could not ſecretly compaſs, travailed with your Majeſty, being yet for your tender Years not able to conceive his falſhood, by crafty, ſubtile and traitorous means and perſuaſions, having alſo prepared about your Grace, by corruption, ſundry Perſons to be Inſtruments to help forward all his naughty, traitorous purpoſes, to have cauſed your Grace at his contemplation, to have written a Bill or Letter of your Majeſty's own Hand, to your High-Court of Parliament, deſiring the ſame thereby to be good unto the ſaid Lord *Seymour*, in ſuch Suits and Matters as he ſhould open and declare unto them; which Bill or Letter the ſaid Lord Admiral thought and determined not only in his own Perſon to have brought into the Nether Houſe of your ſaid Court of Parliament, but alſo to have likewiſe opened the ſame in the Higher Houſe, having in both the ſame Houſes laboured, ſtirred, and moved a number of Perſons to take part and join Cap. xviii.

* It is a ſtrange thing, that as the particulars of his charge were manifeſtly proved, if any credit is to be given to the Council Book, not only by witneſſes, but by letters under his own hand, they ſhould refuſe however to try him according to the laws of the land, and to bring his accuſers face to face; and yet he was a Peer of the Realm, Lord High Admiral of *England*, and Uncle to the King. At laſt, finding he could not obtain this favour, or rather juſtice, he deſired the Articles of his accuſation might be left with him, and ſaid he would anſwer to them when he had examined them; but even this was denied him: I don't know whether it was lawful then to leave with the party accuſed the Articles of his charge, and to allow him time to examine them: But as for the bringing his accuſers face to face, it is evident that could not be denied him without injuſtice, though this pernicious cuſtom had been introduced in the late Reign. *Rapin (Engliſh Oct. Edit.)* Vol. VIII. p. 50.

† It is a pretty hard taſk to juſtify the Duke of *Somerſet* for proſecuting his own Brother to death, for crimes committed againſt his perſon only. But indeed it was never clearly proved, that he had formed any ill deſign either againſt the King or the State, as he proteſted to his laſt breath. But this is not the only time that Plots againſt the *Miniſters* have been reckoned High-Treaſon. *Rapin (Engliſh)* Vol. VIII. p. 52.

** Biſhop *Burnet*, in his *Hiſtory of the Reformation*, Vol. II. p. 99. ſays, The Peers had been ſo accuſtomed to agree to ſuch bills in King *Henry*'s time, that they did eaſily paſs it. All the Judges and the King's Council delivered their opinions, That the Articles were Treaſon. Then the Evidence was brought: Many Lords gave it ſo fully, that all the reſt, with one voice, conſented to the Bill; only the Protector, *for natural pity's ſake*, as in the Council Book, deſired leave to withdraw. On the 27th, the Bill was ſent down to the Commons, with a meſſage, That if they deſired to proceed as the Lords had done, thoſe Lords that had given their Evidence in their own Houſe, ſhould come down and declare it to the Commons. But there was more oppoſition made in the Houſe of Commons. Many argued againſt Attainders in abſence, and thought it an odd way that ſome Peers ſhould riſe in their places in their own Houſe, and relate ſomewhat to the ſlander of another, and that he ſhould be thereupon attainted: Therefore it was preſſed, that it might be done by a Trial, and that the Admiral ſhould be brought to the bar, and be heard plead for himſelf. But on the 4th of *March* a meſſage was ſent from the King, That he thought it was not neceſſary to ſend for the Admiral; and that the Lords ſhould come down and renew before them the Evidence they had given in their own Houſe. This was done; and ſo the Bill was agreed to by the Commons in a full Houſe, judged about four hundred, and there were not above ten or twelve that voted in the negative. The Biſhop, in the next page ſays, But the way of proceeding was much condemned, ſince to attaint a man without bringing him to make his own defence, or to object what he could ſay to the Witneſſes that were brought againſt him, was ſo illegal and unjuſt, that it could not be defended, only this was to be ſaid for it, That it was a little more regular than *Parliamentary Attainders* had been formerly; for here the Evidence, upon which it was founded, was given before both Houſes.

with

with him in ſuch things as he would ſet forth and enterpriſe, whereby he thought to breed ſuch a Tumult, Uproar, and ſedition, as well in the ſaid Court, as in the whole Realm, as by the troubling of the whole State and Body of this your Realm, he might the more facily and eaſily bring to paſs his moſt fearful, deviliſh, and naughty Purpoſe: for the more ſure and certain compaſſing whereof, like as he feared not to ſay to certain Noblemen and others, that he would make the blackeſt Parliament that ever was ſeen here in *England*, ſo moſt traitorouſly, for the further Accompliſhment of hislewd Enterpriſe, he retained a great number of Men, and prepared a great furniture of Weapons and Habiliments of War, ready for the execution of his ſaid traitorous Attempts. And to colour and cloak his ſaid miſchievous purpoſes, did, by all ſuch ways and means as he could poſſibly deviſe and imagine, practiſe, as it were, for his entry towards the ſame, to ſeek and attain the Government of your moſt Noble Perſon, and thereby to have gotten into his hands the order of your Realms and Dominions, whereunto he aſpired in ſuch Sort, as he did even then travail expreſsly with the moſt part of your Highneſſes moſt Honourable Council to help him to the ſaid Government, doing likewiſe all he could in the Parliament by himſelf, his Servants and Miniſters, not only to hinder and lett all things there proponed, which touched the Honour, Surety, and Benefit of your Majeſty and the Realm; but alſo ſpreading abroad Slanders touching your Majeſty's Perſon, your deareſt Uncle the ſaid Lord Protector, and the whole State of your Council, over-vile, dangerous, and unmeet to be here recited: Which things being by the Goodneſs of God revealed, as your ſaid Uncle, the Lord Protector could not chuſe but heartily lament the ſaid Lord Admiral's evil, malicious, and corrupt Diſpoſition, chiefly in reſpect of the apparent and irrecuperable Danger which was like, by the ſame, preſently to have enſued to your Majeſty, and to your Reals and Dominions; and ſecondly, for that he was by proximity of Blood ſo nearly joined unto him. So hoping that by good Advertiſements and Counſels he might yet recover and ſave him, and by the Grace of God cauſe him to caſt away his naughty, vile, and ambitious Diſpoſition, and to have had a better Conſideration hereafter to his Duty, both to God and unto your Majeſty, whereunto he was moſt bounden; the ſaid Lord Protector laboured with the whole Councel and otherwiſe, to reconcile and reform him, which preſently muſt elſe have periſhed in his Folly and Outrage. And albeit, the ſaid Lord Protector had then perfect knowledge of the Attempts and Miſbehaviours of the ſaid Admiral before rehearſed; and that the ſaid Admiral had then ſaid, that he would not come at the ſaid Lord Protector and Council, altho' they ſent for him, and that he would not be committed to any ward for his doings by the beſt of them, whereby it appeared that he thought his Party ſtrong enough to reſiſt your Majeſty's Power and ordinary Authority; yet the ſaid Lord Protector, not ceaſing with all clemency to follow his godly and charitable purpoſe, did not only uſe all the good means he could deviſe by the perſuaſions of certain of your Grace's Council, and otherwiſe to frame him to the Amendment of his Evils, and ſo to bring him to the better remembrance of his Duty; but alſo conſidering, that if the matter ſhould have grown to extremity, being ſo near, and ſo much bound to your Majeſty, being new come to your Kingdom, your Subjects not altogether left in the beſt concord for matters of Religion, great ſlander, tumult, and danger might have enſued thereby as well here at home in your Realm, as from ſome outward parts with whom you were in the War, and in ſome ſecret enmity ready to enter the Wars, thought it, with the Advice of your whole Council, moſt meet and ſureſt for your Majeſty to paſs his evil Doings over in ſilence, and in ſomewhat the more in reſpect of the better ſtay, for the time of your preſent Eſtate, to bridle him with your Liberality, and therefore to give unto him Lands to the yearly Value of eight hundred Pounds, truſting thereby, and by ſuch other good means as were uſed towards him, to encourage and move him to leave for ever that Ambition, and ſeditious Mind, and to live in ſuch order as might have pleaſed God, and ſerved your Majeſty, and your Publick Weal. But all this notwithſtanding, the Devil, who had before planted that vile and evil Weed ſo deeply in his Heart, that the Root of the ſame could not be clearly pulled out, but cauſed his Ambition eftſoons to ſpring, and ſhew itſelf more rankly than it had done before: For it plainly appeareth, that he tarried not long in his diſſembled good Mood and Promiſe, but began afreſh to imagine, compaſs and deviſe, for the ſatisfying of his traitorous deſire, to make a Party, Faction, and Confederation, whereof he would be the Head, and did not only get as many Rules and Offices into his hands of all Men, as he could poſſibly attain, and retained many Gentlemen and Yeomen into his Service, making a full account and reckoning, which he declared ſecretly to ſome of his familiars, that he was thereby able, of his own ruled Tenants and Servants, to make ten thouſand Men for the obtaining of his ſaid purpoſe; for whoſe Wages he had alſo deviſed after ten thouſand Pounds by the Month, out of your Majeſty's Mint at *Briſtol*, which he had obtained, with all your Treaſure in the ſame, by the means and conſent of Sir *William Sharington*, Knt. Vice-Treaſurer there, to be at his commandment, which Sir *William* now ſtandeth attainted of Treaſon; and alſo had put your Grace's Caſtle of the *Holt*, whereof he had the keeping, even now of late in a readineſs, and there cauſed to be prepared a great Furniture of Wheat, Malt, Beefs, and a great maſs of Money, for the feeding and entertainment of a number of Men: which Money he cauſed to be levied and taxed half the Year before the ſame was due; bruiting alſo for the better atchieving of his purpoſe, and to amaze therewith the more the people, that your Majeſty (whom God long preſerve to us) ſhould be dead; but alſo he laboured ſundry of your Nobles, and other your Grace's Subjects, to join with him, deviſing with divers of them, how and by what Policy, Ways, and Means they ſhould make themſelves ſtrong in their Countries for that purpoſe, and how they ſhould win unto them the head Yeomen, and Ringleaders of the common People; declaring how he meant to have matched, and ſet one Nobleman againſt another Nobleman, as he thought he could never compaſs and win to aſſent to this Faction and falſe Conſpiracy, promiſing to divers of them ſundry Benefits; yea, taking ſo much upon him, for the accompliſhment of his ſaid traitorous intent and purpoſe, as he ſpared not to promiſe your moſt excellent perſon in marriage to a Nobleman's Daughter of this your Realm. And yet not contented herewith, for the further advancement of his moſt naughty and traitorous purpoſe, did traitorouſly and unnaturally practiſe even with your Highneſs's own Perſon, to make your moſt Excellent Majeſty (for your tender years unable to underſtand his falſe and traitorous purpoſes) an inſtrument towards the undoing and deſtruction of your Highneſs, and the ſubverſion of the whole State of this your Grace's Realm: purſuing your Majeſty, as much as in him did lie, not only to take upon you, now in your young and tender age, the Rule and Order of yourſelf, intending and meaning by the colour thereof, to take in his hands your moſt Royal Perſon, the Rules and Orders of all the Affairs of your Realms and Dominions; being already by the ſaid Lord Protector, with the Advice of your Grace's moſt honourable Council, as well prudently and politically governed, as valiantly and nobly defended againſt our outward Enemies, to the increaſe of your immortal Fame and Honour; but alſo to receive and engender an hatred in your moſt noble Heart, both againſt your deareſt Uncle the ſaid Lord Protector, and all your true and faithful Councellors: To the which his deviliſh Perſuaſions and Aſſaults, God gave your Highneſs, even at this age, to the great rejoice of all us your faithful Subjects and Servants, a ſpecial Grace to reſiſt, above common reaſon and all expectation, and moſt graciouſly, without any Advice or Counſel, to refuſe and deny his evil advertiſements and perſuaſions. And further, the ſaid Admiral did moſt falſly and traitorouſly corrupt ſundry of your Highneſs's Privy-Chamber with many gifts, and otherwiſe, to the intent they ſhould move and procure your Majeſty to write ſundry Letters at his or their devices, and to put into your Grace's head a ſpecial and ſingular favour, affection, and truſt towards him, and a Diſpoſition to follow whatſoever he would have wrought towards all others, that he might the rather have compaſſed his moſt traitorous purpoſe, which muſt needs have tended to your Majeſty's Deſtruction (which God forbid), and to the utter ruin of all us, your Highneſs's moſt loving, faithful, and obedient Subjects. For, moſt gracious Sovereign Lord, beſides all this, it is moſt evident and apparent, that as immediately after the King your Father's Death, of moſt noble Memory, he bare a ſpecial love and favour to your Grace's Siſter the Lady *Elizabeth*, ſecond Perſon in the Remainder of the State of Succeſſion to the Crown of this Realm after your Majeſty, and the Heirs of your Body, whom the living God long preſerve unto us, with the increaſe of much Fruit; and would then of his great Preſumption and traitorous determination have married her, if he could by any means have brought to paſs the ſame, but that he was ſtayed by the ſaid Lord Protector, and other of your Grace's Council; ſo he did not only continue in his ſaid determination towards her, in the Queen his late Wife's time, but alſo by divers ſecret and crafty means and practices, continually ſought by atchieving of the ſame ſince the Queen's Death, as by ſundry ways is confeſſed, and appeareth. Inſomuch as the ſame being perceived by your ſaid deareſt Uncle, and ſome others beſide of your Council, and other Perſonages of Reputation; and the ſaid Admiral by them earneſtly adviſed to beware of it, and to forbear his pretenſed purpoſe, ſpecially for that it could not be but dangerous to your Grace's Perſon, he hath not been afraid to defend his naughty doings and purpoſes in it, and to aſk why he ſhould not continue his Suit towards the ſaidy *Elizabeth?* with ſundry other words declaring his full intent and determinations to it; and neglecting all good Advices, Reaſons, and Admonitions made, given or alledged, contrary to his purpoſe, he hath ſecretly and earneſtly followed it, in ſuch ſort, as if ſundry other his miſchievous devices and practices had not appeared, and come to knowledge, it is evident that he would have done what he could ſecretly to have married her, as he did the late Queen, whom it may appear he married firſt, and after ſued to your Majeſty, and the Lord Protector, and your Council, for his preferment to it; whom nevertheleſs it hath been credibly declared, he holped to her end to haſte forwards his other purpoſe. But what this marriage of your ſaid Siſter, with his prepared forces and confederacies ſhould mean, and what the getting of the rule and order of your Majeſty's Mint at *Briſtol* into his hands with ten thouſand men, which beſides all his friends, and divers retainers, he accounted himſelf furniſhed of, and able to make all times within his own rules, and of his own ſervants and tenants, ſhould tend unto, for the wages and entertainments of whom he had prepared, as is aforeſaid, conſidering that the ſaid Admiral at all times, when occaſion of the ſervice of your Majeſty was neceſſary or requiſite, went always back, and refuſed to take it upon him, whether it were by ſea or land, as your Grace's Council both know, and divers times have lamented, and in that caſe travelled with him (in vain) to bring him unto it, whereby no good mind or will of him toward your Majeſty's ſafety or aſſurance can appear. And upon all theſe ſiniſter ways and means, what his corrupt and ſubtil attempts of getting your moſt noble Perſon into his hands, by colour whereof he might have wrought what he would, and whatſoever his ambitious intent could have deviſed with his preparation of victuals and money, and other his ſaid doings at your Grace's Caſtle of the *Holt*, and in the parts thereabouts, would have wrought in the end, eſpecially in this tender age of your Highneſs, and whilſt your Majeſty is in the Government of a Protector, it is fearful to conſider and think upon, and cannot otherwiſe be taken, but to be indeed more than a manifeſt declaration of a traitorous aſpiring to your Crown of this Realm, and to be King of the ſame, and an open deed and act, and a falſe and traitorous compaſs and imagination to depoſe and deprive your Majeſty from your Royal Eſtate and Title of your Realms, and to compaſs and imagine the Death of your moſt Noble Perſon, and moſt traitorouſly to take away and deſtroy all things which ſhould have ſounded to the lett and impediment of his moſt traitorous and ambitious enterprize.

And further, gracious Sovereign Lord, to declare the traitorous diſpoſition of his nature, and how little he cared to offend your Grace's law, and how he did yet leſs regard his truth and duty towards your Grace, where *William Sharington*, Knight, late of *London*, the tenth day of *July*, in the firſt year of your Grace's Reign, hath in the County and City of *Briſtol* falſly and traitorouſly forged and counterfeited certain of your Grace's coin, and further imbezzled and purloined from your Majeſty, untruly and falſly at the leaſt, the ſum of forty thouſand pounds, for part whereof the ſame Sir *William Sharington* upon his own confeſſion is attainted of treaſon according to your Grace's laws; to which

ſaid traitorous Acts the ſaid Lord Admiral did not only abet and procure the ſaid Sir *William Sharington*, labouring him he ſhould get as much money from time to time into his hands for his purpoſe as he could, ſo that he might ever have a good maſs in a readineſs; but alſo ſince the time of the ſaid treaſons and traitorous acts, ſo done by the ſaid Sir *William Sharington*, the ſaid Lord Admiral having perfect knowledge thereof, as well by the declaration of the moſt part of your Highneſs's Council, as by ſome of his own Counſel learned, hath traitorouſly comforted, aided, aſſiſted, and maintained the ſame Sir *William Sharington* in his ſaid traitorous acts and faults againſt your Grace's laws and ſtatutes of this Realm; taking the patent, indentures, books and reckonings of the ſame Sir *William Sharington*, of his own authority, into his cuſtody, and affirming both to ſundry of your Grace's Council, and to divers of your ſubjects, that the ſaid *Sharington* had wrong to be committed: deviſing all the ways he could poſſible, contrary to his duty and allegiance, traitorouſly to bear him in his evil and traitorous doings, and to deliver him, if he by any means might have come by him.

And for a further proof to induce, that the ſaid Admiral did maintain and comfort the ſame *Sharington*, where the ſaid Admiral owed to the ſaid *Sharington* two thouſand eight hundred pounds, the ſaid *Sharington* upon a miſtruſt which he had before his apprehenſion, that he ſhould for his fault and proceedings come one day to his trial and examination, communicating the ſame with the ſaid Lord Admiral, and the ſaid Admiral agreed and promiſed not only to aid and maintain and bear him to the uttermoſt of his power, as indeed he did both as is aforeſaid, and in conſulting with learned men for him, and otherwiſe, but alſo for his more aſſured aid, being indebted to the ſaid *Sharington* the ſum of two thouſand eight hundred pounds, untruly conſpired with the ſaid *Sharington* upon a bill, whereby it appeared that the ſaid *Sharington* ſhould owe unto him the ſum of two thouſand pounds with intereſts, ſo as the ſaid Admiral might help and relieve him with that two thouſand pounds, with the intereſt at your Majeſty's hand, as a debt unto himſelf; and alſo with two thouſand eight hundred pounds which the ſaid Admiral owed indeed to the ſaid *Sharington*, amounting in the whole to five thouſand and ſix hundred pounds: which bill moſt untruly, and to the maintenance and favour of the ſaid *Sharington*, the ſaid Lord Admiral affirmed before the ſaid Lord Protector, and your Highneſs's Council, to be a true bill, and the ſame two thouſand eight hundred pounds, with the intereſt, to be his juſt debt, and ſo was taken, until the ſaid *Sharington* himſelf confeſſed and affirmed the truth, whereby the covin and falſhood plainly appeared to the contrary.

Finally, moſt gracious Sovereign Lord, it were too much and over tedious to moleſt and trouble your excellent Majeſty, either with the remembrance of his evil doings in his office of the Admiralty, wherein he hath ſo manifeſtly recited, maintained, aided and comforted ſundry pirates, and taken to his own uſe the goods piratouſly taken againſt your laws, and expreſly againſt the orders determined by the Lord Protector and the whole Council, whereunto his own hand hath been for the reſtitution of them; whereby he hath moved almoſt all Princes Chriſtian to conceive a grudge and diſpleaſure, and by open wars to ſeek remedies at their own hands, to the great trouble and danger of your Majeſty, your realms and dominions, and to the great charge, loſs and diſquiet of your moſt loving and faithful ſubjects, and to the peril of breaking of the leagues and treaties of amity betwixt your Majeſty and other foreign Princes, as their Ambaſſadors here have plainly declared, and as preſent experience teacheth; or to expreſs his innumerable untruths, falſhoods, and deceitful practices, diſcovering and opening of your Majeſty's Counſels, refuſal to ſerve your Highneſs as he hath been commanded, oppreſſion and manifeſt extortion of your Majeſty's ſubjects, uſing *Iſland* and other voyages by the ſea; and his determination of revenge towards all men with whom he was offended; which his own letters and other teſtimonies do declare againſt him; with a full reſolution to have put the whole of his intent ſhortly in experience and execution (if God had not prevented it), to the deſtruction of your moſt Royal Perſon, and the ſubverſion and alteration of the whole eſtate of your realms and dominions. Wherefore conſidering as well that he is a member ſo unnatural, unkind and corrupt, and ſuch a heinous offender of your Majeſty and your laws, as he cannot, nor may conveniently be ſuffered to remain in the body of your Grace's Commonwealth, but to the extream danger of your Highneſs; being Head, and of all the good members of the ſame, and is too pernicious and dangerous an example, that ſuch a perſon ſo much bound and ſo forgetful of it, ſo mercifully heretofore intreated, and by ſundry and great benefits allured and called, and ſo cruelly and ingrately continuing in his falſe and traitorous intents and purpoſes againſt your Highneſs, and the whole eſtate of your realm, ſhould remain amongſt us:

'It may therefore pleaſe your excellent Majeſty, that it may be enacted 'with your Highneſs's aſſent, the Lords Spiritual and Temporal, and 'the Commons in this preſent Parliament aſſembled, and by authority of 'the ſame, That the ſaid Sir *Thomas Seymour*, Knt. Lord *Seymour* of '*Sudley*, High Admiral of *England*, for the ſaid traitorous offences and 'deeds, ſhall be by the authority of this preſent Parliament adjudged and 'attainted of treaſon: And that the ſame Sir *Thomas Seymour*, Knt. 'Lord *Seymour* of *Sudley*, high Admiral of *England*, ſhall have, ſuffer, 'and ſuſtain ſuch pains of death, as in caſes of High-Treaſon have been 'uſed and accuſtomed. And alſo, that the ſaid Lord *Seymour* of *Sudley* 'ſhall forfeit and loſe to your Majeſty, and your Heirs, all ſuch caſtles, 'manors, lands, tenements, leaſes, meadows, paſtures, woods, waters, 'rents, reverſions, ſervices, offices, fees, annuities, and all other here'ditaments, goods, chattels and debts whatſoever, the ſame Lord *Seymour* 'had, enjoyed, or was ſeized or poſſeſſed of at the ſeventeenth day of *Ja'nuary*, in the ſecond year of your Grace's reign, or at any time ſince.

'And that all ſuch caſtles, manors, lands, tenements, meadows, 'leaſes, paſtures, woods, waters, rents, reverſions, ſervices, offices, fees, 'annuities, and other hereditaments, to be by authority of this preſent 'act adjudged, veſted, and deemed in the actual and real poſſeſſion of 'your Highneſs, from the ſaid ſeventeenth day of *January*, without any 'office or inquiſition to be thereof had or found. Saving to all and every 'perſon and perſons, and bodies politick and corporate, and to their 'heirs, aſſigns, and ſucceſſors, and to every of them (other than the ſaid 'Lord *Seymour* of *Sudley* and his heirs) all ſuch rights, titles, intereſts, uſes, 'poſſeſſions, reverſons, remainders, entries, conditions, leaſes, fees, offices, 'rents-ſervices, rents-charges, rents-ſeck, annuities, commons, and all 'other commodities, profits, and hereditaments whatſoever, they or any 'of them had, might, or ought to have had, if this preſent act had never 'been had or made.

'Furthermore, the King's Majeſty is pleaſed that it be enacted, That 'all perſon and perſons, bodies politick and corporate, and their execu'tors and adminiſtrators, ſhall be well and truly contented and paid, upon 'their humble ſuit and petition hereafter to be made unto his Highneſs of 'all ſuch debts, which either by ſpecialty, or by any other juſt and true 'contract, the ſaid Lord Admiral did owe to them, or any of them, at any 'time before the ſaid ſeventeenth day of *January*, in the ſaid ſecond year 'of his Majeſty's reign *.'

On the tenth of *March* the Council reſolved to preſs the King that juſtice might be done on the Admiral: and ſince the caſe was ſo heavy and lamentable to the Protector, (ſo it is in the Council-Book) though it was alſo ſorrowful to them all, they reſolv'd to proceed in it, ſo that neither the King, nor he, ſhould be further troubled with it; after dinner they went to the King, the Protector being with them: the King, ſaid he had well obſerved their proceeding, and thank'd them for their great care of his ſafety, and commanded them to proceed in it without further moleſting him or the Protector; and ended; *I pray you, my Lords, do ſo.* Upon this they order'd the Biſhop of *Ely* to go to the Admiral, and to inſtruct him in the things that related to another life, and to prepare him to take patiently his execution; and on the 17th of *March* he having made report to them of his attendance on the Admiral, the Council ſign'd a Warrant for his execution, *viz.*

The Warrant for the Admiral's Execution.

THIS day, the 17th of *March*, the Lord Chancellor *Ex Libro Concilii*, and the reſt of the King's Council, meeting in his *fol.* 247. Highneſs's Palace of *Weſtminſter*, heard the report of the Biſhop of *Ely*, who by the ſaid Lords, and others of the Council, was ſent to inſtruct and comfort the Lord Admiral; after the hearing whereof, conſulting and deliberating with themſelves of the time moſt convenient for the execution of the ſaid Lord Admiral, now attainted and condemned by the Parliament, they did condeſcend and agree, That the ſaid Lord Admiral ſhould be executed the *Wedneſday* next following, betwixt the hours of nine and twelve in the forenoon the ſame day, upon *Tower-Hill*: His body and head to be buried within the *Tower*; the King's writ (as in ſuch caſes as heretofore hath been accuſtomed) being firſt directed and ſent forth for that purpoſe and effect. Whereupon calling to the Council-Chamber the Biſhop of *Ely*, they willed him to declare this their determination to the ſaid Lord Admiral; and to inſtruct and teach him, the beſt he could, to the quiet and patient ſuffering of juſtice, and to prepare himſelf to Almighty God.

E. Somerſet.

T. Cantuarien.	*William Paget.*
R. Rich, Cancel.	*Anthony Wingfield.*
W. St. John.	*William Petre.*
J. Ruſſel.	*A. Denny.*
J. Warwick.	*Edward North.*
F. Shrewſbury.	*R. Sadler.*
Thomas Southampton.	

The ſaid Biſhop, after he had been with the Lord Admiral, repairing again to the Court, made report to Mr. Comptrollor and Secretary *Smith* of the Lord Admiral's requeſts †, the which were, that he required Mr. *Latimer* to come to him, the day of execution to be deferr'd, certain of his Servants to be with him, his Daughter to be with my Lady Ducheſs of *Suffolk* to be brought up, and ſuch like. Touching which requeſts, the ſaid Lords and the reſt of the Council declar'd their minds to Mr. Secretary *Smith*, willing him to write their anſwer in a Letter to the Lieutenant of the *Tower*, who ſhould ſhew in all thoſe requeſts their reſolute anſwer to the ſaid Lord Admiral; which was done accordingly.

On the 20th of *March* he was brought to the Scaffold.

And in the fourth Sermon of Mayſter *Hughe Latymer* ‡, whych he preached before the Kynge wythin hys Graces Palayce at *Weſtminſter*, the xxix day of *Marche*, is the following account of the Lord Admiral ‖.

I knowe more of my Lord Admiral's death ſith that tyme, then I did knowe before. O ſaye they, the man dyed very boldly, he woulde not have done ſo, hadde he not bene in a juſt quarell.

This is no good argument, my frendes. A man ſemeth not to feare death, therefore hys cauſe is good. Thys is a deceavable argumente. He went to hys death boldely: Ergo, he ſtandeth in a juſt quarell.

If I ſhould have ſaied al that I knewe, your ears woulde have yrked to have hearde it, and nowe God hathe brought more to lyghte. And as touchyng the kynde of hys death, whether he be ſaved or no, I referre that to God onely. What God can do, I can not tell. I wyl not denye but that he maye in the twynkeling of an eye ſave a man, and turne hys harte. What he dyd, I cannot tell. And when a man hathe two ſtrokes wyth an axe, whoo can tel that betwene two ſtrokes he doth repent. It is very hard to judge; well, I wyl not go ſo nye to worke, but this I wyl ſay, if they aſke me what I thinke of hys deathe, that he dyed very daungerouſly, yrkeſomelye, horryblye.

The man beyng in the Tower, wrote certayne papers, whiche I ſawe my ſelfe. Thei were two lyttle ones, one to my Ladye *Marye*'s Grace, and another

* But in the 3 and 4 of *Edw.* VI. there paſs'd an Act for reſtitution in blood of *Mary Seymour*, Daughter to Sir *Thomas Seymour*, Knt. Lord *Seymour* of *Sudley*, late Admiral of *England*. See *Raſtal*, vol. I. pag. 996.

† *Strype*'s Memorials, vol. II. pag. 128.

‡ The Reverend Mr. *Wilſon* in his tranſlation of Monſ. *De Thou*'s Hiſtory of his Own Time, vol. I. pag. 272, ſays, 'The Duke of *Somerſet*, the Protector, had conceiv'd a 'jealouſy (which was fomented by the emulation of the women) of his Brother *Thomas* the Admiral, who had married *Catharine Parr*, the late King *Henry*'s widow; and had 'order'd him to be committed to priſon, on ſuſpicion of aiming at the Crown: and as it is the temper of that nation to be over-haſty and prepoſterouſly ſevere in matters 'which relate to the Commonwealth, after he had him put to the rack, he at laſt, by the ſuggeſtion of *Hugh Latimer*, procured him to be condemn'd to death; and on the '20th of *March* to be beheaded.'

‖ This is only to be found in the firſt Edition of *Latimer*'s Sermons in a ſmall thick Octavo, for the later Editions are all caſtrated.

another to my Ladye *Elizabethe*'s Grace, tendynge to thys ende, that they ſhoulde conſpyre agaynſt my Lord Protectour's Grace.

Surely ſo ſeditiouſly as could be. Nowe what a kind of Death was thys, that when he was readye to laye his Head upon the Blocke, he turnes me to the Levetenantes Servaunte and ſayeth, byd my Servaunte ſpede the Thyng that he wottes of: Wel, the Worde was over-heard.

Hys Servaunt confeſſed theſe two Papers, and they were found in a Shooe of hys. They were ſo ſowen between the Soules of a velved Shooe. He made hys ynke ſo craftely, and wyth ſuch Workmanſhip, as the lyke hath not bene ſene.

I was Priſoner in the Touer miſelfe, and I coulde never invente to make ynke ſo. It is a Wonder to hear of his Subtilitie. He made hys Pen of the Aglet of a Poynte that he plucked from hys Hoſe, and thus wrote theſe Letters ſoo ſeditiouſlye, as ye have hearde, enforſynge many matters agaynſt my Lord Protectour's Grace, and ſo fourth. God had lefte him to hymſelfe, he hadde cleane forſaken hym. What woulde he have done if he had lived ſtyll? that went about thys geare, when he layed hys head on the blocke at the ende of hys lyfe. Charity (they ſaye) worketh but godly, not after thys ſorte. Well, he is gone, he knoweth hys fate by thys, he is eyther in joy or in payne. There is no repentance after thys lyfe, but if he dye in the ſtate of damnacion, he ſhall ryſe in the ſame. Yea, thoughe he have a whole Monkerye to ſynge for hym, he ſhall have hys fynal ſentence when he dyeth.

And that ſervant of hys that confeſſeth and uttered thys gere, was an honeſt manne. He dyed honeſtlye in it. God put it in his herte. And as for the tother, whether he be ſaved or no, I leave it to God. But ſurelye, he was a wycked man, the Realme is well rydde of hym.

It hath a treaſure, that he is gone, he knoweth hys fare by thys. A terrible example ſurelye, and to be noted of every man; nowe before he ſhoulde dye, I heard ſay he had commendations to the Kyng, and ſpake many wordes of his Majeſtye. All is the Kinge, the Kinge. Yea, *Bona Verba*. Theſe were fayre wordes, the Kynge, the Kynge. It hath been the caſt of all Traitours to pretend nothing againſt the Kynge's Perſon, they never pretend the matter to the Kynge, but to other. Subjects maye not reſyſte anye Magiſtrates, nor oughte to do nothinge contrarye to the Kinge's Lawes. And therefore theſe wordes, the Kynge, and ſo fourth, are of ſmall effect. I have hearde muche wickednes of thys manne, and I have thought oft, Jeſu, what wyl worth, what wyl be the ende of thys manne? Among others (that went to execution) I heard of a wanton woman, a naughtye lyer, a whore, a vayne bodye: and was ledde from *Newgate* to the place of execution, for a certain robberye that ſhe had committed, and ſhe hadde a wycked communication by the waye. This woman, I ſaye, as ſhe wente by the waye, had wanton and folyſhe talke, as thys: That yf good fellowes hadde kept touch wyth hyr, ſhe hadde not been at thys time in that caſe; and amongſte al other talke, ſhe ſaied, That ſuch a one, and named this manne, had hyr maidenhead fyrſte; and heryinge thys of hym at that tyme, I loked ever what woulde be hys ende, what woulde become of hym.

He was a manne the fardeſt frome the feare of God that ever I knewe or hearde of in *Englande*. Fyrſte he was author of all thys woman's whoredome. For if he had not had hyr maydenhead, ſhe myghte have been maryed, and become an honeſte womanne; whereas nowe beying nought with hym, ſhee fell afterwarde by that occaſion to other: And they that were nought with hyr fel to robbery, and ſhe folowed; and thus was he author of all thys. This geare came bi ſequels, peradventure thys maye ſeeme to be a lyghte matter, but ſurelye it is a great matter: and he, by unrepentance, fel frome evyl to worſe, and from worſe to worſte of all, tyll at the length he was made a ſpectacle to all the worlde. I have hearde ſaye, he was of the opinion that he believed not the immortalytye of the Soule, that he was not ryghte in the matter. And it mighte well appear by the takynge of hys death. But ye well ſay, What ye ſclaunder, ye breake Charitye.

Nay, it is Charitie that I do, we canne have no better uſe of hym nowe, than to warne others to beware by hym.

Chriſt ſaith, *Remember* Lotte's *Wife!* ſhe was a woman that would not be content with her good ſtate, but wreſtleled wyth God's callinge; and ſhe was for that cauſe turned into a Salt Stone, *&c.* Thus may thys man be an example to us. Let us all ſubjects judge well of our Magiſtrates in ſuche matters, and be content wyth theyr doings, and loke not to be of the Counſaile.

And thus toke I occaſion to ſpeake of him, and to profit you thereby, and I beſeech you ſo to take it, he may be a good warnyng to us, and this is the beſt uſe that wee can have of him now.

In his fifth Sermon he ſaieth, You will ſaye this, the Parliament Houſe are wiſer than I am; you might leave them to the defence of themſelves: Although the men of the Parliament Houſe can defende themſelves, yet have I ſpoken thys of a good zeale, and a good ground of the Admiralle's wrytinge: I have not fayned, nor lyed one jote. I will nowe leave the honourable Counſayle to anſwer for themſelves. He confeſſed one fact, he would have hadde the Governaunce of the King's Majeſty, and wot ye whye? He ſayed, he would not in his minoritie have him brought up lyke a warde. I am ſure he hath bene brought up ſo godly, with ſuch Schole-maſters, as never King was in *Englande*, *&c.*

And in his ſeventh Sermon he ſaieth thus: I have heard ſay, when that good Quene (meaning Queen *Cathrine*) that is gone, had ordained in her houſe dayly prayer both before none and after none, the Admyral gettes hym out of the waye, lyke a moule diggying in the earth. He ſhal be *Lotte*'s Wyfe to me as long as I lyve. He was a covetous man, an horrible covetous manne; I woulde there were no mo in *England:* He was an ambicious man; I woulde there were no mo in *Englande:* He was a ſedicious man, a contemnar of Commune Prayer, I would there were no mo in *England:* He is gone, I wolde he had lefte none behind him. Remember you, my Lordes, that you pray in your houſes, to the better mortification of your Fleſhe.

II. Proceedings againſt *Edward*, Duke of Somerset, in Parliament, for *Miſdemeanours* and *High-Treaſon*, *Jan.* 1550. 3 and 4 *Edw.* VI.

THE Duke of *Somerſet* having taken the part of the common People againſt the Nobility in the buſineſs of incloſures, made himſelf many Enemies. He had alſo given great Grounds of Jealouſy by entertaining foreign Troops in the King's Service; and the noble Palace he was raiſing in the *Strand* out of the Ruins of ſome Biſhops Houſes and Churches, drew as publick an Envy on him as any Thing he had done: And his acting by his own Authority, without aſking the Advice of the Council, and often againſt it, was aſſuming a regal Power, and ſeemed not to be endured by thoſe who thought they were in all Points his Equals. Thus, all *September*, there were great Heats between the Lords and him. The King was then at *Hampton-Court*, where the Protector alſo was, with ſome of his Retinue and Servants about him, which increaſed the Jealouſies: for it was given out, he intended to carry away the King. On the 6th of *October*, ſome of the Council met, and ſent to the Lord Mayor and Aldermen of *London* to obey no Letters from the Protector, and wrote to the Nobility to inform them how they were proceeding. The Protector hearing of theſe Things, removed the King to *Windſor* in all haſte, and armed ſuch as he could gather for his preſervation: Whereupon ſeveral Letters paſſed between the Council at *London*, and thoſe at *Windſor**; and at laſt a Proclamation was publiſhed againſt the Protector to the following effect: 1. "That the Protector, by his "malicious and evil Government, was the Occaſion of all the Sedition "that of late happened within the Realm. 2. The Loſs of the King's "Pieces in *France*. 3. That he was ambitious and ſought his own "Glory, as appeared by building of moſt ſumptuous and coſtly Houſes "in the Time of the King's Wars. 4. That he eſteemed nothing the "grave Counſel of the Councillors. 5. That he ſowed Diviſion between "the Nobles, the Gentlemen, and the Commons. 6. That the Nobles "aſſembled themſelves together at *London*, for none other purpoſe but "to have cauſed the Protector to have lived within Limits, and to have "put ſuch Order for the Surety of the King's Majeſty as appertain-"ed: Whatſoever the Protector's Doings were, which they ſaid were "unnatural, ungrate, and traitorous. 7. That the Protector ſlandered "the Council to the King, and did what in him lay to cauſe Variance "between the King and the Nobles. 8. That he was a great Traitor†, "and therefore the Lords deſired the City and Commons to aid them to "take him from the King." This was ſigned by the Lord *Rich*, Lord "Chancellor; the Lord *St. John*, Preſident of the Council; the Marquis of *Northampton*; the Earl of *Warwick*, great Chamberlain; and moſt of the Council. On the 12th of *October* the whole Council went to *Windſor*, and coming to the King, they proteſted, that all they had done was only out of Zeal and Affection to his Perſon and Service. The King received them very kindly, and thanked them for their Care of him. On the 13th they ſat in Council, and ſent for thoſe who were ordered to be kept in their Chambers, only *Cecil* (afterwards the famous Lord *Burleigh*) was let go; and, in the end, the Lord Protector was commanded from the King's Preſence, and committed to Ward in a Tower within the Caſtle of *Windſor*, called *Beauchamp Tower:* and the next Day, being the 14th, they brought from thence the Protector, and conveyed him to the *Tower* of *London*. Some Time after, the Lords reſorted to the *Tower*, and there charged the Protector with the following Articles of Miſdemeanour and High-Treaſon**.

Articles objected to the Duke of Somerſet.

1. THAT he took upon him the Office of Protector, upon expreſs Condition, that he ſhould do nothing in the King's Affairs, but by Aſſent of the late King's Executors, or the greateſt Part of them.

2. That contrary to this Condition, he did hinder Juſtice, and ſubvert Laws of his own Authority, as well by Letters as by other Command.

3. That he cauſed divers Perſons, arreſted and impriſoned for Treaſon, Murder, Man-ſlaughter, and Felony, to be diſcharged, againſt the Laws and Statutes of the Realm.

4. That he appointed Lieutenants for Armies, and other Officers for the weighty Affairs of the King, under his own Writing and Seal.

5. That he communed with Ambaſſadors of other Realms alone, of the weighty Matters of the Realm.

6. That he would taunt and reprove divers of the King's moſt honourable Councillors, for declaring their Advice in the King's weighty Affairs againſt his Opinion; ſometimes telling them, that they were not worthy to ſit in Council; and ſometimes, that he need not to open weighty Matters to them; and that if they were not agreeable to his Opinion, he would diſcharge them.

7. That againſt Law he held a Court of Requeſt in his own Houſe; and did enforce divers to anſwer there for their Freehold and Goods, and did determine of the ſame.

* See the Articles offered by the Protector, and the Letters that paſſed between the Lords and the King, in *Burnet*'s *Reformation*, Vol. II. in the Collection of Records, p. 183, *&c.*

† This Proclamation, which had made him a Traitor, within three Days was called in again, with Commandment given none of them to be ſold. *Fox*'s *Book of Martyrs.* Vol. II. p. 1217. Old Edit.

** *Fox*, and *Hayward* (in his Life of King *Edward* the VI.) both ſay, the Duke was in the Tower a ſmall Time before the Lords laid the Articles to his Charge: But *Burnet* and *Rapin* ſay, the *Duke* was called before the Council on the 14th, and that the Articles of his Accuſation were then read to him.

8. That

8. That being no Officer, without the advice of the Council, or most part of them, he did dispose Offices of the King's gift for Money; grant leases and wards, and presentations of Benefices pertaining to the King; gave Bishopricks, and made sales of the King's Lands.

9. That he commanded alchimy and multiplication to be practised, thereby to abase the King's Coin.

10. That divers times he openly said, that the Nobility and Gentry were the only cause of dearth; whereupon the people rose to reform matters of themselves.

11. That against the mind of the whole council, he caused Proclamation to be made concerning inclosures; whereupon the people made divers insurrections, and destroyed many of the King's Subjects.

12. That he sent forth a Commission, with articles annexed, concerning inclosures, commons, highways, cottages, and such like matters, giving the Commissioners authority to hear and determine those causes, whereby the laws and statutes of the Realm were subverted, and much Rebellion raised.

13. That he suffered Rebels to assemble and lie armed in Camp, against the Nobility and Gentry of the Realm, without speedy repressing of them.

14. That he did comfort and encourage divers Rebels, by giving them money, and by promising them fees, rewards, and services.

15. That he caused a Proclamation to be made against law, and in favour of the Rebels, that none of them should be vexed or sued by any for their offences in their Rebellion.

16. That in time of Rebellion, he said, that he liked well the actions of the Rebels; and that the avarice of gentlemen gave occasion for the people to rise; and that it was better for them to die, than to perish for want.

17. That he said, the Lords of the Parliament were loth to reform inclosures and other things, therefore the people had a good cause to reform them themselves.

18. That after declaration of the defaults of *Bulloign*, and the pieces there, by such as did survey them, he would never amend the same.

19. That he would not suffer the King's pieces of *Newhaven*, and *Blackness*, to be furnished with men and provision; albeit he was advertised of the Defaults, and advised thereto by the King's Council; whereby the *French* King was emboldened to attempt upon them.

20. That he would neither give authority, nor suffer Noblemen and Gentlemen to suppress Rebels in time convenient; but wrote to them to speak the Rebels fair, and use them gently.

21. That upon the 5th of *October*, the present year, at *Hampton-Court*, for defence of his own private causes, he procured seditious Bills to be written in counterfeit hands, and secretly to be dispersed into divers parts of the Realm; beginning thus: *Good People*; intending thereby to raise the King's subjects to Rebellion and open War.

22. That the King's Privy Council did consult at *London* to come to him, and move him to reform his Government; but he hearing of their assembly, declared, by his letters in divers places, that they were high Traitors to the King.

23. That he declared untruly, as well to the King as to other young Lords attending his Person, that the Lords at *London* intended to destroy the King; and desired the King never to forget, but to revenge it, and desired the young Lords to put the King in remembrance thereof; with intent to make sedition and discord between the King and his Nobles.

24. That at divers times and places, he said, the Lords of the Council at *London* intended to kill me; but if I die, the King shall die: and if they famish me, they shall famish him.

25. That of his own head he removed the King so suddenly from *Hampton-Court* to *Windsor*, without any provision there made, that he was thereby not only in great fear, but cast thereby into a dangerous disease.

26. That by his Letters he caused the King's People to assemble in great numbers in armour, after the manner of War, to his aid and defence.

27. That he caused his servants and friends at *Hampton-Court* and *Windsor*, to be apparelled in the King's armour, when the King's servants and guards went unarmed.

28. * That he caused at *Windsor* his own person in the night-time to be guarded in harness by many persons, leaving the King's Majesty's person unguarded; and would not suffer his own guard and servants to be next the King's Person, but appointed his servants and friends to keep the gates.

29. That he intended to fly to *Jersey* or *Wales*, and laid post-horses and men, and a boat, to that purpose †.

After he had read and considered the above Articles, he sent the underwritten submission to the Lords.

Edward *Duke of* Somerset's *first Submission*.

I *Edward*, Duke of *Somerset*, have read and considered these saide twenty-nine Articles before specified, and do acknowledge my saide offences, faults, and crimes, doone and conteined in the same, and most humblie prostrate on my knees, do fullie and wholie submit myselfe to the most aboundant mercy and clemencie of the King's Majestie, for the moderation of my saide offences; having my full trust and confidence, that his Majestie, with the advice of his Highnesse most honourable Counsaile, will consider mine offences, faultes, wordes, and proceedings, that if anie of my saide offences be by his clemencie pardoned, remitted, or otherwise discharged, that I maie enjoye the benefite thereof, although the same become unknowne. And farther, I do most humblie beseech all my Lordes, and other his Majesties most honourable Counsayle, not onlie to be meanes to his Majestie, to take awaie and consider mine offences to have proceeded more of ignorance, negligence, follie, wilfulnes, and for lacke of good consideration, than of anie kankerd or malicious hart, evil intent or thought, tending to anie Treason to his Majestie or Realm: But that it may please his Majestie, by the charitable advise of their good Lordships, to have pity upon mee, my wife and children, and to take some mercifull waie with me, not according to the extremity of his lawes, but after his great goodnes and clemencie, whereunto whatsoever it shall bee, I doe most humblie with all my hart submit my selfe.

Written with mine owne hande the 23d Day of December (Burnet *says the 13th) in the 3d yeere of our Soveraigne Lord King* Edward *the Sixth.*

However, on the second of *January*, a Bill was put in against the Duke of *Somerset* of the Articles before-mentioned, with the above Confession. This he was prevailed with to do, upon assurance given, that he should be gently dealt with, if he would truly confess and submit himself to the King's mercy. But some of the Lords said, they did not know whether that Confession was not drawn from him by force; and that it might be an ill precedent to pass Acts upon such papers, without examining the party, whether he had subscribed them freely and uncompelled: Whereupon a Committee was appointed of four Temporal Lords and four Spiritual, who were sent to examine him concerning it. The day following the Bishop of *Coventry* and *Litchfield* made the Report: That he thanked them for their kind message, but that he had freely subscribed the Confession ‡ that lay before them. He made it on his knees before the King and Council, and signed it: and he protested his offences had flowed from rashness and indiscretion rather than malice; and that he had no treasonable design against the King or his Realms. So both Houses soon passed the Bill against him, and he was fined, by Act of Parliament, intitled, *An Act touching the Fine and Ransome of the Duke of* Somerset; that is, for the punishment of his late misdemeanors, whereby he was fined 2000*l.* a year of land, and lost all his goods and offices. Upon this, he sent another submission.

The second Submission of Edward *Duke of* Somerset, *Prisoner in the Tower.*

I AM most fearefull and full of heavinesse, my verie good Lordes, to understande that my last letter was no better accepted at your Lordships handes, to whom I am bounde during my life, for your most gentle and mercifull dealinge with me, that it pleased your goodnesse to bring my case to a fine. I truste your Lordshipes never think that ever I did, or woulde intende, to stand against the King's Majestie and youre Lordshipes Goodnes, or that I woulde goe about to justifie my cause, seeing his Majestie and your Lordshipes offereth clemencie, mercie, and pardon. Although the fine be to me importable, yet I doe commit my self wholie to his Highnesse and your Lordships mercies; I pray onlie the moderation of it, and did covet to declare to youre goodnesse mine inabilitie to beare it: And yet referred all to his Majestie, and your wisdome, goodnesse, and discretion. And I most humblie desire your Lordshipes not to think that I was about to contende with your Lordshipes, when I did speake of my conscience, I might erre, in that I thought I did for the best, as I doe acknowledge and confesse, that neither I am the wisest man in the worlde, nor yet if I were, I shoulde not escape without a most singular grace, but manie times I shoulde offende: But I leave all that, and most humblie, simplie, wholie, and lowlie, I submit my selfe to the King's Majestie and to your good Lordshipes; appealing from the rigour and extremitie of his Majestie's lawes, to his Majesty's great mercie and clemencie; praying your goodnes to bee meanes to his Majestie, not to bee offended with mee, nor to exclude his Majestie's mercie and benignitie from me, for my rudenes and lack of discretion, but to accept my good minde as one that faine woulde doo that were well. And when I cannot or have not doone that things I ought to do, I would gladlie amende, and am readie at all times without condition to doo and suffer willinglie that thing that your honours will appoint mee, accepting what clemencie or mercie soever I obtayne to be of his Majestie's and your goodnesse. Most humbly on my knees praying his Majestie and your good Lordships to pardone mine offences, and to order me for them, as to his moste high mercifull clemencie shall appeere convenient. And finallie flying from extremitie of justice, desire mercie, as you bee, and are called, most mercifull Counsellors, not imputing my writings and doings hitherto as of stouteneesse or stubbornesse, but onlie for lack of discretion and wisdome. For the which once again I require pardon and favor to be shewed, and if it pleased your good Lordshipes to heare me, I trust you should find me lowly unto your honors, and so conformable unto your Lordships orders, that I trust to make amends, and obtaine pardon for my former folly. And thus I most humblie commit your good Lordships to Almighty God, to whom I shall alwaies pray that ye maie long continue in honor. *From the Tower, the second of* Februarie.

He came out of the *Tower* on the 6th of *February*, giving bond of 10000*l.* for his good behaviour, but limited that he should stay at the King's house at *Sheen*, or his own at *Sion*, and should not go four miles from them, nor come to the King or Council, unless he was called; and when he knew that the King was to come within four miles of these houses, he was to withdraw from them.

* This Article is in *Stow*'s *Chronicle*, but omitted in *Hayward*'s Life of *Edw.* VI. and *Burnet*'s Reformation.

† *Rapin*, Vol. VIII. *Oct. Edit.* p. 72 says, Upon these accusations, to which it was then no time to answer, he was sent to the Tower; those whom he had taken so much pains to humble being become his proper Judges. He could not deny that most of the facts laid to his charge were true. But the question was, Whether they were crimes? for he was accused neither of fraud nor of rapine, nor of extortion. But that was to be decided only by the Peers of the Realm, or by the Parliament.

‡ Many thought his confession a very strange thing, and aggravated the abjectness of such a behaviour. But it was doubtless becaus they would have been glad he should have taken another course, which would not have failed to prove fatal to him. It is certain, that among the articles of his accusation, there were several which could be justified only by the intention, which would scarce have served his turn in the House of Peers: the major part of whom were not inclined to favour him. For instance, to mention only the chief Article; could he deny that, *contrary to the condition on which he was made Protector, he had degraded, as it were, the other Regents, and reduced them to the state of bare counsellors?* It is true, he might have alledged the King's Patent. But it was the Patent of a minor King, between ten and eleven years old only, who looking upon him as his Governor, did every thing by his advice; wherefore the Duke could never have cleared himself upon this Article, any more than upon several others. Consequently his only remedy was to own himself guilty of all, and to cast himself upon the King's mercy. Besides, it concerned him highly to get out of prison if it was possible on any terms, since it was dangerous for him to continue any longer in the hands of his enemies. *Rapin* (8vo Edit.) Vol. VIII. p. 76.

On the 16th he had his pardon, and carried himſelf ſo well, that on the 18th of *April* following he went by invitation to Court, to the King's Majeſty at *Greenwich*; where he was honourably received by the King and his Council, and dined with the King, and was ſworn of the Privy-Council; and the King of his ſpecial favour, and at the humble petition of the Council, by Patent dated *June* the 4th, gave him back almoſt all his eſtate that was forfeited.

III. *Proceedings againſt* Edward, *Duke of* Somerset, *for* High-Treaſon *and* Felony, Dec. 1, 1551, 5 Ed. VI. *at* Weſtminſter.

THE Duke of *Somerſet* had ſuch acceſs to the King, and ſuch freedoms with him (notwithſtanding the late judgment againſt him), that the Earl of *Warwick* had a mind to get rid of him. The Duke ſeemed alſo in *April* this year to have got the King again in his power, and dealt with the Lord *Strange* to perſuade the King to marry his daughter *Jane*; and that he would advertiſe him of all that paſſed about the King. The Earl of *Warwick* had got himſelf created Duke of *Northumberland*; and for ſeveral of his friends he procured a creation of new honours. The new Duke of *Northumberland* could no longer bear ſuch a Rival in greatneſs as the Duke of *Somerſet* was, who was the only perſon that he thought could take the King out of his hands: So a deſign being laid to deſtroy him, he was apprehended on the 17th of *October*, and ſent to the *Tower*, and with him the Lord *Gray*, Sir *Ralph Vane*, Sir *Thomas Palmer*, Sir *Thomas Arundell*, were alſo taken, and ſome of his followers, *Hamond*, *Newdigate*, and two of the *Seymours*, and were ſent to priſon. The Day after, the Dutcheſs of *Somerſet* was alſo ſent to the *Tower*, with one *Crane* and his wife, and two of her chamber-women; after theſe, Sir *Thomas Holdcroft*, Sir *Miles Patridge*, Sir *Michael Stanhope*, *Wingfield*, *Banniſter*, and *Vaughan*, were all made Priſoners.

But Sir *Thomas Palmer*, though impriſoned with him as an accomplice, was the perſon that ruined him. The evidence againſt the Duke was chiefly Sir *Thomas Palmer*'s Information; who being brought by the Duke of *Northumberland* privately to the King, related the whole conſpiracy.

Sir Thomas Palmer's *Examination.*

HE declared, That upon St. *George's-Day* laſt, before the Duke of *Somerſet* being upon a journey towards the north, in caſe Sir *William Herbert*, Maſter of the Horſe, had not aſſured him that he ſhould receive no harm, would have raiſed the People; and that he had ſent the Lord *Gray* before to know who would be his friends: Alſo that the Duke of *Northumberland*, the Marquis of *Northampton*, the Earl of *Pembroke*, and other Lords, ſhould be invited to a banquet; and if they came with a bare company, to be ſet upon by the way; if ſtrongly, their heads ſhould have been cut off at the place of their feaſting. He declared farther, that Sir *Ralph Vane* had two thouſand men in readineſs: That Sir *Thomas Arundel* had aſſured the *Tower*, that *Patridge* ſhould raiſe *London*, and take the Great Seal; that *Seymour* and *Hamond* would wait upon him, and that all the Horſe of the Gendarmerie ſhould be ſlain.

The Earl of *Rutland* did affirm, that he had made a Party for getting himſelf declared Protector in the next Parliament.

The above-mentioned particulars were told the King, with ſuch circumſtances, that he was induced to believe them, and reſolved to leave him to the law.

Sir Thomas Palmer's *ſecond Examination.*

THAT the Gendarmerie, upon the muſter-day, ſhould be aſſaulted by two thouſand men, under Sir *Ralph Vane*, and by an hundred horſes of the Duke of *Somerſet*'s, beſides his Friends, which ſhould ſtand by, and beſides the idle people, which were thought inclinable to take his part. That this done, he would run through the city and proclaim *Liberty*, *Liberty*, to raiſe the apprentices, *&c.* And in caſe his attempt did not ſucceed, he would go to the *Iſle of Wight*, or to *Poole*.

Crane's *Examination.*

HE confeſſed all that *Palmer* had ſaid; to which he added, That the Lord *Paget*'s Houſe was the place, where the Nobility being invited to a banquet, ſhould have loſt their heads: And that the Earl of *Arundel* was made acquainted with the Conſpiracy by Sir *Michael Stanhope*, who was a meſſenger between them: And that the thing had been done, but that the greatneſs of the enterprize cauſed delays, and ſome diverſity of advice. And further, that the Duke of *Somerſet* once, feigning himſelf ſick, went to *London* to ſee what friends he could procure.

Hamond's *Examination.*

HE confeſſed that the Duke of *Somerſet*'s chamber at *Greenwich* had been ſtrongly guarded in the night by many armed men.

All theſe were ſworn before the Council, and the greateſt part of the Nobility, that their Confeſſions were true; and they did ſay, that what was ſworn was without any kind of compulſion, force, or envy, or diſpleaſure, but as favourable to the Duke as they could ſwear to with ſafe Conſciences.

Lord Strange's *Examination.*

HE voluntarily informed how the Duke deſired him to move the King to take to wife his third daughter the Lady *Jane*; and that he would be his ſpy about the King, to advertiſe him when any of the Council ſpake privately with him, and to acquaint him what they ſaid.

Hereupon the Lord Chancellor openly declared in the Star-Chamber theſe Accuſations againſt the Duke of *Somerſet*; and on the 22d of *October*, with much Shew and Ceremony, were all the Crafts and Corporations of *London* commanded to repair to their Halls, and there it was ſhewed them, That the Duke of *Somerſet* would have taken the Tower, ſeized on the Broad-Seal, and have deſtroyed the City, and then to have gone to the *Iſle of Wight*. After this Declaration, they were charged each Corporation to ward every Gate in *London*, and to have a walking Watch through the City. Towards the latter end of *November*, a Letter was ſent to the Lord Chancellor, to cauſe a ſufficient Commiſſion to be made, and ſealed with the Great Seal of *England*, of *Oyer* and *Terminer*, to the Lord Marquis of *Winchester*, that he may thereby be the King's Seneſchal, *hac unica vice tantum*, for the hearing and determining of the Treaſons and Felonies of the Duke of *Somerſet*, giving the Date of the ſaid Commiſſion the 28th of *November*; and the 1ſt of *December* was ordered for his Trial.

December 1. the Duke of *Somerſet* came to his Trial at *Weſtminſter-Hall*. The Lord Treaſurer ſat as High-Steward of *England*, under the Cloth of State, on a Bench between two Poſts, three degrees high. All the Lords to the number of twenty-ſeven, *viz.*

Dukes.	*Suſſex*,	*Bourough*,
Suffolk,	*Worceſter*,	*Zouch*,
Northumberland.	*Pembroke*.	*Stafford*,
Marquis.	Viſcount.	*Wentworth*,
Northampton.	*Hereford*.	*Darcy*,
Earls.	Barons.	*Sturton*,
Derby,	*Burgaveny*,	*Windſor*,
Bedford,	*Audley*,	*Cromwell*,
Huntington,	*Wharton*,	*Gobham*,
Rutland,	*Evers*,	*Bray*.
Bath,	*Latimer*,	

Theſe ſat a degree under, and heard the matter debated.

The Crime laids againſt him were caſt into five ſeveral Indictments, as King *Edward* VI. has it in his Journal; but the Record mentions only three, whether Indictments or Articles, is not ſo clear. 1. That he had deſigned to have ſeized on the King's Perſon, and ſo have governed all Affairs. 2. That he, with one hundred others, intended to have impriſoned the Earl of *Warwick*, afterwards Duke of *Northumberland*. And 3. That he had deſigned to have raiſed an Inſurrection in the City of *London*. But the Indictment which here follows, is only for deſigning to ſeize on and impriſon the Duke of *Northumberland*.

London' ſſ. ‘ INquiſitio capt' fuit apud Guihald' Civitat' London die Sabbathi, videlicet viceſimo primo die Novembris, anno
‘ regni domini Edwardi nuper Regis Anglie ſexti, quinto, coram Ri-
‘ chardo Dobbes tunc Majore Civitat' London, ac aliis Juſticiariis, &
‘ Commiſſioniariis per ſacramentum duodecim, &c. qui dixerunt ſu-
‘ per ſacramentum ſuum, quod Edwardus Dux Somerſ' nuper de
‘ Sion in Comitat' Middleſex' Deum pre oculis ſuis non habens, ſed inſti-
‘ gatione Diabolica ſeduct' & debit', legiantie ſue minime ponderans,
‘ apud Holborne, in parochia ſancta Andree infra Civit' London, viceſi-
‘ mo die Aprilis anno regni dicti nuper Regis Edwardi ſexti quinto ſu-
‘ pradicto, & diverſis diebus & vicibus antea & poſtea falſe, malitioſe,
‘ & proditorie, per apertum factum circumivit, compaſſavit, & imagina-
‘ vit, cum diverſis aliis perſonis predictum nuper Regem Edwardum ſex-
‘ tum de ſtatu ſuo Regali deponere & deprivare, necnon ex injuria ſua pro-
‘ pria Perſona Regalem ipſius nuper Regnis natural' & ſupremi domini
‘ abſq; authoritate aliqua ſibi per ipſum nuper Regem dat', ſive conceſſa in
‘ ſolam gubernationem predicti nuper Ducis habere & retinere, ac ad vo-
‘ luntatem ejuſdem nuper Ducis regere & tractare, ac etiam omnia & ſin-
‘ gula dominia, negotia, authoritateſque Regias hujus regni Anglie ad
‘ libit' ipſius nuper Ducis, ordinare & uti, adtunc & ibidem arrogant',
‘ falſe, malitioſe, & proditorie compaſſavit & imaginavit: Et ulterius Ju-
‘ ratores predicti preſentabant, quod idem nuper Dux Somerſ' ad ſuam
‘ proditoriam intentionem perimplend', & proficiend', ex malitia ſua pre-
‘ cogitat' ſeipſum ſimul cum Michaele Stanhope nuper de Bedington in
‘ Comitat' Sur' Milit', Milone Patriche nuper de London, Milit',
‘ Thom' Holcroft nuper de London, Milit', Franciſco Newdigate nuper
‘ de London generoſ', ac cum diverſis aliis perſonis ad numerum centum
‘ perſonarum Jurator' predictis ignot' in forcibili modo ex eorum pro-
‘ priis authoritatibus ad intentionem capiend' & impriſonand' prenobilem
‘ Johannem nuper Ducem Northumberl' adtunc Comitem Warr', unum
‘ de Privat' Concilio dicti nuper Regis tunc exiſten' adtunc & ibidem illici-
‘ te, falſe, malitioſe, & proditorie aſſemblaverunt, ipſiſque modo & forma
‘ predictis, illicite, voluntarie, & malitioſe aſſemblat', ad perimplend'
‘ & exequend' falſam & proditoriam intentionem ſuam predictam, falſe,
‘ voluntarie, malitioſe, & proditorie, adtunc & ibidem per ſpatium duarum
‘ horarum & amplius inſimul continuaverunt & remanſerunt, contra legi-
‘ antiam ſuam debitam, & contra pacem dicti nuper Regis coronam
‘ & dignitatem ſuas, ac contra formam diverſorum ſtatutorum in hu-
‘ juſmodi caſu nuper edit' & proviſ'. Et ulterius Juratores predicti pre-
‘ ſentabant, quod predictus Edwardus nuper Dux Somers' Deum pre ocu-
‘ lis ſuis non habens, ſed inſtigatione Diabolica ſeduct' viceſimo die
‘ Maii, anno regni dicti nuper Regis Edwardi ſexti quinto ſupradicto, &
‘ diverſis aliis diebus & vicibus antea, & poſtea apud Holborne, in pre-
‘ dicta parochia ſancti Andree infra Civitat' London, & apud diverſa alia
‘ loca, infra Civitat' London predictam felonice, ut felo dicti nuper Re-
‘ gis per aperta verba & facta procuravit, movit & inſtigavit complu-
‘ rim' ſubdit' dicti nuper Regis ad inſurgend' & apertam rebellionem &
‘ inſurrectionem infra hoc regnum Anglie movend', contra ipſum nuper
‘ Regem, & adtunc & ibidem felonice ad capiend' & impriſonand' pre-
‘ dictum prenobil' Johannem nuper Ducem Northumberland, tunc Comit'
‘ Warwic' de Privat' Concilio dicti nuper Regis adtunc exiſten' contra
‘ pacem ipſius nuper Regis coronam & dignitatem ſuas, ac contra formam
‘ ſtatuti in huiuſmodi cauſa editi & provis'.

‘ Et poſtea ſcilicet die Martis primo die Decembris, anno quinto ſupra-
‘ dicto, coram Willielmo Marchione Wynton, Theſaurar' Anglie, necnon
‘ Seneſchallo Anglie, hac vice apud Weſtmonaſterium ven' prædictus Ed-
‘ wardus nuper Dux Somerſ', ſub cuſtod' Johannis Gage prenobil' ordinis

'Garterii Milit', Conſtabular' dicti Turr' London, in cujus cuſtod' preantea 'ex cauſa predicta, & aliis certis de cauſis commiſſus fuit ad barr' apud 'Weſtmonaſterium predictam duct' in propria perſona ſua qui committe-'batur prefat' Conſtabular', &c. Et ſtatim de omnibus & ſingulis ſepe-'ralibus proditionibus, & feloniis predictis ſibi ſuperius impoſit' allocat' 'qualit' ſe voluiſſet inde acquietari, dixit quod ipſe in nullo fuit cul-'pabil'. Et inde de bono & malo pon' ſe ſuper pares ſuos, &c. Super 'quo Henric. Dux Suffolc', Johannes Dux Northumberland, & ceteri 'Comit' & Barones, predict' Edwardi nuper Ducis Somers' pares in-'ſtant ſuper eorum fidelitatibus & legianc' dicto nuper Regi debit' per 'prefat' Seneſchal' Anglie de veritate inde dicend' onerati; Et poſtea per 'eundem Seneſchal' ab inferiori pare, uſque ad ſupremum parem illorum 'ſeperatim publice examinati quilibet eorum ſeperatim dixerunt, quod 'predictus Edwardus nuper Dux Somers' de ſeperalibus proditionibus 'predictis ſibi ſeperatim in forma predicta ſuperius impoſit' in nullo fuit 'inde culpabil'. Et ulterius quilibet eorum ſeperatim dixerunt, quod 'predictus Edwardus nuper Dux Somers' de feloniis predictis ſibi ſepe-'ratim in forma predicta ſuperius impoſit' fuit culpabil' modo & forma, 'prout per ſeperalia indictamenta inde ſuperius ſupponebatur, ſuper quo 'inſtant' ſervien' dicti nuper Regis ad legem, ac ipſius nuper Regis At-'torn' juxta debit' legis formam pet' verſus eundem Edwardum nuper 'Ducem Somers' judicium, & executionem ſuper ſeperalibus feloniis pre-'dictis pro dicto nuper Rege habend', &c.

Judgement que ſerra acquite pur le treaſon, & ſuſpend pur le felonie.

'Et ſuper hoc viſis per Curiam predictam adtunc intellec-'tis omnibus & ſingulis premiſſis, conſideratum fuit quod 'predictus Edwardus nuper Dux Somers' quoad ſeperales 'proditiones predictas ſibi ſeperatim in forma predicta ſu-'perius impoſit', & quamlibet eorum iret inde quiet'. Et 'quoad ſeperalis felonias predict', eidem nuper Duci So-'mers' in forma predicta ſuperius impoſit' unde invent' fuit culpabil', 'ulterius conſideratum fuit, quod idem Edwardus nuper Dux Somers' 'ſuſpenderetur, &c.'

Then were read the Depoſitions of *Palmer*, *Crane*, *Hamond*, *&c.* and the King's Counſel opened the Indictment, and urged ſtrongly *Palmer*'s voluntary Examination (as they called it) with *Crane*'s and the other Exminations.

The Duke of *Somerſet* being, it ſeems, little acquainted with Law, did not deſire Counſel to plead or aſſiſt him in Point of Law, but only anſwered to Matters of Fact; he deſired no Advantage might be taken againſt him for any idle or angry Word that might at any time have fallen from him; he proteſted he never intended to have raiſed the Northern Parts, but had only, upon ſome Reports, ſent to Sir *William Herbert* to be his Friend; that he had never determined to have killed the Duke of *Northumberland*, or any other Perſon, but had only talked of it, without any Intention of doing it. That for the Deſign of deſtroying the Gendarmery, it was ridiculous to think, that he with a ſmall Troop could deſtroy ſo ſtrong a Body, conſiſting of 900 Men; in which, though he had ſucceeded, it could have ſignified nothing. That he never deſigned to raiſe any Stirs in *London*, but had always looked upon it as a Place where he was moſt ſafe. That his having Men about him at *Greenwich* was with no ill Deſign, ſince when he could have done Miſchief with them, he had not done it; but upon his Attachment rendered himſelf a Priſoner, without any Reſiſtance. He objected alſo many things againſt the Witneſſes, and deſired they might be brought face to face. He particularly ſpoke againſt Sir *Thomas Palmer*, the chief Witneſs. But the Witneſſes were not brought, only their Examinations before-mentioned read. Upon this the King's Counſel replied, and avouched the Law to be, to aſſemble Men with Intent to kill the Duke of *Northumberland*, was Treaſon by a *Statute of the 3d and 4th of* Edw. VI. *made againſt unlawful Aſſemblies*, which enacts, 'That if twelve Perſons ſhould have aſſembled 'together to have killed any Privy-Counſellor, and upon Proclamation 'they had not diſperſed themſelves, it was Treaſon: Or, if ſuch twelve 'had been by any malicious Artifice brought together for any Riot, and 'being warned, did not diſperſe themſelves, it was Felony, without Be-'nefit of Clergy or Sanctuary.' That to raiſe *London*, or the North Parts of the Realm, was Treaſon. That to have Men about him to reſiſt his Attachment was Felony. That to aſſault the Lords, and to deviſe their Deaths, was Felony. Theſe Things were urged againſt him by the Counſel (as is their uſual Way of Pleading) with much Bitterneſs. Then the Peers withdrew to debate the Matter. The Proofs about his Deſign of raiſing the North or the City, or of killing the Gendarmes, did not ſatisfy them, (for all theſe had been without Queſtion treaſonable) ſo they only held to that Point, *of conſpiring to impriſon the Duke of* Northumberland. The Duke of *Suffolk* was of Opinion, That no Contention among private Subjects ſhould be on any Account ſcrewed up to be Treaſon. The Duke of *Northumbeland* ſaid, he would never conſent that any Practice againſt him ſhould be reputed Treaſon. Several of the Lords ſaid, They held it unfit that the Duke of *Northumberland*, the Marquis of *Northampton*, and the Earl of *Pembroke*, ſhould be on the Trial; becauſe the Priſoner was chiefly charged with Practices intended againſt them. But Anſwer was made, That a Peer of the Realm might not be challenged. So after great Difference of Opinion, they all acquitted him of Treaſon. But the greater Number found him guilty of Felony*, and Judgment was given that he ſhould be hanged †.

Then the Duke of *Northumberland* addreſſed himſelf to the Duke, and told him, That now, ſince by the Law he was condemned to die, as he had ſaved him formerly, ſo he would not now be wanting to ſerve him, how little ſoever he expected it from him; he deſired him therefore to fly to the King's Mercy, in which he promiſed him he would faithfully ſerve him. The Duke of *Somerſet* then thanked the Lords for their Favour, and aſked Pardon of the Duke of *Northumberland*, *Northampton*, and *Pembroke* for his ill Intentions againſt them; and made Suit for his Life, and for his Wife and Children: And from thence he was carried to the Tower, where he remained till *January* 22, when his Petition for Life having been rejected, he was brought to the Scaffold about eight o'Clock in the Morning.

Touching which Execution ‡, a few Words here would be beſtowed in deſcribing the wonderful Order and Manner thereof, according as it hath faithfully been ſuggeſted to us upon the Credit of a certain noble Perſonage, who not only was there preſent at the Deed doing, but alſo in Manner next unto him upon the Scaffold, beholding the Order of all Things with his Eyes, and with his Pen alſo reporting the ſame in Order and Manner as here followeth.

In the Year of our Lord 1552, the 22d Day of *January*, the noble Duke of *Somerſet*, Uncle to King *Edward*, was brought out of the Tower of *London*, and delivered to the Sheriffs of the City, and compaſſed round about with a great Number of armed Men, both of the Guard and others, he was brought unto the Scaffold on *Tower-hill*; where as he nothing changing neither Voice nor Countenance, but in a Manner with the ſame Geſture which he commonly uſed at home, kneeling down upon both his Knees, and lifting up his Hands, commended himſelf unto God.

After that he had ended a few ſhort Prayers, ſtanding up again, and turning himſelf toward the Eaſt-ſide of the Scaffold, nothing at all abaſhed (as it ſeemed unto me ſtanding about the Midſt of the Scaffold, and diligently marking all Things), neither with the Sight of the Ax, neither yet of the Hangman, or of preſent Death §; but with the like Alacrity and Chearfulneſs of Mind and Countenance as beforetimes he was accuſtomed to hear the Cauſes and Supplications of others, and eſpecially the Poor, he uttered theſe Words to the People:

Dearly beloved Friends,

I am brought hither to ſuffer Death, albeit that I never offended againſt the King, neither by Word nor Deed, and have been always as faithful and true unto this Realm, as any Man hath been. But forſomuch as I am by a Law condemned to die, I do acknowledge myſelf as well as others to be ſubject thereunto. Wherefore to teſtify my Obedience which I owe unto the Laws, I am come hither to ſuffer Death; whereunto I willingly offer myſelf, with moſt hearty Thanks unto God, that hath given me this Time of Repentance, who might through ſudden Death have taken away my Life, that neither I ſhould have acknowledg'd him nor myſelf.

Moreover (dearly beloved Friends), there is yet ſomewhat that I muſt put you in mind of, as touching Chriſtian Religion; which, ſo long as I was in Authority, I always diligently ſet forth and furthered to my Power. Neither I repent me of my Doings, but rejoice therein, ſith that now the State of Chriſtian Religion cometh moſt near unto the Form and Order of the primitive Church. Which Thing I eſteem as a great Benefit given of God both unto you and me: Moſt heartily exhorting you all, that this which is moſt purely ſet forth unto you, you will with like thankfulneſs accept and embrace, and ſet out the ſame in your living. Which Thing if you do not, without doubt greater Miſchief and Calamity will follow.

When he had ſpoken theſe Words, ſuddenly there was a terrible Noiſe heard: Whereupon there came a great Fear on all Men. This Noiſe was as it had been the Noiſe of ſome great Storm or Tempeſt, which unto ſome ſeemed to be heard from above; like as if a great deal of Gunpowder being incloſed in an Armoury, and having caught Fire, had violently broken out. But unto ſome again, it ſeemed as though it had been a great Multitude of Horſemen running together, or coming upon them. Such a Noiſe then was in the Ears of all Men, albeit they ſaw nothing. Whereby it happened, that all the People being amazed without any evident Cauſe, without any Violence or Stroke ſtricken, or any Man ſeen, they ran away, ſome into the Ditches and Puddles, and ſome into the Houſes thereabout; other ſome being afraid with the Horror and Noiſe, fell down groveling unto the Ground with their Pole-Axes and Halberts; and moſt of them cried out, Jeſus, ſave us, Jeſus, ſave us!

* One Attainder paſſed in *Edward* the Sixth's Reign, when, tho' the party was not heard, the witneſſes were heard; but when the Duke of *Somerſet* came to be tried both for Treaſon and Felony, he had not the benefit of the Accuſers being brought face to face, but was proceeded againſt upon depoſitions read in the Court; he was acquitted of the Treaſon, but caſt for Felony; and that occaſioned the Act which the Commons grafted upon a Bill ſent down by the Lords in the ſubſequent Seſſions, *viz.* 5 and 6 *Edw.* VI. *State-Tracts*, vol. II. p. 554. By which Act, no Perſon ſhall be indicted, arraigned, *&c.* unleſs the offender be accuſed by two lawful Accuſers; which Accuſers, at the time of the Arraignment, ſhall be brought in Perſon before the Party ſo accuſed, *&c.* See *Raſtal*, vol. I. p. 1023.

† *Thuanus*, tranſlated by the Reverend Mr. *Wilſon*, vol. II. p. 409. ſays, In *England* there were troubles of a moſt dangerous nature; for *John Dudley*, firſt created Earl of *Warwick*, and then Duke of *Northumberland*, an ambitious and ſagacious Man, had accuſed the Duke of *Somerſet*, Protector of the Realm, a Perſon of mean ſpirit, whoſe Patience he had long abuſed, of Male-adminiſtration, and had procured his impriſonment; after that, being reconciled to him, he put him upon beheading his brother, who was exceeding brave, and formidable to *Northumberland*. Which done, after he had gained his wiſh, and drawn the chief power into his own hands, he had nothing elſe to do, but to remove *Somerſet* himſelf out of the way; towards whom he ſhewed ſuch a contempt, as drove the other upon thought of killing *Dudley*, for the vindication of his own authority. *Somerſet* therefore went to his houſe under pretence of a viſit, covered with a coat of mail under his cloathes, and carrying with him a party of armed men, whom he left in the next chamber; but when he was introduced in the civileſt manner to *Dudley*, who was naked and lying upon his bed, the good-natured Man repented him, would not execute his deſign, and departed without ſtriking a ſtroke. The plot being afterwards diſcovered by the treachery of ſome of the accomplices, he was accuſed upon it, and, notwithſtanding the unwillingneſs of the King, who had been brought up under his care, was condemned to death, becauſe he had offended againſt a late Law, which had provided, That whoever was found contriving the death of a Privy-Counſellor, tho' he did not accompliſh it, ſhould forfeit his head. Accordingly, in the beginning of the next year, he was, by the malignant ſport of Fortune, beheaded at *London*. With him ſuffered Sir *Ralph Vane*, by whoſe advice *Somerſet* was ſaid to have held his unlawful cabals, and to have conſpired againſt *Northumberland* and others.

‡ Taken from *Fox*'s Book of Martyrs, vol. II. p. 1247.

§ Biſhop *Burnet*, in his ſecond Volume of the *Hiſtory of the Reformation*, p. 186. ſays, It was generally believed, that all this pretended conſpiracy upon which he was condemned, was only a forgery; for both *Palmer* and *Crane*, the chief Witneſſes, were ſoon after diſcharged, as were alſo *Bartvile* and *Hamond*, with all the reſt that had been made priſoners on the pretence of this plot. And the Duke of *Northumberland* continued after that in ſo cloſe a friendſhip with *Palmer*, that it was generally believed he had been corrupted to betray him. And indeed, the not bringing witneſſes into Court, but only the Depoſitions and the Parties ſitting Judges, gave great occaſion to condemn the Proceedings againſt him. For it was generally thought, that all was an artifice of *Palmer*'s, who had put the Duke of *Somerſet* in fear of his life, and ſo got him to gather men about him for his own preſervation; and that he afterwards being taken with him, ſeemed thro' fear to acknowledge all that which he had before contrived. This was more confirmed by the death of the other four, who were executed on the 26th of *February*, and did all proteſt they had never been guilty of any deſign, either againſt the King, or to kill the Lords. *Vane* added, That his blood would make *Northumberland*'s pillow uneaſy to him. The people were generally much affected with this execution.

Thoſe which tarried ſtill in their Places, for fear knew not where they were. And I myſelf which was there preſent among the reſt, being alſo afraid in this Hurly-burly, ſtood ſtill altogether amazed, looking when any Man would knock me on the Head.

In the mean time, whilſt theſe things were thus in doing, the People by Chance ſpied one Sir *Anthony Brown* riding unto the Scaffold, which was the occaſion of a new noiſe; for when they ſaw him coming, they conjectured that which was not true, but notwithſtanding which they all wiſh'd for, that the King by that Meſſenger had ſent his Uncle pardon; and therefore with great rejoycing, and caſting up their caps, they cried out, Pardon, pardon is come: God ſave the King! Thus this good Duke, altho' he was deſtitute of all Man's help, yet he ſaw before his departure, in how great love and favour he was with all Men. And truly I do not think, that in ſo great ſlaughter of Dukes as hath been in *England* within theſe few years, there were ſo many weeping eyes at one time; and not without cauſe: for all men did ſee in the decay of this Duke, the publick ruin of all *England*, except ſuch as indeed did perceive nothing. But now to return from whence we have ſtrayed, the duke in the mean time ſtanding ſtill in the ſame place, modeſtly, and with a grave countenance, made a ſign to the people with his hand, that they would keep themſelves quiet. Which thing being done, and ſilence obtained, he ſpake unto them in this manner.

Dearly beloved Friends, there is no ſuch matter here in hand, as you vainly hope or believe. It ſeemeth thus good unto Almighty God, whoſe Ordinance it is meet and neceſſary that we all be obedient unto. Wherefore I pray you all to be quiet, and to be contented with my death, which I am moſt willing to ſuffer: and let us now join in prayer unto the Lord for the preſervation of the King's Majeſty, unto whom hitherto I have always ſhewed myſelf a moſt faithful and true ſubject. I have always been moſt diligent about his Majeſty in his affairs, both at home and abroad, and no leſs diligent in ſeeking the common commodity of the whole Realm. At which words all the People cried out, and ſaid, It was moſt true.

Then the Duke proceeding, ſaid, Unto whoſe Majeſty I wiſh continual health, with all felicity and all proſperous ſucceſs. Whereunto the people again cried out, *Amen*.

Moreover, I do wiſh unto all his Counſellors the Grace and Favour of God, whereby they may rule in all things uprightly with juſtice. Unto whom I exhort you all in the Lord, to ſhew yourſelves obedient, as it is your bounden duty, under the pain of condemnation, and alſo moſt profitable for the preſervation and ſafeguard of the King's Majeſty.

Moreover, forſomuch as heretofore I have had oftentimes affairs with divers Men, and hard it is to pleaſe every Man, therefore if there be any that hath been offended and injured by me, I moſt humbly require and aſk him forgiveneſs; but eſpecially Almighty God, whom throughout all my Life I have moſt grievouſly offended: and all other whatſoever they be that have offended me, I do with my whole heart forgive them. Now I once again require you, dearly beloved in the Lord, that you will keep yourſelves quiet and ſtill, leſt through your tumult you might trouble me. For albeit the Spirit be willing and ready, the Fleſh is frail and wavering; and thro' your quietneſs, I ſhall be much more quieter. Moreover, I deſire you all to bear me witneſs, that I die here in the faith of Jeſus Chriſt; deſiring you to help me with your prayers, that I may perſevere conſtant in the ſame unto my life's end.

After this, he turning himſelf again about like a meek Lamb, kneeled down upon his knees. Then Dr. *Cox*, who was there preſent to counſel and advertiſe him, delivered a certain Scroll into his hand, wherein was contained a brief confeſſion unto God; which being read, he ſtood up again upon his feet, without any trouble of Mind, (as it appeared) and firſt bad the Sheriffs farewel, then the Lieutenant of the Tower and others, taking them all by the hands which were upon the Scaffold with him. Then he gave the Hangman certain money. Which done, he put off his gown, and kneeling down again in the ſtraw, untied his ſhirt-ſtrings. After that, the Hangman coming unto him, turned down his collar round about his neck, and all other things which did let or hinder him. Then lifting up his eyes to Heaven, where his only hope remained, and covering his face with his own handkerchief, he laid himſelf down along, ſhewing no manner of token of trouble or fear, neither did his countenance change, but that before his eyes were covered, there began to appear a red colour in the midſt of his cheeks.

Thus this moſt meek and gentle Duke lying along, and looking for the ſtroke, becauſe his doublet covered his neck, he was commanded to riſe up and put it off; and then laying himſelf down again upon the block, and calling thrice upon the name of Jeſus, ſaying, *Lord Jeſu, ſave me!* As he was the third time repeating the ſame, even as the name of *Jeſu* was in uttering, in a moment he was bereft both of head and life.

His Son continued in a diſconſolate condition, deprived of all his titles; till Queen *Elizabeth*, in the firſt year of her reign, created him Earl of *Hertford*, and Baron *Seymour*; and his Grandſon, *William* Earl of *Hertford*, was created Marquis of *Hertford*, 1640, and in the year 1660, he preſented the following Caſe to the Houſe of Peers: which giving a great light into that proceeding is here inſerted.

The CASE *of the Marquis of* Hertford, *touching the Dukedom of* Somerſet, *A. D.* 1660, *when the Bill was brought into Parliament to reſtore him to the Title of Duke of* Somerſet.

EDWARD, Earl of *Hertford* (great Grandfather of the ſaid Marquis) was by Letters Patents under the Great Seal of *England*, bearing date the 6th of *April*, 1 *Edw.* VI. created Duke of *Somerſet*, to hold to him and the Heirs Males of his body, upon the body of the Lady *Anne* his then wife begotten, and to be begotten, for ever; with ſeveral other remainders over in tail.

The ſaid Duke afterwards, viz. in *Michaelmas-Term*, 5 *Edw.* VI. was indicted of Felony, for procuring and ſtirring up others to take and impriſon *John* Earl of *Warwick* (one of the King's Privy-Council); which Indictment (tho' void both in matter and form) was pretended to be grounded on the Statute of 3 and 4 *Edw.* VI. which makes it Felony to ſtir up and procure others to take away the Life of any of the King's Council; but this Indictment was only for ſtirring up others to impriſon a Privy-Counſellor, (which was never reduced into act) and the ſame declared and branded in print to be void by learned Judges. Yet the ſaid Duke was found guilty of Felony, and put to death for this fact, which was but a pretended Felony: and if true, yet no entail'd eſtate forfeitable thereby.

The malice of his enemies not ſatisfied with his blood, afterwards by their power (in the infancy of the Duke's Heir, who continued and was owned for Duke of *Somerſet* for ſeveral months after his Father's death), procured an Act of Parliament in the ſame year, 5 *Edw.* VI. intitled, An Act touching the limitation of the late Duke of *Somerſet*'s Lands, wherein there is a clauſe obliquely inſerted *, to take away the ſaid Honour ſo entailed as aforeſaid; which, by no Felony (how notorious ſoever the ſame had been) could by law have been forfeited.

This being a caſe unprecedented, both in law and hiſtory, and ſo contrary to the rules of law, juſtice and reaſon, to have an attainder of Felony ſtand, for an offence, which apparently neither then, nor at any time after was Felony; and if a Felony, yet to have a forfeiture extended beyond the offence, (if there were any) and to be ſo maliciouſly proſecuted after the death of the ſaid Duke, (who was mainly inſtrumental in bringing about the Bleſſed Reformation of Religion) it is humbly conceived to be moſt agreeable to juſtice to reſtore the ſaid Marquis, who is Heir Male of the bodys of the ſaid Duke and the Lady *Anne* his wife, to his ancient Honour, ſo illegally taken away as aforeſaid.

Whereupon, in *September* 1660, the ſaid Marquis of *Hertford* was reſtor'd to the Dukedom of *Somerſet*, by a repeal of the Act of the 5th of *Edw.* VI.

* And be it farther enacted, That the ſaid Duke and his Heirs Males, begotten upon the Body of the ſaid Lady *Anne* for ever, ſhall, by authority of this Act, loſe and forfeit unto your Highneſs, your Heirs and Succeſſors for ever, and alſo be deprived from henceforth for ever, as well of the Names of Viſcount *Beauchamp*, Earl of *Hertford*, and Duke of *Somerſet*, and every of them, as alſo of all and every other his and their Honour or Honours, Degrees, Dignities, Eſtates, Preheminences, and Styles, by whatſoever Name or Names he the ſame Duke hath been called, named, or created, by any Letters Patents, Writs, or otherwiſe.

IV. The Arraignment of Mr. Davison in the *Star-Chamber*, upon *Tueſday* the 28th of *March*, 1587 †, 30 *Eliz.*

Before Sir *Chriſtopher Wraye*, Chief Juſtice of *England*, who for the Time ſate as Lord Privy-Seal; the Archbiſhop of *Canterbury*, and the Archbiſhop of *York*; the Earl of *Worceſter*, the Earl of *Cumberland*, and the Earl of *Lincoln*; the Lord *Grey*, and Lord *Lumley*; Sir *James Croft*, the Comptroller; Sir *Gilbert Gerrard*, Maſter of the Rolls; the Lord Chief Juſtice of the Common-Pleas; *Edmund Anderſon*; Sir *Roger Manwood*, the Lord Chief Baron; and Sir *Walter Mildmay*, the Chancellor of the Exchequer;

For hearing of a Matter of Miſpriſion and Contempt againſt Mr. *Daviſon*, late one of her Majeſty's Secretaries, and one of her Privy-Council, by Virtue of a Commiſſion to them directed ‡.

WHereupon Mr. *Popham*, the Queen's Attorney-General, ſpake in form following:

My Lords, I am to inform your Lordſhips in her Majeſty's behalf, of a certain great and grievous Contempt and Miſpriſion againſt Mr. *Daviſon*, there Priſoner at the Bar, late one of her Majeſty's Secretaries. The manifold and ſundry practices committed by the *Scotiſh* Queen are not unknown unto your Honours, which were offences in the higheſt degree, and required to be looked unto with ſpeed. It is well known unto your Lordſhips alſo, that thereupon, by earneſt intreaty and interceſſion, her Majeſty at length condeſcended that the matter ſhould be heard and decided according unto law. Whereupon were thoſe honourable proceedings had at *Fotheringhay*. But the reſidence which belonged thereunto, to-wit, the execution, her Majeſty politiquely neither conſented unto, nor denyed, eſteeming no clemency in the former, nor wiſdom in the latter. Which courſe, ſhe held from the 25th of *October*, all *November*, *December* and *January*. During which time, moſt horrible conſpiracies againſt her Majeſty's Sacred Perſon were contrived, moſt falſe rumours that the *Scotiſh* Queen was eſcaped ſpread abroad, and bruited that foreigners were landed for invaſion; all which, for preſervation of the *Scotiſh* Queen, and prejudice of ours. Upon theſe conſiderations, her Majeſty aſſented to ſign the Warrant for her Execution, by whom ſuch tumults were raiſed: Notwithſtanding, being

† Copied from a MS. in *Caius* Colege, *Cambridge*, Claſs A. 1090. 8. p. 267.

‡ Queen *Elizabeth* undertook to make the Publick believe that the execution (of the Queen of *Scots*) was done againſt her will, and without her Knowledge; the way ſhe went to work was thus: *Daviſon* was the inſtrument ſhe made uſe of, without his knowing any thing of the matter, to act this ſort of Comedy. A little before the Queen of *Scots*' ſentence he was made Secretary of State; and it is very likely ſhe was put into that poſt on purpoſe, that he might be drawn into the ſnare, and made accountable for *Mary*'s death. *Rapin*, Vol. IX. (Oct. Edit.) pag. 105, 106. See alſo pag. 109, 110, 111, 112, 113. for more particulars of this affair.

being moved to mercy by her great wiſdom, ſhe thought it neceſſary to have it in readineſs, if any attempt ſhould be begun, and yet not in haſte to execute the ſame: this ſo ſigned, ſhe left with Mr. *Daviſon* to carry to the Great Seal, to have it in readineſs as aforeſaid. And he, after the ſealing, and without her Majeſty's commandment, preſented it unto the Lords without her privity, contemptuouſly. Notwithſtanding, upon the delivery thereof to him, her Majeſty bid him uſe ſecrecy. And upon queſtion made by the Lords whether her Majeſty continued in that mind for execution of the *Scotiſh* Queen, he ſaid, ſhe held that courſe ſtill; and upon farther queſtion made, ſaid her Majeſty would not be farther troubled with that matter. Whereupon the Lords ſeeing no impediment, diſpatched the execution, wherein Mr. *Daviſon* did break the ſecrecy her Majeſty repoſed in him, in delivering it unto the Lords, and dealt very contemptuouſly in not making her privy, knowing her mind to be to the contrary. For her Majeſty ſent Mr. *Killegrew* unto him, commanding him, if it were not ſealed already, it ſhould not be ſealed; and after, when he told her Majeſty it was ſealed already, She aſked him what haſte? This act ſo done by him, he being but a particular Counſellor, her Majeſty doth take it a matter of high indignity and abuſe of her Counſellors, and a thing of the greateſt moment that ever happened ſince her Reign, ſince which time never any Counſellor in matters of far leſs importance proceeded without her reſolution or privity: which thing ſhe leaves to your Honours conſideration for puniſhment thereof.

Daviſon, with a comely countenance, repleniſhed with gravity, a fine deliverance of ſpeech, but a voice ſomewhat low (which he excuſed by late ſickneſs) diſcreetly anſwered in ſort enſuing:

My Lords, I am right ſorry, that an action of this nature, for the honourable proceedings againſt the *Scotiſh* Queen, than which never was any thing more honourable, ſhould after the full and laudable performance thereof be called into queſtion. Again, my Lords, I am moſt ſorry that her gracious Highneſs ſhould conceive ſuch an high diſpleaſure againſt me, as to trouble your Honours with me at this preſent. But as in all mine actions heretofore, I have been moſt faithful and forward to do her Majeſty's commandments; ſo in this, by your Honours favour, let me bear the teſtimony of my conſcience, that I have done nothing either wittingly or willingly, but as became an honeſt man. And therefore, firſt, that I delivered it unto the Lords without her commandment, or againſt her commandment; let it be lawful for me with your Honours leave to proteſt the contrary. To that the Attorney anſwered, I ſaid not that you delivered it unto the Lords againſt her commandment, but that you knowing her mind to be contrary to it. *Daviſon* to that replied, Well, then, I deſire to have the proofs: whereupon the Sollicitor-General read his examination, wherein to the ſixth point he ſayeth, that after the ſigning and ſealing he made her not privy to the ſending down. Mr. *Daviſon* to that anſwered; My good Lords, the Warrant for the execution was ſigned and ſealed by her Majeſty's expreſs commandment; which being ſo, I take it to be irrevocable in law. Whereupon, by the Advice of the Lords it was ſent down, ſhe not being privy to ſending down, wherein I thought I dealt as beſeemed me: for writs of execution do not uſe to come to her Majeſty. That I was ſo forward, I thought it my duty, and for no other reaſon I proteſt; for I never had any private grudge or hatred againſt the Queen of *Scots*, but in reſpect of my Country and Common-Weal. The Warrant reſted with me ſix Weeks before I preſented it, and when I preſented it, my Lord Admiral will witneſs I was ſent for. The place I held, I proteſt I never ſought for; it pleaſed her Majeſty for ſome gracious opinion of me to prefer me thereunto. In which I am aſſured I have not committed any wilful error, but as an honeſt man ſhould do; for nothing in the world is more dear to me than my reputation. I confeſs I ſaid to ſome Lords, I took it to be her Majeſty's pleaſure to proceed therein, and I appeal to her Majeſty's own conſcience if I had not cauſe to think ſo. But ſhe is my moſt gracious Sovereign, it is not my duty to ſay, if ſhe gainſay; I will not ſtand in conteſtation with her, for it beſeems me not, and therefore I ſubmit myſelf to what puniſhment your Honours ſhall pleaſe to lay upon me.

To that the Sollicitor *(Egerton)* anſwered; Mr. *Daviſon*, you do well to extol the honour of the proceedings, for it beſeems you, and ſo the truth was. But I muſt tell you the more honourable the proceedings were, the more is your contempt in not making her privy. In reſerving the execution, I note her Majeſty's magnanimity, who not regarded the dangers of her own ſelf, to continue the other's life. And yet her wiſdom is therein to be commended, who thought good to have it in a readineſs, with intention to have clemency ſo long as might be. In not conteſting with her Majeſty you obſerve duty, but by your means was a great contempt; and farther, ſhe ſaid to you, you ſhould uſe it with great ſecrecy.

To which Mr. *Daviſon* ſaid, I confeſs it; and the Sollicitor replied, Why then that was a caution not to do it without her conſent: ſo notwithſtanding your intention was good, it was a foul error. Whereto *Daviſon* rejoined, She is my moſt gracious Sovereign, as good a Miſtreſs unto me as ever any ſervant had, and what I have, I had it at her hands. I hope, therefore, my Lords think me not ſo unwiſe as to offend her, unleſs by overſight; but that I did it wittingly or willingly, I proteſt I did it not. And notwithſtanding ſhe ſent Mr. *Killegrew* that it ſhould not be ſealed, if it were not ſealed already; yet it proves not but that ſhe had a mind to do it when it was ſealed. She ſaid unto me, What haſte? Whereto I anſwered, I had done it by her Majeſty's commandment, and that ſuch a thing might not be dallied withal. Now, my Lords, the reaſons to move me to think it was her Majeſty's meaning, were ſundry and divers: firſt, the honour and juſtice of the cauſe; next, I knew of advertiſement from beyond the ſeas of her Majeſty's imminent dangers. Alſo I was privy to the proceedings at *Fotheringhay*. I was not ignorant of the doings in Parliament. Laſt of all, the rumour of invaſion, the cries and tumults in the Realm, which moved me, having no expreſs commandment to the contrary, to do as I did. When he had ſaid this, Mr. Sollicitor read his examination, where to the ſecond he ſaith, when her Majeſty bade him uſe ſecrecy, he ſaid he would be as careful and ſecret as ſhould need: to the third, he confeſſeth Mr. *Killegrew* came unto him, telling him, if it were not ſealed already it ſhould not be ſealed. To the ſeventh, after the Warrant was ſealed, her Majeſty aſked him, What haſte? Whereto *Daviſon* anſwered, tho' her Majeſty commanded me to keep it ſecret, and I told the Council of it, how can I be thought ill of for that? For her Majeſty bade me expreſsly ſhew Mr. Secretary *Walſingham* thereof; my Lord-Chancellor muſt needs know it, foraſmuch as he muſt ſeal it. And her Majeſty made my Lord-Admiral privy thereunto; why then might I not make it known to ſome others that were chief Counſellors? To that, ſaid Mr. Attorney, Though Mr. *Walſingham* ſhould know it, yet it was not general. Mr. *Daviſon* anſwered, Neither was I verbally commanded to conceal it from the reſt. Then ſaid the Sollicitor, Another matter makes againſt you; my Lord-Treaſurer did aſk you, whether it was her Majeſty's pleaſure? And you anſwered, Yea. To that ſaid *Daviſon*, I remember not that. The Sollicitor reply'd, It is my Lord-Treaſurer's teſtimony. And *Daviſon* rejoined, I reverence his teſtimony; and proceeded, ſaying, my Lords, the cauſe is between her Majeſty and me; ſhe is my gracious Sovereign, and I her ſervant, it behoveth me not to ſay, if ſhe gainſay, neither could I, as I ſaid, conteſt againſt her; yet let me proteſt, that, in my own conceit, I have dealt as ſincerely, ſoundly and honeſtly as any ſervant could do. Then ſpake the Lord Chief Juſtice of *England*, ſaying, By that, if ſhe aſked you, What haſte? You might know it was her pleaſure to defer it, and therefore you to do it without her commandment was a great offence. Then ſpake *Gawdie*, the Queen's Serjeant: My Lords, four things I note that Mr. *Daviſon* confeſſeth; firſt, that her Majeſty bade him uſe ſecrecy; next, the Warrant being ſealed, Mr. *Killegrew* was ſent unto him, that were it not ſealed already, it ſhould not be ſealed at all. Thirdly, he confeſſeth her Majeſty was content he ſhould ſhew it Mr. *Walſingham*, which proves ſhe minded to keep it from the reſt. And it had been his duty to have known her pleaſure; and therefore for ſo much as he confeſſeth this,

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Though the above Trial of Mr. *Daviſon* is very full, yet, as the underwritten one, copied from a MS. in the *Bodleian Library*, under the Title *Juridici*, 7843. 862. *pag.* 235. being ſomething different, taken by an Eye-witneſs, and being ſhort, we hope it will prove acceptable to the Reader, eſpecially as it relates to the Treaſons of *Mary* Queen of *Scots*; whoſe Trial in Vol. I. pag. 135. is very defective.

Ex MS. penes Robertus Sherrell, } 28 Martii 1587.

THE Proceedings againſt Mr. *Daviſon* in the *Star-Chamber*, by Commiſſion not read, but directed to theſe thirteen following:

1. The Lord Chief Juſtice of *England*, as Lord Privy-Seal for that day.
2. The Lord Archbiſhop of *Canterbury*.
3. The Lord Archbiſhop of *York*.
4. The Earl of *Worceſter*.
5. The Earl of *Cumberland*.
6. The Earl of *Lincoln*.
7. The Lord *Gray*.
8. The Lord *Lumley*.
9. Sir *James A-Croft* *.

[* In the above Trial, called *Croft*. But in the Trial of the Earl of *Arundel*, 1589, he is called *A-Croft*. See State Trials, Vol. I. p. 157.]

10. Sir *Walter Mildmay*.
11. The Maſter of the Rolls.
12. The Lord Chief Baron.
13. The Lord *Anderſon*.

The ſum of that which was propoſed, and enforced againſt him by her Majeſty's Counſellors at the Law.

The matter laid againſt him is a great and heinous indignity, as her Majeſty taketh it, committed by him in this laſt proceeding againſt the late *Scotiſh* Queen, which although it were in itſelf moſt juſt and honourable, yet in the manner of dealing concerning it, Mr. *Daviſon* is charged by her Majeſty with want of Duty, *&c.* For whereas by the manifold defects of the ſaid *S.* Queen, and that in the judgment of all the Realm in Parliament her life was now to ſatisfy the Law, and thus neceſſary for the preſervation of the whole Realm, as was ſhewed; yet her Majeſty, of her natural moſt gracious and merciful diſpoſition, after the ſo honourable condition and proclamation of the *S.* Queen's guiltineſs, notwithſtanding ſo many important allegations and vehement interceſſions, could not be brought to condeſcend to the execution; rather deſiring by all means poſſible, if there were any hope of amendment and reclaim, to ſpare where ſhe might honourably ſpill, than to ſpill where ſhe might honourably ſpare; and in this mind ſhe continued from *October* to the end of *January*. But when ſhe ſaw that her malicious enemies daily increaſed their wicked attempts againſt her and the ſtate, that rumours were ſpread and information given daily of attempts by invaſion, by rebellions, by violence upon her Royal Perſon, to work a change and delivery of the ſaid *S.* Queen, ſhe moſt wiſely reſolved at length to have a bill or inſtrument, ſigned according to Law and Juſtice, in a readineſs; whereby upon all occaſions or occurrences, ſhe might be executed: and this of ſpecial choice and truſt, ſhe thought good to commit to Mr. *Daviſon*, willing him to carry it to the Lord Chancellor, to have it under the Broad-Seal, but withal charged him to keep it very ſecret, and not to make any acquainted with it. The very ſame day he carried it to the ſeal, and the next day after having received charge from her Majeſty, by the Lord-Admiral, that ſtay ſhould be made, if it was not ſealed; but he declared it was ſealed the day before, *&c.* whereto the Queen reply'd, What needs that haſte? The next Day after this, (which was, I think, on *Candlemas*-Day) my Lord Treaſurer aſked him, If he knew what mind the Queen had towards the execution? He anſwered, To have it go forward; and ſo ſhewed it to him, and after to the reſt of the Council, procuring their Warrant down to preſent execution, the Queen having

this, I take it to be a great Contempt, Indignity and Miſpriſion for him to ſay his Intent was good; he thought it ſo, is no Anſwer. Fourthly, Her Majeſty told him, ſhe thought of ſome other Courſe to be taken, and he gave her no Anſwer; beſides, he confeſſeth he told the Lords it was her Majeſty's Pleaſure upon ſuch a Demand made. *Daviſon* anſwered, that general Demand was made. *Gawdie* reply'd here, it is the Lord Treaſurer's Teſtimony. *Daviſon* rejoined, let me have right; it was but privately demanded between my Lord-Treaſurer and me. I will not ſpeak in Excuſe, but only to anſwer; I demand, whether the imparting of it to the Council be ſuch a Contempt: farther, there is Difference between an expreſs Commandment, and an imply'd Speech. The Loſs of my Place, I do not eſteem, neither weigh I this Diſgrace; only her Majeſty's Diſfavour is the Thing that grieves me. Then *Puckering* the Queen's Serjeant began to ſpeak, aggravating *Daviſon*'s Offence, and forward to accuſe, and yet ſeemed more *pro forma tantum*, than of any matter he had to charge him withal, more than had been ſpoken of before. Whereupon *Daviſon* anſwered, All this ſpeech is anſwered, but that I made her not privy; whereto I ſay, I made her not privy in reſpect my Lords of the Council thought it not neceſſary, becauſe it was not fit ſhe ſhould be privy to the Execution. I will not ſtand upon Terms, as I ſay, for it becomes me not, but ſubmit myſelf to your Honours Cenſures.

Then ſaid *Wraye*, Mr. *Daviſon*, to ſay it was irrevocable you are deceived, for ſhe might do it at her Pleaſure. Then ſaid *Daviſon*, I beſeech you, my Lords, make Means to her Majeſty that I may have her Favour; and for the reſt, I wave it not. Whereupon *Wraye* willed Sir *Walter Mildmay* to deliver his Opinion; who began in Form following.

How honourable her Majeſty, our gracious Sovereign, hath dealt in all Juſtice, is known to all the World, againſt ſuch Traytors, by whom her Life ſhould have been taken away; whereupon ſhould enſue, Subverſion to the whole State, upon the Proceedings whereof it appeared that the *Scotiſh* Queen was chief Author, dealing moſt ingratefully againſt her, who before Time had ſaved her from them that vehemently ſought her Deſtruction. And notwithſtanding that her Majeſty might have proceeded againſt her as a private Perſon, yet ſhe granted her Commiſſion to great Perſons to hear what ſhe could alledge in her Defence. And albeit that upon the hearing thereof ſhe was declared to be guilty, yet none could think Execution might be done without her Majeſty's expreſs aſſent. Then he dilated of the Proceedings of Parliament, the Petition, her Anſwer thereunto, wherein he noted her Wiſdom in not being haſty in ſo high a Matter; he ſhewed farther, how ſhe was contented to hear Ambaſſadors, if they could propound any Thing in her Defence. Afterward followed the Proclamation to notify the Proceedings paſſed unto the People; for People, ſaid he, be deſirous to hear of State-matters, and I warrant you itch to underſtand what we do here: herein, ſaid he, was Juſtice, Mercy, and Diſcretion. Afterwards, upon the . . . . . and cries, ſhe thought it neceſſary to look unto it; upon this ſhe ſealed her Warrant, yet continuing her former clemency, not to put it in Execution; for as it was in her to grant that it ſhould be done, ſo ſhe might ſtay and defer it; which ſhe ſo meaning, it behoved her to truſt ſomebody, and ſo, ſaid he, ſhe did this Gentleman, called unto her ſervice upon Truſt, who, for the Acqaintance that I have had with him, was worthy of that Place. This Truſt ſhe committed unto him, and I am ſorry, ſaid he, he was not in this ſo good a Servant as in all other Things. Surely he had notable Cautions, not to have preſumed in ſo great a Matter to have done any Thing without her Commandment. His Offence, ſaid he, I interpret in two degrees; an abuſe to the Truſt, and the Contempt: for the firſt ſhe willed him to tell it Mr. *Walſingham*, and it is no Excuſe to ſay, ſhe forbad you not the reſt: for you ought not to have told it unto any but whom ſhe would. Alſo, which aggravates your Offence, you told the Lords ſhe was pleaſed. For the Contempt, the Writ was not delivered unto you, but had it not been delivered unto them to whom it was directed, then had it been a Commandment. Your good Intention was no Anſwer, neither ought my Lords to allow of it, albeit *per* Caſe I could allow it, becauſe I know you. Alſo your fault is the greater, which you know. Farther, you were near her, and had Time convenient to ſhew her; hereof ſaid he, hath followed a greater Miſchief to the Queen's Majeſty, which may turn to all our Hindrance, foraſmuch as our Welfare depends upon her well-doing. Next, ſaid he, hath followed a Diſhonour to her Majeſty, that ſhe having governed this Land ſo long Time in all Obedience, a Servant of hers in this Age, ſhould have ſo ſmall Regard. Now for my Opinion of the Offence, it reſteth to conſider what Puniſhment is behoveful in ſuch a Caſe. Puniſhments in this Court are either corporal, or pecuniary; pecuniary, by Fines impoſed upon Offenders; and corporal, by Puniſhments and ſuch like. Now, ſaid he, if the Fine ſhould be *ſecundum quantitatem delicti*, I think he ſhould not bear it; for I know his Eſtate. Surely leſs than ten thouſand Marks may not be ſufficient, which tho' it be too great for his Ability, yet is it too little for his Fault. The Qualification, wherefore, reſteth in them where I doubt not he ſhall find Favour; next he muſt ſuffer Impriſonment during her Majeſty's Pleaſure, which muſt be reſerved to her merciful Mitigation.

And after him ſpake *Manwood* the chief Baron, who in the Beginning of his Tale took ſo large a Scope, as many did judge he would be tedious, as he was indeed. Firſt, he declared how in the very Beginning the Queen of *Scots* bewrayed her Malice againſt the Crown of this Land when ſhe was Queen of *France*, at which Time ſhe made Letters Patents as Queen of *England*; ſhe uſurped her Majeſty's Stile, and ſhe quartered the Arms of *England*. Then he deſcended unto her doings when ſhe was Dowager; how ſhe excuſed her former offences by reaſon of coverture: then he declared her marriage with the Lord *Darnley*; the Murder of her Huſband, the Practices with the Biſhop of *Roſs*; her Conſpiracy with the Duke of *Norfolk*. To conclude, he couched the whole Hiſtory which any Way concerned her Life or Manners. At laſt he came to Mr. *Daviſon*'s Offence, which he took in Law to be a Miſpriſion; and yet not every Commandment of the Prince tranſgreſſed, is a Miſpriſion: But, ſaid he, when one is put in Truſt in a Point of Juſtice, which is the Government of the Common-weal, there a Commandment tranſgreſſed is a Miſpriſion. For Example whereof, he cited a caſe there in that Place decided; meaning Sir *John Throgmorton*'s Caſe, as many deemed. Alſo, ſaid he, if a Sheriff exerciſe his Office without an Oath, that is a Miſpriſion. And, ſaid he, if one have Power by Law to do a Thing, if he prevent the Time wherein it ought to be done, that is a Miſpriſion. And if a Judge for Expedition of Juſtice ſhould ſit in Judgment before the Term, that is Miſpriſion. Now, ſaid he, this is a Miſpriſion, becauſe you prevented the Time in doing it before you were commanded, altho' the Thing were lawful; for you did *fuſtum*, but not *fuſte*. Farther, by naming Mr. *Walſingham* in Specialty, it was a ſecluding the reſt in generality. And alſo, if the Warrant were ſealed, yet was it not lawful to kill her, becauſe the direction was ſpecial, and not general. So then he concluded, the contempt was great, and the puniſhment aſſeſſed by Sir *Walter Mildmay* worthily deſerved, whereunto he agreed.

After him, ſpake *Anderſon*, Chief Juſtice, who ſaid, The Proceeding had been honourable, which he would not ſpeak of, being known unto all men, and having been ſpoke to before. But to come to the caſe in queſtion; in the accuſation, ſaid he, be two parts, firſt, that Mr. *Daviſon*, without her Majeſty's commandment ſent it down; and the ſecond, that againſt her commandment he made the Lords privy. For the firſt, he confeſſed; to the ſecond he ſaith ſhe bade him uſe ſecrecy. The cauſes alledged by him are good, and yet the proceeding therein, that which cauſed the offence, the words, *uſe ſecrecy*, and not to cauſe it to be publiſhed or known to any. Then he being one of her Majeſty's Council,

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having not notice nor knowledge of this; and after, when ſhe conferred with him about another courſe to be taken, he concealed from her what had been done therein. Theſe chief matters were proved by his own confeſſion in an examination before taken and urged againſt him, both in reſpect of himſelf being bound to eſpecial obedience, not only as a ſubject, but as a ſervant, a counſellor, a ſecretary ſo much truſted, and yet not to keep ſecret, where ſpecial charge was given him; and in reſpect of the Queen, ſo good and gracious a Prince, ſo well deſerving of him, the fountain and head of all juſtice and authority amongſt us, and yet not to be made privy of the doing of ſuch an act of ſo great a quality and importance as that was, wherein ſhe had ſhewed herſelf always, (and that moſt apparently) whereof Mr. *Daviſon* could not be ignorant, both backward and unwilling to yield to that which all her Realm deſired and ſued for at her Hands; yet Mr. *Daviſon*, contrary to her known mind, procured with ſuch haſte (of what good purpoſe in himſelf, this would not regard); but with apparent want of duty to his Sovereign, which did more appear in his concealing his proceedings when ſhe purpoſely talked with him of that matter as aforeſaid; all which they left to the Counſellors to judge of.

Mr. Daviſon's *Anſwer for himſelf.*

NOtwithſtanding at the bar, whither he was brought by his keeper, Sir *Owen Hopton*, being faint by reaſon of his late ſickneſs, and carrying his left arm in a ſcarf, benumbed I think by his late taken palſy, he ſpake ſomewhat faintly, unaudibly; tho' being required by his Commiſſioners to ſpeak higher, yet deſired favour to ſpeak as he could, which was to this effect: Firſt, proteſting that he was not guilty to himſelf of any wilful diſloyalty, or breach of duty, but that he did always ſince his firſt employment in her Majeſty's ſervice, endeavour to bear himſelf moſt ſerviceable and unblameable; and he took therein her Majeſty's own ſelf and God to witneſs; confeſſing alſo, that his ſkill and experience was not yet great in this latter kind of ſervice, whereto he was without his ſuit and above his expectation called; and for the matter proteſting alſo, that he would not for any danger, no not preſent death, in juſtifying himſelf, diſcloſe any private ſpeech or commandment that paſſed betwixt her Majeſty and him; nor would he by any means enter into any affirmation or avowing, which could not ſtand with his dutiful regard to her Majeſty's honour, *&c.* but would admit all that againſt him: and farther, that he would not in any part diſclaim my Lord Treaſurer's reports or teſtimony againſt him. But to the matters, he anſwered, firſt, That he was ſorry that a fact of that importance and neceſſity, ſo honourable and profitably for the Commonwealth, ſhould be ſo heavily taken againſt him; wherein he might take it on his ſoul, that he did nothing but that which in his underſtanding might be agreeable to her mind, neither did he otherwiſe conceive of her meaning and purpoſe; and that upon theſe inducements:

Firſt, the conſideration of the thing itſelf, ſo juſt, ſo neceſſary, ſo honourable, ſo vehemently ſued for by the whole Realm. Secondly, in conſideration of her Majeſty, ſo gracious and wiſe a Prince, ſo loving and careful of her Subjects and Commonwealth; and more ſtrongly in conſideration of her words, which ſhe uſed at the firſt delivery of the bill, *Now you have it, let me be troubled no more with it.* Beſides the ſufficiency and perfectment of the ſaid inſtruments for the ſaid purpoſe, which was had by her directions, *viz.* as under the Great-Seal, all which were in his underſtanding proof enough what her meaning was, neither was there any apparent and direct countermand, without the which he took that inſtrument to be irrevocable. For the charge of ſecrecy, he conceived her meaning was, that it ſhould be kept from the common and publick knowledge only; for ſhe being a Prince ſo wiſe, did in his judgement conſider what violent attempts the favourites of the *S.* Queen might by likelihood offer in that deſperate plunge, if it ſhould be known that ſuch a Warrant was ſigned for her execution, and not from her Council. For her Majeſty's ſelf after willed in his way to the Lord Chancellor, to impart it to Sir *Francis Walſingham*, that then lay ſick at his houſe at *London*; herſelf made my Lord-Admiral privy to it, in ſending him to ſtay the Seal *ut ſupra*, and my Lord-Chancellor by ſealing muſt needs have ſome knowledge of it; and then why ſhould he think the Council ſhould not know it, being Privy-Counſellors and Counſellors of Eſtate, if he imparted it to none but to my Lord-Treaſurer, and he to the reſt, and that excuſably in regard of the great credit and truſt that her Majeſty uſually repoſeth in my Lord-Treaſurer for matter of greateſt moment and weight. Secondly, for ſending down the Warrant, he did it not without the opinion of the Council,

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cil, the fault is bad; and it is the worſe, becauſe by her ſaying what haſte, he might gather what her intent was. Mr. *Daviſon* ſaith, he excuſeth it by love to the Commonweal, which a man may term blind love, which is no excuſe, but it remaineth a Contempt, and a Contempt is a Miſpriſion; and yet is not every Miſpriſion a Contempt? If a man do a thing without a warrant, it is a Contempt; and ſo he concluded this to be a great offence worthy the puniſhment inflicted upon him: and ſo ended.

After him ſpake the Maſter of the Rolls, agreeing with the cenſures of them that ſpake before; and that Mr. *Daviſon*'s great Zeal made him forget his duty: alſo ſaying, that the point did reſt, whether he did know it was her Majeſty's pleaſure it ſhould be ſtayed, which, ſaid he, appeareth by his own confeſſion; and therefore, in fine, he agreed with the former cenſures.

Next ſpake Sir *James Croft*, who ſaid not very much, and yet ſpake ſomewhat: that he loved the man well, and ſo had cauſe, ſaying, that he had no lack of good-will; but yet had grievouſly offended. So he ſubſcribed in opinion to the former judgement.

After him ſpake the Lord *Lumley*, who divided the offence into two parts. Firſt, The neglect of his duty; and ſecondly, The breaking of his duty: ſaying further, that the Judges had told the law, and we muſt believe them, that it is within the compaſs of a Contempt. The matter, ſaid he, is evident: for firſt, her unwillingneſs in the Parliament was a ſignification of her mind, which he let ſlip. And farther, in ſaying, that ſhe was of that mind ſtill, ſurely you ſpake without the book, which was a very bold part; for you ought to have told them how dutiful it was; yet, Sir, you took a worſe courſe, that ſuch a high matter by your perſuaſions, as it ſhould ſeem, ſhould be done without her privity. Why ſaid he, what an abuſe of the Counſellors was this? Surely a great abuſe! and if it were a fault againſt them, much more againſt her Majeſty: this is one of the higheſt offences, by my trowth, (for ſo he ſware) that ever ſubject did againſt the Prince; and tho' you were my brother and heir (before God I ſpeak it), I think the puniſhment too little; yet with no offence to you, but for the quality of your fault. But, I ſay, had a greater fine been impoſed upon you, I would eaſily have agreed thereunto.

After him ſpake my Lord *Gray*; who ſaid, Two points were ſpoken of: the firſt, touching the Queen of *Scots*; and the next, Mr. *Daviſon*'s offence. For the firſt, ſaid he, it is largely diſcourſed: for the laſt, my good Lords, let me crave your farther examination. His offence is made the more for divers circumſtances; the firſt circumſtance is, for that it was for execution of a Queen; but what Queen? Surely ſuch a Queen as practiſed moſt horrible treaſons againſt our ſovereign Queen! ſuch a Queen, as conſpired the overthrow of the whole State! yea, ſuch a Queen, that ſought the ſubverſion of Chriſt's true Religion, to bring our ſouls headlong to the devil! So then, my Lords, the taking away ſuch a Queen, can no way aggravate his fate. The ſecond circumſtance is, his breach of ſecrecy, which he excuſeth, that he told it but to the chief Counſellors: whereas Mr. *Walſingham*, my Lord-Admiral and Lord-Chancellor, either by neceſſity, or commandment from her Majeſty, did know it undoubtedly: Whatſoever my Lords before me have thought; his anſwer in the behalf doth ſatisfy me, ſo I am reſolved. For the third point, ſhe aſking what haſte? and he afterwards, to ſend it down without her privity, here, even here, is the full proof of the Contempt; here is that, that cauſes the offence, which he ſeemeth to acknowledge, yet with two conſiderations: the firſt, the ſeditious tumults within the Realm; the next, advertiſements from *Ireland*, and beyond the ſeas. Now, my Lords, muſt not theſe conſiderations move him rather to put himſelf in her Majeſty's mercy by dealing without her commandment, than commit her Majeſty to the mercy of her foes by obeying her? For had that other thing happened (which God forbid), that her Majeſty would have miſcarried, and then this Warrant ſigned and ſealed had been found in Mr. *Daviſon*'s hands, wanting nothing but execution, ſhould we not then have judged him a traytor? ſhould we not have torn and rent him aſunder? Surely, my Lords, I ſhould then have thought him more worthy of ten thouſand deaths, than now of the leaſt puniſhment that may be inflicted upon him; for each of us, in preſervation of our Country, ought to loſe our lands, our livings, and ſacrifice our bodies; howbeit, I excuſe not his offence, neither do I agree it as a Contempt, and I agree with the puniſhment; and yet I think his fault proceeded from a very good zeal he bore unto his Country: and I pray God, that that peculiar ornament of pity and compaſſion wherewith her Majeſty is ſingular, may be ſo extended towards him, that all good ſubjects, by his example, may neglect their own private hindrance or diſgrace in reſpect of the furtherance of the Weal publick.

After him ſpake the Earl of *Lincoln*, who, for his opinion, thought it was but negligently done, and not contemptuouſly; but had it been done in contempt, he would have then thought Fine and Impriſonment no ſufficient puniſhment for an offence of that quality; yet the Offence being as it is, for company, ſaid he, I agree to the Fine: but in mine opinion it is too much, ſaving that I know her Majeſty is merciful: and for the reſt, I agree with my Lord *Gray*.

The Earl of *Cumberland* repeated the caſe, neither aggravating nor denying the offence; but briefly concluded, he agreed in opinion with Sir *Walter Mildmay*.

And the Earl of *Worceſter* ſaid nothing, ſaving that he was of the ſame mind with Mr. Chancellor, that ſpake firſt.

After him ſpake the Archbiſhop of *York*, ſpeaking, as he was, like a Biſhop, rather than a Judge, to decide a matter which did concern the State; for he inveighed againſt Mr. *Daviſon*'s offence by places of Scripture: Obedience, ſaid he, is the only virtue, and Diſobedience the contrary; and God requireth nothing elſe but obedience. St. *Paul* ſaith, *Let every ſoul be ſubject unto the higher powers*, &c. And when *Joſhua* was appointed Ruler over *Iſrael*, the People ſaid, *They would obey him in all things*. If then they ought to obey a Prince in all things, much more in thoſe things which be good. I am ſorry, ſaid he, for Mr. *Daviſon*, for he did it neither wittingly nor willingly, as I think certainly, but of a good mind to cut off our common enemy: that it was a good deed, muſt needs be confeſſed; but that it was not well done, muſt needs be granted.

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and therefore no preſumption in him; and in his own judgment, he had ſufficient warrant ſo to do by the firſt delivery of it from the Queen herſelf. Then conſidering the troubleſome rumours that were then abroad, and that information came daily from *Ireland* and *Wales* of forces of people in arms, and the report ſcattered abroad that *Fotheringay-Caſtle* was broken, the priſoners gone, that *London* was fired, and her Majeſty made away, amongſt theſe terrors what ſhould I do? Did I not that which any honeſt man and good ſubject would do in ſuch a caſe? Further, it is not cuſtom in court that particularities ſhould trouble her Majeſty in the execution of any ſuch bills: but when ſhe hath given, by her Royal aſſent, warrant, authority and life to it, the reſt for the manner and means of execution is left to the Council; and for all other circumſtances of time, when; of place, where; of perſons, by whom; eſpecially in this cauſe when her Majeſty had ſaid expreſsly that ſhe would not be troubled any more with it. Thirdly, for the not imparting of it to her upon her communication with him, &c. 'I had it by me five or ſix Weeks before 'ſhe ſpake any thing more of it, and was very unwilling to trouble her 'any more with it, eſpecially remembring her words.'

This was the effect of his defence, not uttered continuately, as I have ſet it down, but interruptly to the particulars as they were objected, in much more forcibly large and choice terms; but I think that I have not left out any thing of weight. After this, the Commiſſioners began to ſpeak *judiciouſly* unto the matter, whoſe Speeches I will by way of abridgement note, where any thing was ſpoken different from others, and eſpecially notable; for moſt of them had the ſame beginning of the *Scotiſh* Queen's demerits, &c.

The firſt that ſpoke was Sir Walter Mildmay.

He handled eloquently the great cauſes the Queen had to deal ſeverely with the *S.* Queen, and the importance of the Parliament thereto, and her Majeſty's patience in forbearing, her wiſdom in being willing, her natural and accuſtomable clemency in being ſlow; and compared her ſlackneſs with Mr. *Daviſon*'s haſte, tho' he knew her mind herein very well. Then he ſhewed, that ſuch things might not in any wiſe be extorted from Princes, and that perſuaſions and entreaties are the uttermoſt that ſubjects can offer; for the Prince's Heart is in God's hand to diſpoſe of. As for the Council, it is known that no Prince's Counſellors are farther made privy to any thing, than that it pleaſeth the Prince, and oftentimes that is imparted to one that is concealed from another with great cauſe; and therefore you ſhould not preſume farther than you had expreſs leave, much leſs to have been an encouragement to the reſt to proceed therein upon your own opinion, howſoever your deſire was for the end good and honeſt, eſpecially ſeeing there hath not been the like example. So he concluded that the puniſhment ſhould not be in regard to the man's ability, but to the quantity of the Crime committed, (by his judgment) ten thouſand marks, and impriſonment during her Majeſty's pleaſure. To which all after agreed.

2. *Sir* Roger Manhode, *Lord Chief-Baron.*

The ſecond, ſhewed at large the *Scotiſh* Queen's perpetual evil mind to our Queen, to bereave her of her Crown in her life-time, as her uſurping the Arms and Stile of *England* in poſſeſſion, when ſhe was firſt (out of the ſhell) married into *France*, her diſſembling of it in her Widowhood, by laying the fault upon her late huſband, and yet then ſeeking to be proclaimed Heir apparent in the life of her eldeſt ſiſter, (for ſhe never called her dear ſiſter) which was a dangerous ſtep to her purpoſe. After, in her ſecond marriage, her bloodineſs in conſenting to her huſband's murder, and upon that, flight and deprivation; her protection here by our Queen not only in life, but in honour; yet her aſſenting to the purpoſes of the Duke of *Norfolk*; and yet after that, tho' then our Queen would not ſuffer her for that to be touched, nor any way diſabled, as many would have had her, not only agreeing to traitorous plots, but alſo complotting with them, and therein going beyond them all, ſo as we could never be in quiet, but we had a *Somervile*, and then an *Alden*, then a *Throckmorton*, then a *Parry*, and now lately *Abington* and *Babington*; her Majeſty at length was forced to uſe a little ſeverity with her accuſtomed mercy, and one ounce of one with ten of the other. For even in this proceeding againſt her, ſhe might have been by the Statute of *Edward* III. by a Jury of Eſquires and Gentlemen, attainted and burned, and her blood corrupt; yet her Majeſty did chuſe by a new order to deal more honourably with her. Then he came to this fact of Mr. *Daviſon*'s, which he amplified by the conſideration of her Majeſty's mind in all this, proceeding as the other did before: the thing he took to be Miſpriſion and Contempt in our Law, puniſhable by Fine and Impriſonment; and he ſaid, that Miſpriſion and Contempt is to do any thing contrary to, or beſides the Prince's commandment in point of Juſtice, not in other things; as Juſtices of *Weſtminſter* to ſit out of Term, to raze Indictments or Records; and ſo he gave other examples, as in the Miniſters of the Law, *viz.* Sheriffs to execute their offices, to return Knights to the Parliament without their Oaths. So this thing then being ſo high a point of Juſtice, was not in any reſpect to be done otherwiſe than her Majeſty's expreſs commandment would bear, eſpecially not with ſuch haſte, when ſhe expreſsly declared her mind to the contrary; wherein Mr. *Daviſon* may ſeem by this haſte, if her Majeſty had any other purpoſe, to have prevented her, and God might otherwiſe have turned her mind; for it is not ſtrange to hear of mutation in her Majeſty in reſpect of this, as in the execution of the Duke of *Norfolk*, day and day was appointed, and often her Majeſty declared her unwillingneſs and lothfulneſs to have put him to death, if otherwiſe the law might have been ſatisfy'd. The commandment to impart it to Sir *Francis Walſingham* in eſpeciality, was an excluding the reſt in generality; and farther, what he told my Lord-Treaſurer could not be gathered of her Majeſty's words, but rather the contrary; and the inſtrument was not ſo peremptory and irrevocable as he took it, nor a ſufficient Warrant for any kind of proceeding againſt the *S.* Queen, neither for the aſſociates, nor for any other: for the laſt Statute, beſides the condition and proclamation, doth require the Queen's direction,

To reveal ſecrets was bad: for her Majeſty imparts not each part of her counſel to every Counſellor; ſo then his offence was a diſobedience, and a great fault. He alledgeth in excuſe, I think, a good intention, but that excuſeth not the fault: for *obedientia eſt melior quam ſacrificium.* And St. *Paul* ſaith, *Non facimus malum ut inde veniat bonum.* Therefore, ſaid he, the offence was great, too dangerous; for, in ſuch a caſe, one would be twice adviſed, if he were either honeſt or wiſe. Laſt of all, he concluded he agreed with the puniſhment aſſeſſed, and ſo ended his ſermon.

Then ſpake the Archbiſhop of *Canterbury*, That the matter had been opened; firſt, concerning the doings of the *Scottiſh* Queen, whom he thought, living and dead, was ordained to diſturb and trouble the ſtate of *England.* Then concerning Mr. *Daviſon*'s offence, Albeit, ſaid he, that which is done could be wiſhed to be otherwiſe done, yet none I hope could wiſh it undone; whatſoever he did, in my opinion, ſaid he, he did it in the ſuperabundant zeal of Religion unto her Majeſty, and love to the Commonwealth. Theſe be great arguments, ſaid he, and yet no excuſe: for *modus non factum efficit culpam*; altho' the act were good, yet can I not excuſe him in the circumſtance, howbeit, ſaid he, the mercy in the Prince in deferring it was ſevere; for there is a ſeverè mercy, as well as a merciful ſeverity: for it is written, *He ſlew* Og *the king of* Baſan, *for his mercy endureth for ever.* Yet, ſaid he, mercy in a Prince is not to be reſtrained; and therefore, becauſe the example may be dangerous hereafter, that Counſellors may preſume to do without the commandment of the Prince, which is a miſchief more intolerable than an inconveniency; therefore I agree to that puniſhment which is before agreed.

Laſt of all ſpake *Wraye*, Chief Juſtice, who ſhewed the Cauſe, and ſaid farther, That to every Contempt a commandment was not neceſſary, which in my opinion was needful to be proved; for, ſaid he, the Biſhop of *Wincheſter* came to the Parliament, and afterwards departed without licence, and therefore had a grievous Fine ſet upon him. Myſelf, ſaid he, am a Juſtice of the King's Bench; in the Term we hear of matters of Treaſon, by the reaſon of our office; and out of the Term, by Commiſſion of *Oyer* and *Terminer* aſſociate with others: if, ſaid he, a Commiſſion ſhould be directed unto me and others of *Oyer* and *Terminer* for a matter of Treaſon, and we ſhould arraign the Perſon, and adjudge him to die, yet would I not put him to execution; and yet the Commiſſion is to hear and determine. Surely, I think you meant well, and it was *bonum*, but not *bene.* Finally, he agreed the puniſhment ſhould be as it was firſt of all aſſeſſed. But farther, ſaid he, I muſt tell you, that forſomuch as the fault is yours, it declares her Majeſty's ſincerity, and not privity in this action, and that ſhe is offended therewithal. Farther, my Lords, I muſt ſignify unto you from her Majeſty, that foraſmuch as the Lords of the Council were abuſed by Mr. *Daviſon*'s relation, in telling them ſhe was pleaſed, and that which they did was for her ſafety, upon his wrong information, the Lords be ſorrowful becauſe they were abuſed by him; therefore her Majeſty imputeth no fault to any of the Counſellors, but only to him; and the reſt ſhe doth diſburthen of all blame.

This ſaid; Mr. *Daviſon* craved leave to demand one queſtion, and make one petition.

For your queſtion, ſaid *Wraye*, I think it was never the order in this Court, after the matter is heard judicially, to anſwer any queſtion, (which Sir *Walter Mildmay* affirmed;) but for your petition you may ſpeak.

Truly, my Lords, ſaid *Daviſon*, my queſtion ſhall be ſuch as in your own conſcience ſhall ſeem reaſonable.

Whereat they neither gave him leave nor denied him.

Whereupon *Daviſon* ſaid, If this Warrant, being ſigned and ſealed, and left with me, and wanting nothing but execution, it ſhould have fortuned her Majeſty ſhould have miſcarried, whether then—

Nay, ſaid *Wraye* and *Mildmay*, now you enter into that which is diſcuſſed already: yea, ſaid *Manwood*, that queſtion was moved by my Lord *Gray.*

Well then, ſaid *Daviſon*, I will not ſeek for preſent enlargement of my liberty, nor releaſe of my impriſonment, altho' my body be not well able to endure it; only let your Honours clear me, I beſeech you, of all blemiſh of diſhoneſty, and be mediators for me, that I remain not in her Majeſty's diſfavour and diſgrace: for I proteſt I ſhall be contented with any condition and ſtate of life whatſoever, if I may have her Majeſty's favour.

Whereunto the Lords univerſally anſwered, he ſpake like a good ſubject. And ſo the Court aroſe *.

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and that muſt be either general, that all men may do it, which is not here granted; or particular, who, or by what means: neither is there here any ſuch, eſpecially her Majeſty having no knowledge of the thing done. Further, ſhe was the Queen's priſoner, and therefore no man might pretend to take her away, or deliver her without ſpecial privity from the Queen: and laſtly, he ſhewed, that the good intent was no warrant to tranſgreſs duty; whereof he put a caſe or two, as where Judgment of death is given againſt one, and the Sheriff, for that he is a notorious thief or traytor, will hang him preſently, before the Juſtice depart out of town.

3. Lord *Anderſon.*

He noted a difference in law between Miſpriſion and Contempt, that one was larger than the other, and both in point of Juſtice, and might be when the Warrant of a Juſtice, or a Commiſſioner's Letter in ſuch matters is not directly and ſtraitly obſerved; and urged, that a Secretary ſhould be ſecret, and that it was his duty to have an expreſs commandment.

4. Sir *Gibert Gerrard*, Maſter of the Rolls.

He handled the ſame matter that before is ſpoken by others, but ſomewhat otherwiſe.

5. Sir *James A-Croft.*

He ſhewed his mind indifferently, with proteſtations of his good-will and good-opinion of the man; that it was a rare example, and committed, as he thought, for want of experience more than for want of duty.

6. Lord *Lumley.*

He was ſomewhat ſharp. Such Commiſſions of execution are ſent to Sheriffs; you, no Sheriff, ought to be very particular for ſuch great perſonages; you had no more Commiſſion than I, *&c.* and of likelihood you have hereby prevented other good purpoſes, which God might have put into her Majeſty's Mind, and herein you have ſeduced ſo many grave Counſellors, *&c.* If you were my brother, I would think ten times ſo much to be little enough, *&c.*

7. Lord *Gray.*

He propoſed very vehemently the great exigence the good Gentleman was in at that time: My good Lords, conſider, quoth he, and call to mind in what caſe we were daily, there came advertiſement of forces come and arrived in *Ireland*, in *Wales*, advertiſements from abroad, from our Provinces at home, even within fifteen miles of this City, of riſing, firing, breaking up holders, yea of the deſtruction of her Majeſty's Royal Perſon: if otherwiſe than well had come to her Majeſty's Royal Perſon, which of us would not have run to him, and torn him with our hands? My Lords, why ſhould *Daviſon* be more zealous and forward for his Prince than we? After he replyed to that of my Lord Chief Baron, that the telling of Sir *Francis Walſingham* did not exclude the reſt, as he proved, but rather implied and preſuppoſed that the reſt ſhould know it: for without this eſpecial information, he being ſick in his houſe, and ſo abſent from the Court, could not in any due time have knowledge of it. After he agreed to the Puniſhment, but wiſh'd that her Majeſty ſhould have compaſſion on him to encourage others that were zealous to deſerve well of her and the State, and ſo he ended. *Vulgique ſecutum ultima murmur erat.*

8. Earl of *Lincoln* ſaid little to the purpoſe.

9. Earl of *Cumberland* was very ſhort.

10. Earl of *Worceſter* was ſhort, and as before.

11. Archbiſhop of *York* diſcourſed theologically of the neceſſity and worthineſs of the virtue of Obedience, even ſtrictly to Princes in all things: and that *non faciendum malum ut inde veniat bonum*, adding the difference between *bonum* and *bene*, (as before my Lord Chief-Juſtice of *juſtum* and *juſte*, which I forgot afore to relate) and good intents do not make the fact excuſable, and that he ought to have a direct, expreſs, and iterated command; whereto he cited a Rule out of Civil Law, (wherein he ſaid he was ſo found and converſant) to this purpoſe, If the Prince commanded *aliquid magnum de libera, tenta ſi perſiſtat, & habe ſecundam juſſionem:* he concluded, he did agree to the puniſhment, but was ſorry that Mr. *Daviſon*, of whom he had heard ſo well, ſhould fall into this cauſe, he could not help it; a wiſer man might have been led with zeal, and none of us would have it undone.

12. Archbiſhop of *Canterbury*, having ſaid firſt ſomewhat of her who troubled us all both alive and dead, and theologically of *miſericordia puniens*, as out of the *Pſalm*, where God plagueth the enemy of his Church, for his mercy endureth for ever; for this preſent matter, he ſaid, *non factum ſed modus* was in queſtion, a thing done, as he thought, unfeignedly of zeal, and that which might have been better done in conſideration of her Majeſty's purpoſe to forbear her death, which could not be unknown to Mr. *Daviſon*; for ſuch things are by no means to be wreſted from Princes, God will extraordinarily move their hearts, and when it ſhall be moſt for his glory. This example, he ſaid, might be dangerous and inconvenient hereafter; and therefore he concluded it rather a miſchief than an inconvenience, and ſo agreed to the puniſhment.

13. *Wraye*, Lord Chief-Juſtice. He, as Chief, concluded the matter, and pronounced Judgement judicially upon the grounds alledged before of others, which he enforced, *&c.* And after, as from her Majeſty, ſpake ſomewhat to juſtify her proceedings in all theſe matters, and to declare that ſhe did not for this impute any fault to her Council, for that they were miſled by this man's undue ſuggeſtions.

Mr. *Daviſon* ſubmitted himſelf to the Judgement of the Queen's mercy, and requeſted that he might propoſe a queſtion, which he took upon his credit to be ſuch as they would not diſlike, and therefore he had leave; and a requeſt. His queſtion was, If this being in my hands, her Majeſty had miſcarried, what ſhould have become of me? To this, Sir *Walter Mildmay* and my Lord Chief-Baron anſwered, that my Lord *Gray* had moved it already. His requeſt was not for mitigation of his fine, nor for enlargement of priſon, altho' he could never in all his life worſe bear it than now; much leſs for his former eſtate: but only that he might, with her Majeſty's favour, enjoy any condition whatſoever, requeſting them to be interceſſors for this. Nothing to this was ſaid, but they aroſe and departed.

'These I am ſure are the principal matters by any of them uttered, ſo 'far as by myſelf, or by my conference I could recall to mind.'

Ex Autographo Gulielmi Nutti, *qui oculatus teſtis adfuit.*

* *Daviſon* thus excuſed himſelf in an apologetical Diſcourſe of his to *Walſingham:* The Queen, ſays he, after the departure of the *French* and *Scotiſh* Ambaſſadors, of her own motion, commanded me to deliver her the Warrant for executing the ſentence againſt the Queen of *Scots.* When I had delivered it, ſhe ſigned it readily with her own hand: when ſhe had ſo done, ſhe commanded it to be ſealed with the Great Seal of *England*; and in jeſting manner ſaid, Go tell all this to *Walſingham*, who is now ſick, altho' I fear he will die for ſorrow when he hears it. She added alſo the reaſons of her deferring it ſo long, namely, leſt ſhe might ſeem to have been violently or maliciouſly drawn thereto; whereas in the mean time ſhe was not ignorant how neceſſary it was: moreover, ſhe blamed *Pawlet* and *Drury*, that they had not eaſed her of this care, and wiſhed that *Walſingham* would feel their pulſes touching this matter. The next day after it was under the Great-Seal, ſhe commanded me, by *Killegrew*, that it ſhould not be done: and when I had informed her that it was done already, ſhe found fault with ſuch great haſte; telling me, that in the judgment of ſome wiſe men, another courſe might be taken. I anſwered, that that courſe was always beſt and ſafeſt which was moſt juſt. But fearing leſt ſhe would lay the fault upon me, (as ſhe had laid the putting of the Duke of *Norfolk* to death upon the Lord *Burleigh*) I acquainted *Hatton* with the whole matter, proteſting that I would not plunge myſelf any deeper in ſo great a buſineſs. He preſently imparted it to the Lord *Burleigh*, and the Lord *Burleigh* to the reſt of the Council, who all conſented to have the execution haſtened, and every one of them vowed to bear an equal ſhare in the blame, and ſent *Beale* away with the Warrant and Letters. The third day after, when by a dream ſhe was told of the Queen of *Scots*' death, I perceived that ſhe wavered in her reſolution, I aſked her, whether ſhe had changed her mind? She anſwered, No: but another courſe, ſaid ſhe, might have been deviſed. And withal ſhe aſked me, whether I had received any anſwer from *Pawlet?* Whoſe Letter when I had ſhewed her, wherein he flatly refuſed to undertake that which ſtood not with honour and juſtice; ſhe waxing angry, accuſed him and others (who had bound themſelves by the Aſſociation) of perjury and

and breach of their vow, as thoſe that had promiſed great matters for their Prince's ſafety, but would perform nothing; yet there are, ſaid ſhe, who will do it for my ſake. But I ſhewed her how diſhonourable and unjuſt a thing this would be; and withal into how great danger ſhe would bring *Pawlet* and *Drury* by it: for if ſhe approved the fact, ſhe would draw upon herſelf both danger and diſhonour, not without cenſure of injuſtice; and if ſhe diſallowed it, ſhe would utterly undo men of great deſert, and their whole poſterity. And afterwards ſhe gave me a light check the ſame day that the Queen of *Scots* was executed, becauſe ſhe was not yet put to death. *Camden's Eliz.* in *Kennet's* Hiſt. of *England*, vol. II. p. 538.

Freebairn, in his Life of *Mary* Queen of *Scots*, p. 269 ſays, Queen *Elizabeth* ſent orders to *Pawlet*, on whoſe obedience ſhe could reckon with certainty, for committing of any act of barbarity to make away with his priſoner, the Queen of *Scots*; and p. 270, 271 and 272, inſerts a Letter from *Walſingham* and *Daviſon* (her two Secretaries) to Sir *Amyas Pawlet*, with his anſwer, which were found among Sir *Amyas Pawlet's* Papers; a copy of which, tranſcribed from the originals, were ſent to Dr. *Mackenzie*, by Mr. *John Urry*, of *Chriſt-Church College*, *Oxford*.

The LETTER *wrote to Sir* Amias Pawlet *and Sir* Drew Drury.

'AFTER our hearty commendations, we find by a Speech lately made by her Majeſty, That ſhe doth note in you both a lack of that care and zeal for her ſervice, that ſhe looketh for at your hands, in that you have not in all this time (of yourſelves without other provocation) found out ſome way to ſhorten the life of the *Scots* Queen, conſidering the great peril ſhe is hourly ſubject to, ſo long as the ſaid Queen ſhould live; wherein, beſides a kind of lack of love towards her, ſhe wonders greatly that you have not that care of your own particular ſafeties, or rather the preſervation of Religion, and the publick good and proſperity of your Countries that reaſon and policy commandeth; eſpecially, having ſo good a warrant and ground for the ſatisfaction of your conſciences toward God, and the diſcharge of your credit and reputation towards the world as the oath of aſſociation, which you both have ſo ſolemnly taken and vowed; eſpecially the matter wherewith ſhe ſtandeth charged, being ſo clearly and manifeſtly proved againſt her: and therefore ſhe taketh it moſt unkindly, that men profeſſing that love towards her that you do, ſhould in a kind of ſort for lack of the diſcharge of your duties, caſt the burden upon her, knowing, as you do, her indiſpoſition to ſhed blood; eſpecially, of one of that ſex and quality, and ſo near to her in blood as the ſaid Queen is. Theſe reſpects, we find, do greatly trouble her Majeſty; who, we aſſure you, hath ſundry times proteſted, that if the regard of the danger of her good ſubjects, and faithful ſervants, did not more move her than her own peril, ſhe would never be drawn to aſſent to the ſhedding of her blood. We thought it meet to acquaint you with theſe ſpeeches lately paſſed from her Majeſty, referring the ſame to your good judgments: And ſo we commit you to the protection of the Almighty.

London, February the 1ſt, 1586. *Your moſt aſſured Friends*, Fra. Walſingham, Will. Daviſon.

Directed thus:

To the Right Honourable Sir *Amias Pawlet*, Knight, one of his Majeſty's Privy-Council.

This Letter was received at *Fothringay*, the 2d of *February*, at five in the afternoon; and in another Letter from Mr. *Daviſon*, of the 1ſt of *February*, to Sir *Amias*, he ſays, *I pray you let both this and the incloſed be committed to the fire, which meaſure ſhall be likewiſe met to your anſwer, after it hath been communicated to her Majeſty for her ſatisfaction.* And in a Poſtſcript of another Letter from Mr. *Daviſon* to him, dated the 3d of *February*, 1686, he ſays, *I intreated you in my laſt Letters, to burn both the Letters ſent you for the argument's ſake; which by your anſwer to Mr. Secretary (which I have ſeen) appeareth not to be done; I pray you let me intreat to make Hereticks of the one and the other, as I mean to uſe yours after her Majeſty hath ſeen it.* And in the end of the Poſtſcript, *I pray you let me know what you have done with my Letters becauſe they are not to be kept, that I my ſatisfy her Majeſty therein, who might otherwiſe take offence thereat; and if you treat this Poſtſcript in the ſame kind, I ſhall care not a whit.* But it ſeems none of them obſerved this; for amongſt the ſame papers, is the following Letter to Sir *Francis Walſingham*.

'SIR,

'YOUR Letters of yeſterday coming to my hands this preſent day, at 5 *p. m.* I would not fail, according to your direction, to return my anſwer with all poſſible ſpeed; which I ſhall deliver unto you with great grief and bitterneſs of mind, in that I am ſo unhappy, as living to ſee this unhappy day, in which I am required by Direction from my moſt gracious Sovereign, to do an act which God and the law forbiddeth. My Goods and Life are at her Majeſty's diſpoſition, and I am ready to loſe the next morrow, if it ſhall pleaſe her; acknowledging, that I do hold them as of her meer and moſt gracious favour, and do not deſign to enjoy them but with her Highneſs's good liking: but God forbid I ſhould make ſo foul a ſhipwreck of my conſcience, or leave ſo great a blot on my poor poſterity, and ſhed blood without law or warrant; truſting, that her Majeſty, of her accuſtomed clemency, and the rather by your good mediation, will take this my anſwer in good part, as proceeding from one who never will be inferior to any Chriſtian Subject, living in honour, love and obedience towards his Sovereign; and thus I commit you to the mercy of the Almighty.

From *Fotheringay*, the 2d of *February*, 1586. *Your moſt aſſured poor Friend*, A. PAWLET.

P. S. Your Letters coming in the plural number, ſeem to be meant to Sir *Drew Drury*, as to myſelf; and yet becauſe he is not named in them, neither the Letter directed unto him; he forbeareth to make any particular anſwer, but ſubſcribeth in heart to my opinion. D. DRURY.

V. *The Arraignment of Sir* RICHARD KNIGHTLY, *and others, in the* Star-Chamber, *for maintaining ſeditious Perſons, Books, and Libels*; Feb. 31, 1588. 31 Eliz. *

ON *Friday* the 13th of *February*, were brought as priſoners to the Bar, before the Lords in the High-Court of *Star-Chamber*, Sir *Richard Knightly*, Mr. *Hales*, Sir —— *Wickſtone* †, and his wife, whoſe offences hereafter follow. And firſt, Mr. Attorney-General *Popham* began, That the proſperous and happy ſtate of her Majeſty was not unknown unto them all that were preſent, and ſo dilated thereon, *&c.* until two enemies had choſen to diſturb this quietneſs, *viz.* the Papiſts abroad, who by foreign arms, *&c.* and the ſeditious Sectaries at home, whereof there are leud people; next the *Browniſts* and their Fellows: but Juſtice had been done on theſe men, and the law executed. But there is another ſort of ſectary, that are of no ſettled ſtate, but ſeek to transform and ſubvert all. Theſe men would have .... Government in every ſeveral Congregation, ſeverally in each Province, in every Dioceſs, yea, in every Pariſh; whereupon would enſue more miſchief than any man by tongue can utter: they themſelves cannot agree among themſelves, but are full of envy and emulation; for what greater emulation than to fall to contention, and from contention proceed to violence? But they ſtay not here, nor contented with railing againſt the Church and the State thereof, but proceed to Court and the Common-Weal, that all things might contribute to preſerve unity among the Brethren; no law, no order left, all propriety of things taken away and confounded.

But of what ſort of People are theſe Sectaries? Of the very vileſt and baſeſt ſort, and theſe muſt make confuſion of all State, and ſo advance themſelves in their Congregations, this their courſe and this their purpoſe; ſo the heel ſhould govern the head, and not the head the heel, if theſe men be allowed. Her Majeſty, in her great wiſdom duly conſidered the great danger of theſe inconveniencies, took order that no pamphlets or treatiſes ſhould be put in print, but ſuch as ſhould be firſt ſeen and allowed; and farther, leſt that were not ſufficient, ſhe ordained that no printing ſhould be uſed any where but in *London*, *Oxford*, and *Cambridge*. Notwithſtanding, all this ſerved not, but they would print in corners, and ſpread abroad things imprinted; wherefore her Majeſty ſet forth a proclamation in *Anno* 25. that all *Browniſts* books, and ſuch other ſeditious books ſhould be ſuppreſſed and burnt. Afterwards, when their new, ſeditious, and infamous Libels were ſpread abroad, her Majeſty in *February* laſt ſet forth another Proclamation, that all her Subjects might take warning: but becauſe no reformation is had, ſhe now holds it neceſſary to proceed in juſtice: And therefore theſe men, now priſoners at the Bar, but anſwer to their offences, and receive according to their demerits: and firſt for their faults. Sir *Richard Knightly* being a great man in his country, a Deputy-Lieutenant, who had the government thereof, a ſeditious and leud rebel came unto him to have place and entertainment with him, and there Sir *Richard* received him to print: Sir *Richard* doth confeſs that *Penry* told him he would ſet forth ſuch a like book as he had before-time ſet forth for the Government of *Wales*. That book contains ſedition and ſlander moſt opprobrious; and yet Sir *Richard* was contented ſuch a like book ſhould be printed.

But farther, Sir *Richard* ſent his man a ring for a token to receive the preſs into his houſe, who did ſo, and there they printed *The Epitome*, *Walgrave* himſelf being the printer; this is a moſt ſeditious and libellous pamphlet, fit for a vice in a play, and no other: but then the Parſon of the Pariſh having found out the printing, told Sir *Richard* that it was very dangerous; whereupon Sir *Richard* cauſed him to take it down; but neither diſliked nor diſcovered it, but kept it ſecret, and read the books himſelf. Again, when it was told him that his houſe would be ſearched for the preſs, he ſaid he would courſe them that would come to ſearch his houſe; beſide, at his recommendation *Walgrave* was commended unto Mr. *Hales*, and there had entertainment, and there *The Supplication to the Parliament* was printed by *Walgrave*, and publiſhed by *Newman*, Sir *Richard's* man; and another book, viz. *Have you any Work for the Cooper?* was there printed likewiſe. Therein the Sectaries themſelves confeſs, that inconvenience would enſue of this Government which they ſo ſought to eſtabliſh; but yet it muſt be brought in, becauſe they were ſo determined. And from Mr. *Hales's* houſe in *Coventry*, theſe books and this preſs muſt be conveyed to Sir —— *Wickſtone's*, where *Martyn ſenior*, and *Martyn junior* were both printed; wherein theſe libellers ſay, that all laws that any way impugn this doctrine of theirs are not to be obeyed in any cauſe: then if this be ſuffered, confuſion and diſorder muſt needs enſue. But farther, in theſe books they affirm that the time doth offer them a great opportunity, as though all things would be ſuffered in this ſo troubleſome a time, rather than they ſhould any way be diſquieted. And for Sir —— *Wickſtone*, albeit he knew the preſs was in his houſe, yet he kept ſecret, and would never diſcover it, but came many times, and did viſit there at the Preſs; and his wife, by whoſe procurement and perſuaſions with her huſband, they were firſt received into his houſe, did often relieve them with meat and drink, and gave them money in their purſes. This is the ſubſtance and ſum of their offence, which if they will deny, unconteſtable and manifeſt proofs ſhall be produced againſt them. And ſo he concluded.

Hereupon Sir *Richard Knightly* began to anſwer, and moſt humbly beſought their Lordſhips to conſider of his ſimple wit, and weak capacity; not able to ſpeak in ſuch a place, and before ſo honourable an Aſſembly: and ſaid, that theſe miſhaps which were now ſo aggravated againſt them, were a puniſhment impoſed by God, to put him in mind of other his grievous crimes committed againſt the Majeſty of the Moſt Higheſt. He affirmed conſtantly that he was no Sectary, but of that religion, that ſelf-ſame Religion, which he hoped all they which were then preſent were of, and ſo he truſted were all other her Majeſty's loving Subjects. And if he ſhould ſpeak any thing amiſs, he deſired them not to impute it to his ill diſpoſition, but to his wants, which were many, and the more, by reaſon of his late impriſonment: and ſaid, he was right glad that their Honours were ordained by God, and appointed by her Majeſty to be his Judges, at whoſe hands he was ſure to receive nothing but juſtice: wherefore he beſought them to be an interceſſor and mediator to her Majeſty in his behalf, againſt whom, for any offence committed, or againſt the State, to his knowledge, he was as clear as any preſent, and as good a Subject as ever came to that Bar. He utterly diſclaimed the books, and denied to have any familiarity to his knowledge with thoſe that were the writers of them; and ſhewed that the preſs was brought into his houſe upon this reaſon: There was a book that before-time was printed in *Oxford*, which to his knowledge was never called in; this book was written by one Mr. *Penry*, who requeſted Sir *Richard* that this book might be printed again in his houſe, and in reſpect of the want of learning, which he knew to be in the Miniſtry, he did the rather incline an ear unto. For although he muſt needs confeſs there were in the Miniſtry ſome good, yet to his thinking, for one good, there were forty bad; yea, ſo bad, as he thought them not worthy to ſweep the Church; and therefore his zeal for the furtherance of God's Glory cauſed him to allow of this book. This, as he ſaid, was about *St. James* tide was twelve-month, and he had heard nothing thereof again until *All-ha'low-tide* following; and ſaid, that the preſs was never in his own houſe, but in a houſe at the farther end of the town. And he ſaid, at *Chriſtmas* following *Walgrave* came to him and deſired the preſs, and ſaid that Mr. *Cartwright* had wrote a book againſt the Jeſuits, which he hoped to print. This is the truth, ſaith he.

He wrote to Mr. *Hales* to defend a houſe for a poor man: all this was done before the Proclamation, ſince which time he never meddled therein

* Copied from a MS. in Caius College, *Cambridge*, Claſs A. 1090. 8. p. 206.

† Neale's Hiſt. of Puritans, Vol. I. p. 507.

therein, as he ſaid; for my Lord Chancellor moſt honourably gave him warning to look unto that, which he hath accompliſhed like a good Subject to her Majeſty, to whom he confeſſeth himſelf moſt bounden, as he thinketh all the world is beſide; and now hath learned of *David*, not to much as to touch the hem of the Lord's Anointed. He hopeth her Majeſty will likewiſe forgive him, as ſhe hath forgiven greater offences: And beſought them all to be good unto him, and he for his part would ſay with *Moſes* and *Paul*, that he would rather deſire to be wiped out of the book of life, than not perform his duty to her Majeſty. And ſo he concluded.

Mr. *Hales* began, That albeit it were a great grief unto him to be convented before their Lordſhips, yet in this he joyed that they were his Judges, that were the Governors and Judges of the Land, which could and would do him nothing elſe but juſtice; he confeſſed the bleſſing of God to be exceeding great unto the Commonwealth for placing her Majeſty over the ſame, by whoſe means we enjoy that peace which other nations want, and we happy that live under her: he diſclaimed the books; but he had great reaſon as he thought to gratify Sir *Richard Knightly* in any thing, to whom he owed much reverence, as him that had married his Aunt. Sir *Richard* deſired him to lend his houſe for a poor man, to the which he condeſcended; but he knew not the man, nor his intent; he met with *Penry* in *Coventry*, at a Sermon, who deſired him to direct him to his houſe, there he had *The Supplication to the Parliament* that was printed at *Oxford*; he told him he would print Mr. *Cartwright*'s book *againſt the Romiſh Teſtament*: he was privy that there was a preſs there, but nothing elſe.

It was an eaſy matter for a wiſer man than himſelf to be thus overtaken; *Penry* himſelf was not indicted nor impeached. And he hoped, if a man ignorantly did receive a Traitor or Jeſuit, that it was not treaſon, unleſs himſelf knew of it.

Attorney. You acknowledge you had a book of him?---*Hales*. I do.

Attorney. And you came to the maker of it?

Hales. It was before the Proclamation.

Attorney. It was after.

Hales. It was after the firſt, and before the ſecond Proclamation. Hereupon was read the firſt Proclamation, made in 27 *Eliz.* againſt ſchiſmatical and ſeditious libels, Dr. *Brown*, and ſuch others.

Hales. But Mr. *Penry*'s was no Libel, for he ſubſcribed his name.

Attorney. There is no doubt but it is a Libel, tho' it be ſubſcribed: whereunto *Hales* ſaid nothing. And then was read the other Proclamation in 31 *Eliz.* And the Order in the *Star-Chamber*, made in 28 *Eliz.* whereby printing was allowed only in *London*, *Oxford* and *Cambridge*.

Wickſtone ſaid, he was an ignorant man, and craved he might anſwer by Counſel, which might direct him: whereunto the Lord Chancellor anſwered, that this was matter of fact which lay moſt properly within his own knowledge, and that he muſt provide to anſwer for himſelf, and that he needed no Counſel.

Whereupon *Wickſtone* confeſſed, that his wife deſired him to permit them a home in his houſe, which he conſented unto, knowing the purpoſe of them, and that was all.

Lady *Wickſtone* confeſſed that the zeal of reformation in the Church cauſed her to give them entertainment in her houſe, and ſhe was the cauſe that they came thither, not thinking that it had been any way hurtful or dangerous to the State; and ſhe humbly beſought, that what fault ſoever ſhe had committed, her huſband might not be puniſhed therefore, ſince he was not privy, but only by her means and requeſt.

Hereupon Mr. *Puckering*, the Queen's Serjeant, began to lay open the enormities of thoſe books, which they had in court, and divers clauſes of them were read. Firſt, he affirmed they tended to the ruin of the whole State, next to the aboliſhing of all eccleſiaſtical Government, to the removing of all manner of ſervice, the overthrow of laws; and yet, ſay they, all laws which reſiſt theſe men, are no more to be allowed than thoſe which maintain ſtews. But *Penry* will never give that over, he ſays, though the *Spaniards* were overthrown and diſcomfited by famine and by hunger, yet the Lord will raiſe them up again, and make a weak and feeble generation to overthrow us. So here was read a great part of *The Epitome*.

Puckering. This is moſt ſcornful and ſeditious: But what is their concluſion? They conclude, our Parliament and Councils be aſſembled where no truth beareth ſway; which is moſt falſe and ſcandalous: but if this their Government be not received, thoſe of the Parliament-houſe nor their ſeed ſhall never proſper, nor they ever bear any more rule in *England*. And I *Penry* will never leave, till either this be performed, or that the Lord in vengeance and blood do plague and puniſh us.

For the other book [*Have you any work for the Cooper?*] therein is affirmed that our Church-Government is utterly unlawful: And albeit this form of theirs would be inconvenient in many points, yet every Chriſtian is bound to receive paſtors, doctors, elders and deacons.

For *Martin junior*, he affirms that it is unlawful to have any other Government, that all human laws maintaining any other form are ungodly and not to be obeyed; that the warrant that Biſhops have to maintain their authority, is no better than that which did maintain the ſtews; that Antichriſt is the head of their doctrine, and they part of his body.

For *Martin ſenior*, he loudly termeth the book of common ſervice, the ..... Book at *Lambeth*, that 100,000 hands would ſign to their poſitions and government which they ſeek. And farther, that they are the ſtrength of the land, that it were no policy to reject their ſuit at ſuch a time when the land was invaded.

After which, they read Sir *Richard*'s examination, wherein he confeſſed that *Penry* came unto him as before; but when *Sharp* the miniſter told him the books were leud and dangerous, he cauſed them to be pulled down, and that he knew of no book but *The Epitome*.

He ſent a ring to his man *Jackſon* by *Penry* to receive a load of ſtuff into his houſe, which was the preſs and other neceſſaries for printing.

Newman the Cobler wore his livery, and *Waſtal* his man helped *Walgrave* away from his houſe, to Mr. *Hales* at *Coventry*: *Fox* his Schoolmaſter, and *Waſtal* his man, would commonly read the books in Sir *Richard*'s houſe, and ſcoff and ſcorn at *John of Canterbury*.

Sharp ſaith, that Sir *Richard* conferr'd with *Walgrave*, as *Newman* told him *The Epitome* was printed there: that when it was told Sir *Richard* his houſe would be ſearched, he anſwered, the knaves durſt not ſearch his houſe; and if they did he would have courſed them.

The printer's man ſaith, that the *Mind-Alls* were printed there; but Sir *Richard* anſwered, he never knew ſo much before. *Have you any work for the Cooper?* went in hand there, but they went away then to *Coventry*.

The printer's man would have ſubmitted himſelf long before, but Sir *Richard* adviſed him not to do ſo in any caſe, for the Lords were ſo incenſed, as he ſhould be hanged if he were catched.

For *Hales*, *Have you any work for the Cooper?* was printed at his houſe, he came once to the preſs as they were printing it.

Mrs. *Wickſtone* confeſſeth, *Martin junior* and *Martin ſenior* were printed in her houſe, ſhe gave them entertainment, and placed them in a parlour; her huſband knew it not till it was done: ſhe told him, it was works of embroidering, and willed him to will his ſervants not to peep or pry into the parlour, ſince it pertained not to them: *Hodgskins* and two more printed them all. *Hodgskins* was deſired to print more, but he refuſed. *Hodgskins* confeſſeth that he printed them two; and from Mr. *Wickſtone*'s they were conveyed to *Warrington* in *Lancaſhire*: She gave them 2*s.* 6*d.* at their departure, and her huſband 2*s.*

Upon this Mr. Sollicitor *Egerton* began to declare the danger of theſe books, that they tended to confuſion of all ſtates, to take away her Majeſty's Prerogative Royal, to the diminution of her yearly revenue, where ſhe at this time was forced to ſell her revenues for maintenance of her Realm and People, to the diſheriſon of a great number of their patronages and advowſons and appropriations, to the abrogating of the common law and the civil law in many points: Whereupon he deſired their Lordſhips to proceed to ſentence.

All the Lords agreed that the books were moſt leud, dangerous and ſeditious, and pernicious to the State, moſt ſcandalous in reſpect to our adverſaries the Papiſts, who took occaſion of our diſagreement; that they were ſlanderous to her Majeſty, in accuſing her for not maintaining religion. Whereas ſhe for defence of religion only hath ſcared all the enemies of the State; that the ſword of war had been drawn out againſt her for that cauſe; nay, the ſword of death had compaſſed her chair in her own chamber [Mr. *Parrie* and Mr. *Barnwell*]: Notwithſtanding ſhe, nothing diſmayed, being of princely magnanimity and fortitude, hath not feared any of theſe dangers only for religion ſake. That they took away her Majeſty's regal Power, diſinherited Noblemen and Gentlemen, took away all Property, aboliſhed the reverend eſtate and calling of Biſhops, which are one of the three ancient eſtates of this land; and ſo they meant to pick out one ſtone after another, till they pulled the whole houſe on their heads. That the faults of them there preſent were groſs and grievous; Sir *Richard*, a man highly favoured of the Queen, and much bounden more than ordinarily any of his ſtate.

Yet notwithſtanding, ſaid Mr. Vice-Chamberlain, you be beloved of all of us, yet juſtice muſt be done without affection or compaſſion; for *Puniantur hi, ne tu puniaris*; let the magiſtrate puniſh offenders, leſt himſelf be puniſhed. And again, *St. Auguſtine* ſaith, *pereat unus ne pereat unitas*; let the offender rather be puniſhed, than the unity of the Church be confounded.

That their ignorance was no excuſe, that ignorance which was wilful and malicious only to eſcape the puniſhment of law, which is as high an offence as any privity.

That it was a ſillier anſwer of Mr. *Wickſtone*, to ſay his wife deſired him, a great folly to be ruled by her, and ſhe paſſed the modeſty of her ſex to rule him. And Sir *John Perrot* ſaid expreſsly, he thought him worthy of the greater puniſhment for giving ſuch a fooliſh anſwer, as that he did it at his wife's deſire.

The Lord Chancellor gave the aſſembly that ſtood by to note, that theſe priſoners were not the deviſers and makers of theſe books; for if they had, another place had been fit for them, and not this: that the county of *Northampton* did ſwarm with theſe Sectaries, and in one place there was a Preſbytery planted among them, till at length one of the brethren had offended, wherefore the other would have puniſhed him; but he, when he ſhould be puniſhed, fled, and complained to a Juſtice of Peace, and ſo their power ſurceaſed, and all revealed; whereby he noted the vanity of their Government: yea, ſaid he, it is proceeded ſo far in that Country, that the people were full of contention, and in ſome places had riſen in arms about that quarrel; whereby he concluded it was neceſſary to prevent ſuch miſchief, and to make example of it, and deſired the Judges to notify his action herein in their circuits abroad, to the end the whole Realm might have knowledge of it, and the people no more ſeduced with theſe leud libellers. For puniſhment, they all agreed that Sir *Richard* ſhould be fined two thouſand pounds *; Mr. *Hales*, a thouſand marks; Mr. *Wickſtone* for obeying his wife, and not diſcovering it, five hundred marks; Mrs. *Wickſtone* a thouſand pounds †; and all of them impriſonment at her Majeſty's pleaſure.

* This Sir *Richard Knightly* was divers times choſen Member of Parliament for the county of *Northampton*, in the reign of Queen *Elizabeth*. He was a great favourer of the Puritan party, and at the expence of printing their libels, as is reported, being influenced by *Snape*, and ſome other leading Miniſters of this County; theſe libels were printed by one *Walgrave*, who had a travelling preſs for this purpoſe, which was once brought down to *Faweſley*, and from thence by ſeveral Stages removed to *Mancheſter*, where both the preſs and the workmen were ſeized by the Earl of *Derby*. For this offence Sir *Richard Knightly*, and his confederates, were cited into the *Star-Chamber*, and ſeverely cenſured; but upon the interceſſion of Archbiſhop *Whitgift*, whom they had moſt inſulted, they were ſet at liberty, and had their Fines remitted. But though thus zealous for the Puritan faction, he joined with Sir *Francis Haſtings* in preſenting a Petition to the Houſe of Commons, for granting a Toleration to the Papiſts. *Bridges's Northamptonſhire, by* Jebb, *fol. p.* 63.

† *Camden* ſays, That at this Time ſeveral ſcurrilous pamphlets were publiſhed againſt the Church of *England* by the Diſſenters; their great patrons and abettors were Sir *Richard Knightly* and *Wickſtone*, perſons in other reſpects ſober and pious, but drawn into the party by ſome inſtruments that were to make a private market of them. However the Knights had a pretty round fine laid on them in the *Star-Chamber*; but the Archbiſhop of *Canterbury* was ſo generouſly good-natured, as to procure a remiſſion of it at her Majeſty's hands. See *Camden's Eliz.* in the complete Hiſtory of *England*, vol. II. pag. 550.

VI. Pro-

VI. Proceedings in Parliament againſt *John* Earl of *Gowrie*, *Alexander Ruthven* his Brother, *Henry Ruthven*, *Hugh Moncrief*, and *Peter Eviot*, for *High-Treaſon*, *Nov.* 15, 1600, at *Edinburgh* *.

WILLIAM, Earl of *Gowrie*, having been condemn'd at *Stirling*, and executed in the year 1584, with two others, for ſeditious practices, in ſeizing the King's Perſon at *Ruthven*-Houſe, when in his minority, and baniſhing from him all others who were not of their party, making him condeſcend to what they propos'd, and levying forces to ſecure themſelves and the King's Perſon in their cuſtody; occaſioned the hot Clergy of their party, both to preach and publiſh ſcandalous pamphlets againſt the King and Government: this did beget a ſtrict friendſhip between young *Gowrie* and the factious Clergy. Albeit, the King did, with great benignity, reſtore the Earl of *Gowrie* to his Father's honour's and eſtate; yet, his two ſons, the Earl, and Mr. *Alexander*, were nurſed up in ſuch malice againſt the King, by ſome of his relations, (but eſpecially by the Clergy), that neither the King's reſtoring him to his Eſtate and Honour, conferring alſo other marks of favour and truſt on him, (and placing his Siſter as the firſt Lady of Honour to the Queen, and making his Brother *Alexander* one of his Bedchamber) could allay his revenge; till at laſt, he reſolv'd to bring his long-deſigned purpoſe to effect. For, in *Auguſt* 1600, he devis'd and contriv'd the bringing the King from *Falkland* to his houſe in *Perth*; and there, with his fellow-conſpirators, to have murdered the King.

On account of this Treaſon †, and ſeveral diſorders, a Parliament was indicted to meet at *Edinburgh* on the firſt of *November* that year 1600, albeit the printed Acts bear its meeting to be on the 15th.

Accordingly a Parliament was indicted, to be holden at *Edinburgh* on the 1ſt of *November* 1600, and (as is ordinary) it was adjourned to the 4th of *November*. On which day, Sir *Thomas Hamilton*, King's Advocate, produced a ſummons of Treaſon duly executed againſt *William Ruthven*, Brother and apparent Heir to *John* Earl of *Gowrie*, and Mr. *Alexander Ruthven*: calling alſo, in the ſummons, the tutors and curators of the ſaid *William*, (if he had any) and all others, having pretence or intereſt in the matter, to hear it found; and declared, that the ſaid Earl of *Gowrie*, and Mr. *Alexander* his Brother, had committed Treaſon, in attempting to bereave his Majeſty of his Life, at *St. Johnſtoun*, on the 5th day of *Auguſt* laſt by-paſt: The ſummons and executions being read, and the Heraulds and Meſſengers ſworn to the veracity of the executions, both at their private houſes, mercat-croſſes, and Shoar and Peer of *Leith*, *&c.* (which are the moſt publick Intimations and Citations that can be given by the Law of *Scotland*); which Citations were given on the 28th day of *Auguſt* and 29th ditto, in their reſpective places and mercat-croſſes, and the Parliament was declar'd current daily.

On the 9th day, the ſaid ſummons and executions were read over again, another ſummons of treaſon was produc'd, with their executions and verifications, made on oath in the face of the Court, againſt *Alexander* and *Henry Ruthven*, ſons to *Alexander Ruthven* of *Frieland*; and againſt *Hugh Moncrief*, brother to *William Moncrief* of that Ilk; *Patrick Eviot*, brother to *Colin Eviot* of *Balhouſie*; to hear and ſee themſelves decern'd, as guilty of High-Treaſon, and Leſe-Majeſty, againſt the King at *Perth*, the 5th day of *Auguſt* laſt paſt.

And likewiſe by warrant from the Parliament, one *Andrew Henderſon*, who was priſoner in the Tolbooth of *Edinburgh*, on accuſation for the ſaid crime, was brought by the Baillie of *Edinburgh*, and ſiſted before the Parliament; he having receiv'd formal ſummons in the Tolbooth, on the 28th of *Auguſt* laſt paſt.

The ſummons being thrice called, the executions all verified, and none of the perſons cited compearing, excepting *Andrew Henderſon* the priſoner; the King's Advocate did take inſtruments: and likewiſe the King's Advocate did then, and there, produce before the Lords, our ſovereign Lord's letters of relaxation, given under his Highneſs's ſignet at *Edinburgh*, relaxing all the perſons ſo ſummoned from the horn, and from all the ſummons executed againſt them, at the inſtance of whatſoever perſons; that ſo, they might have ſafety and freedom to compear: and which relaxations were promulgated, at the mercat-croſſes of the ſhires where each perſon had his abode; and alſo at the mercat-croſs at *Edinburgh*, and ſhoar and peer of *Leith*. And theſe executions and relaxations were regiſtrated in the records of the ſhires where the accuſed did reſide: on which production the King's Advocate did take inſtruments.

The Lords Commiſſioners in Parliament did remit the ſaid *Andrew Henderſon* to the Tolbooth for ſafe cuſtody, and the Parliament adjourn'd until the 15th day of *November*: on which day, the Parliament having met, the ſaid Sir *Thomas Hamilton*, Advocate, produc'd the ſaid ſummons of Treaſon and Executions; and the Heraulds and Meſſengers having, of new, verified the executions upon oath formally, *&c.* neither *William*, nor none for him, nor the others cited, compearing; the King's Advocate did take inſtruments thereon: only Mr. *Thomas Henriſon*, one of the Commiſſaries of *Edinburgh*, compeared for the foreſaid *Andrew Henderſon*, and produc'd the writ following, underſubſcribed by the King's Advocate. "It is "our will, and we command you, that upon ſight hereof, ye delete "*Andrew Henderſon*, Chamberlain to umquhile *John* Earl of *Gowrie*, his "name furth of the ſummons of Treaſon and Forfaulture, raiſed and "executed againſt him, for being art, part, redd, counſel, and coun-"ſelling, of the late Treaſon conſpired by the ſaid umquhile Earl, his "umquhile brother, and complices, againſt our Perſon; and as you will "anſwer to us hereupon; keeping thir preſents for your warrant. Sub-"ſcribed with our hand at *Holy-rood-houſe*, the ninth of *November*, 1600. "Sic ſubſcribitur, JACOBUS REX." Conform whereunto, the Advocate "did delete his Name."

The Heraulds and Meſſengers did, at that ſame time, again verify upon oath the executions given in; and the relaxations and executions againſt *William*, and *Alexander*, and *Henry Ruthven*, *Patrick Eviot*, and *Hugh Moncrief*; and the Parliament found the Dittay relevant: and then adjourned till the 15th Day of *November*, and remitted the examination of the witneſſes to the Lords of Articles, which are a Committee of Parliament, according to the conſtant practice and cuſtom in Parliament.

Nota, The Lords of the Articles in that Parliament, were two Biſhops and four Abbots, all men of great worth and integrity; four Earls, *viz. Lennox*, *Errol*, *Marriſchal*, and *Marr*; four Lords, *viz. Seton*, *Livingſtoun*, *Newbottle*, and *Fivie*; ſeven Barons, and nine Commiſſioners of Burrows.

On the 15th of *November*, the Parliament did again meet, and the Advocate did again call the ſummons of Treaſon againſt all the forementioned Perſons (except *Henderſon*), for enterprizing the ſlaughter of the King, on the 5th of *Auguſt* laſt paſt. Being all three called, and none compearing, the hail Eſtates did find both the ſummons ‡, reaſons and cauſes therein mentioned, relevant; and therefore admitted the ſame to the Advocate's probation. Whereupon the Advocate did produce the Letters of horning duly executed and endorſed, againſt *Alexander* and *Henry Ruthven*, *Hugh Moncrief*, and *Patrick Eviot*; bearing, that they were denounced Rebels, and put to the horn, for crimes of Treaſon therein mentioned.

And the oaths and depoſitions of the witneſſes, let and adduc'd by the Advocate, for proving of the Treaſon againſt the defenders (taken before the Lords of Articles), *viz.* the depoſition of umquhile Mr. *Thomas Cranſtoun*, and *George Craigingelt*, when they were executed to death, for the foreſaid crime of Treaſon: and likewiſe, the Advocate repeated the notoriety, with the circumſtances of the matter of fact, to prove the points of the Libel; and produc'd the depoſitions of all the witneſſes, which were all read, as follows:

The Depoſitions of the Witneſſes, examined in preſence of the Lords of Articles, for proving of the ſaid two Summonſes of Treaſon:

[Nota, *That the Words are printed as they were then written and ſpoke, for exactneſs ſake.*]

THE Duke of *Lenox*, ſworn and examined, depones, That upon the 5th day of *Auguſt* laſt by-paſt, this Deponent, for the time being in *Falkland* in company with his Majeſty, he ſaw Mr. *Alexander Ruthven* ſpeaking with his Grace before the ſtables, betwixt ſix and ſeven in the morning; and ſhortly thereafter, his Majeſty paſſing to the hunting of the Buck, and having ſlain one in the Park of *Falkland*, his Highneſs ſpake to the Deponent, diſyring him to accompany his Majeſty to *Perth*, to ſpeak to the Earl of *Gowrie*. And incontinent thereafter, this Deponent ſent his ſervant for another horſe, and for a ſword, and lap on, and followed his Grace: and as this Deponent overtook his Grace, Mr. *Alexander Ruthven* was ſpeaking with his Majeſty; and ſhortly after the Deponent's coming to the King, his Highneſs rode a-part, and ſpake with this Deponent, ſaying, Ye cannot gueſs, man, what errand I am riding for; I am going to get a poſe in *Perth*: and Mr. *Alexander Ruthven* has informed me, that he has fund a man, that has a pitchard full of coined Gold, of great ſorts. And in the mean time, his Highneſs enquired of this Deponent, of what humour he thought Mr. *Alexander* to be of? Who anſwered, that he knew nothing of him, but as of an honeſt diſcreet Gentleman. And after that his Highneſs had declared to this Deponent, the hail circumſtances of the man who had the ſaid Gold, the place where it was found, and where it was kept; this Deponent anſwered, I like not that, Sir; for that is not likely. And they riding beſide the bridge of *Erne*, his Majeſty called to the Deponer, that Mr. *Alexander* diſyred him to keep that matter of the poſe ſecret, and take nobody with him; and then his Highneſs both at that time, and thereafter at *St. Johnſtoun*, within the Earl of *Gowrie*'s hall, ſaid to this Deponer, Take taint where I paſs with Mr. *Alexander Ruthven*, and follow me. And as his Majeſty was within a mile to *Perth*, after that Mr. *Alexander* had come a certain ſpace with his Highneſs, he rod away and galloped to *Perth*, before the reſt of the company, towards his brother's lodging, of purpoſe (as the Deponent believes), to advertiſe the Earl of *Gowrie* of his Majeſty's coming there. And as his Majeſty was within two pair of butt-langs to the town of *Perth*, the Earl of *Gowrie*, accompanied with diverſe perſons, all on foot, met his Highneſs in the *Inche*, and ſaluted him; and immediately thereafter, his Majeſty

* Extracted from the authentick Records, and the principal Vouchers (which lie in publick cuſtody in the Parliament-Houſe, at *Edinburgh*), by *George*, Earl of *Cromerty*, Keeper of the Records, *Temp. Cor.* 2.

† See *Spotiſwood*'s Hiſtory of the Church of *Scotland*. *p.* 457, 458, 459, 460.

‡ *N. B.* The Summonſes and Executions are at full length recorded in the Books of Parliament; and being all exact in the Forms required by Law, it would not only be tedious, but uſeleſs, to repeat them here; they being patent in the Records.

accompanied with this Deponent, the Earl of *Mar*, *Inchechaffrey*, Sir *Thomas Erſkin*, Laird of *Urquhil*, *James Erſkin*, *William Stuart*, Sir *Hugh Herries*, Sir *John Ramſay*, *John Murray*, *John Hamilton* of the *Grange*, and *John Graham* of *Bagowie*, paſt all together, in the Earl of *Gowrie*'s Hall; the ſaid Earl of *Gowrie*, and the ſaid Mr. *Alexander Ruthven* being baith preſent with them. And after their Entry, his Majeſty cry'd for a drink, which was a long time a-coming: and it was an hour after his firſt coming, before his Majeſty got his dinner. And in the time that his Majeſty got his deſert, the Earl of *Gowrie* came to this Deponent, and to the Earl of *Mar*, and remanent perſons foreſaid, and deſired them to dine, which they did, in the Hall; and when they had near hand dined, the Earl of *Gowrie* came from his Majeſty's chamber to the Hall, and called for wine; and ſaid, that he was directed from his Majeſty's chamber, to drink his *Scoll* [the Word us'd then for drinking a health], to my Lord Duke, and the reſt of the company; which he did. And immediately after the Scoll had paſs'd about, this Deponent did raiſe from the table, to have waited upon his Majeſty, conform to his former direction; and then the Earl of *Gowrie* ſaid to the Deponent, that his Majeſty was gone up quietly, ſome quiet errand. And then, the ſaid Earl of *Gowrie* cry'd for the key of his garden, and paſs'd in company with this Deponent, to the garden, accompanied with *Lindores* and Sir *Hugh Herries*, and certain others: and ſhortly after their being in the garden, Mr. *Thomas Cranſtoun* came down to the garden, crying, the King's Majeſty is on horſeback, and riding through the *Inche*: and then the Earl of *Gowrie* cry'd, Horſe, Horſe. And the ſaid Mr. *Thomas Cranſtoun* anſwered to him, Your horſe is in town; to whilk the Earl of *Gowrie* made him no anſwer, but cry'd, Ay, Horſe, Horſe. And this Deponent and the Earl of *Gowrie* came firſt out of the garden, through the hall to the cloſs, and came to the oute gate; and this Deponent ſpeird at the porter, if the King was furth; who anſwer'd, that he was aſſured that his Majeſty was not come furth of the place. Then the Earl of *Gowrie* ſaid, I am ſure he is firſt always; ſtay, my Lord, drink, and I ſhall gang up, and get the verity and certainty thereof. And the ſaid Earl of *Gowrie* paſſed up, and incontinent came again to the cloſs, and he affirmed to this Deponent, that the King's Majeſty was furth at the back-gate, and away. Whereupon, this Deponent, the Earl of *Gowrie*, and *Mar*, and hail company, paſt furth at the fore-gate of the lodging; and ſtaid before the ſame gate, upon the ſtreet: and as they were ſtanding there, adviſing where to ſeek the King, incontinent, and in the mean time, this Deponent heard a voice, and ſaid to the Earl of *Mar*, This is the King's voice, that cryes, be where he will; and ſo they all looked up to the Lodging, and ſaw his Majeſty looking furth of the window, wanting his hat; his face being red, and an hand gripping his cheek and mouth; and the King cry'd, I am murder'd! Treaſon! My Lord *Mar*, help, help. And incontinent, this Deponent, the Earl of *Mar*, and their company, ran up the ſtair of the gallery-chamber, where his Majeſty was, to have relieved him: and as they paſſed up, they found the door of the chamber faſt; and ſeeing a ladder ſtanding beſide, they raſht at the door with the ladder, and the ſteps of the ladder brake: and ſyne, they ſend for hammers; and notwithſtanding large forcing with hammers, they got not entry at the ſaid chamber, while after the Earl of *Gowrie* and his brother were both ſlain. That *Robert Brown* paſt about be the back-door, and came to his Majeſty, and aſſured his Highneſs, that it was my Lord Duke and the Earl of *Mar*, that was ſtricking up the chamber-door; and the hammer was given through the hole of the door of the chamber: and they within brake the door and gave them entry: and, at their firſt entry, they ſaw the Earl of *Gowrie* lying dead in the chamber, Mr. *Alexander Ruthven* being ſlain, and taken down the ſtairs before their entry. And at their firſt entry within that chamber where the King's Majeſty was, the Deponent ſaw ſundry halberts and ſwords ſtricking under the door of the chamber, and ſides thereof, by reaſon the ſame was nae cloſs door; and knew none of the ſtrickers, except *Alexander Ruthven* one of the Defenders, who deſired to ſpeak with this Deponent thro' the door, and ſpeird at him, For God's ſake tell me how my Lord of *Gowrie* was. To whom this Deponent anſwered, He is well: and the ſaid Deponent bad *Alexander* to gang his way; and that he was ane fool; and that he would get little thanks for that labour. And, in the mean time, as they were continuing to ſtrick with halberts under the door, meikle *John Murray*, ſervant to *Tullibardin*, was ſtricken through the legg; and how ſoon the ſaid *Alexander Ruthven* had heard the ſaid Lord Duke ſpeak, he and his hail complices paſt from the foreſaid door, and made no more trouble thereafter thereat, and paſſed down to the cloſs, and ſtood there. And ſaw none of the remanent defenders preſent, at the doing of the violent turns that day, except by report, but the ſaid *Alexander Ruthven:* but ſays, that he ſaw *Hugh Moncrief*, *Earn*, and *Alexander Daithvenies*, and *Patrick Eviot*, with the Earl of *Gowrie*, at the King's dinner that day; and that before and thereafter, looking over the chamber window, he ſaw *George Craigingelt* and *Alexander Ruthven*; and did ſee others of the Earl of *Gowrie*'s ſervants, whom this Deponent knew not, ſtanding in arms within the cloſs: and alſo ſaw other perſons carrying ane Joiſt from the town, to the cloſs of the Earl of *Gowrie*'s lodging: and declares, that there abode ſundry perſons within the ſaid cloſe, and in the high-ſtreet, before the ſaid Earl's lodging, crying and making tumult, to the ſpace of two hours mair, next after the death of the ſaid Earl of *Gowrie*, and his brother.

Sic ſubſcribitur,
LENOX.

THE Earl of *Mar*, ſworn and examined, depones, conform to the Lord Duke of *Lenox*'s depoſition, in all things ſubſtantial, except that his Lordſhip ſaw not Mr. *Alexander Ruthven* in *Falkland*, while about ten hours the day libelled, ſhortly before the ſlaying of the buck: and alſo, overtook not his Majeſty that day, while his Majeſty was near the bridge of *Erne:* and, that after their dinner, my Lord of *Mar* paſſed not to the yeard, in company with the Earl of *Gowrie*, but paſſed to a chamber where the King dined, and ſaw nothing of the Joiſt.

Sic ſubſcribitur,
MAR.

ANdrew *Henderſon*, Chamberlain of *Scoon*, ſworn, depones, that he is of the age of thirty-eight years; declares, that upon *Monday* at night, the fourth day of *Auguſt* laſt by-paſt, this Deponent being, after ſupper, in company with the Earl of *Gowrie* and Mr. *Alexander Ruthven*, within my Lord's own chamber; the Earl of *Gowrie* inquired at this Deponent, What he had to do to-morrow? To whom this Deponent anſwered, That he had to do, to ride to *Ruthven*, to ſpeak with the Tenents. Then the Earl of *Gowrie* anſwered, Stay that journey, you muſt ride to *Falkland*, in company with my brother Mr. *Alexander*; and take *Andrew Ruthven* with you; and that ye be ready to ride be four hours in the morning: and haſte thou back with anſwer, as my brother orders you, by writ or otherways; and let *Andrew Ruthven* remain with my brother. And in the morning, after four hours, they rode all three together to *Falkland*; and coming to *Falkland*, they lighted at *John Barfour*'s houſe, and ſeeing that Colonel *Edmund* was there, they lodged in ane *Law*'s houſe; and the Maſter ſent this Deponent about ſeven hours in the morning, to ſee what the King's Majeſty was doing. And as he was within the place, he ſaw the King's Majeſty coming furth Mid-Cloſs, booted; and then he returned back again to the Maſter, and ſaid to him, Haſte you, the King's Majeſty is coming forth: and incontinent, the Maſter followed his Majeſty, and ſpake with his Majeſty foranent the Equirie; and the King laid his hand on his ſhoulder, and clapped him, where they ſpake together be the ſpace of ane quarter of an hour. And thereafter, the Maſter directed this Deponent to ride to *Perth* in haſte, as he loved the Lord *Gowrie*'s and his honour, and advertiſe his brother, that his Majeſty will be there, with a few number incontinent; and cauſe make his dinner ready. Then this Deponent anſwered, Shall I ride preſently? The Maſter anſwered, No, but ſtay a-while, and follow the King and me, while I ſpeak with his Majeſty again. And, as his Majeſty was riding through the Sloap of the Park-Dike, the Maſter ſpake to his Majeſty; and immediately thereafter, the Maſter bad this Deponent to paſs to *St. Johnſtoun*, with all poſſible diligence, according to his former directions. And, at this Deponent's coming to *Perth*, it was ſhortly after ten hours in the morning, he entered in the Lord of *Gowrie*'s chamber, where he ſaw his Lord ſpeak with *George Hay* and Mr. *Peter Hay:* and how ſoon my Lord of *Gowrie* ſaw this Deponent, he came aſide to this Deponent, and enquired ſecretly, What word he had brought from his brother? and if he had brought a letter? This Deponent anſwered, That he had brought no letter: What anſwer then, ſaid he, has he to me? This Deponent anſwered, That the Maſter his brother bad tell his Lordſhip, that the King's Majeſty would be there incontinent; and bad haſte his dinner. Then the Earl bad this Deponent to follow his lordſhip to the Cabinet, and ſpeird at him, how his Majeſty had tane with his brother? He anſwered, That he was well tane with; and when he did his courteſy, the King laid his hand upon his ſhoulder. The Earl ſpeird, what number of perſons was with the King at the hunting? who anſwered, That he knew not well; but that there were ſundry of his own with him, and ſome *Engliſh-men*. And then the Earl ſpeird, what Noblemen were with him? He anſwered, None but my Lord Duke. And thereafter, this Deponent paſſed to his own houſe in the town, and took off his boots, and returned to the Earl within an hour: and how ſoon the Earl ſaw him in his chamber, he called upon this Deponent, and bad him put on his Secret, [a coat of Mail] and Plate-Sleeves. The Deponent inquired to what effect? The Earl anſwered, I have an Highland-man to take in the *Shoegate*; and then the Deponent paſs'd to his own houſe, and put on his Secret, and Plate-Sleeves, came back again to the Earl of *Gowrie*'s houſe: and about half an hour to one, the Earl commanded this Deponent, Take up my dinner; and this Deponent paſs'd, and took up the firſt ſervice, by reaſon *Charles Craigingelt* was ſick. And in continent the ſaid Earl paſs'd to his dinner, accompanied with Mr. *John Moncrief*, Laird of *Petcrief*, Mr. *James Drummond*, *Alexander Peeples*, Baron of *Findowne*. And ſhortly after the firſt ſervice was ſet down, my Lord ſitting at the table with the foreſaid Company, *Andrew Ruthven* came in from the Maſter, and rounded to the Earl, but heard not what he ſaid; and ſhortly after, this Deponent paſſing down to take up the ſecond ſervice, Mr. *Alexander Ruthven* and *William Blair* came in to the Earl, my Lord ſitting at his dinner: and hown ſoon my Lord ſaw them, he and his hail company roſe from the table; and then this Deponent hearing my Lord on foot bid this Deponent ſend for his Steel-bonnet and Gantlet, believing that my Lord was going to take the ſaid Highland-man. And as this Deponent perceiv'd my Lord paſſing to the *Inche*, and not to the *Shoegate*, he ſent home his Steel-bonnet, and caſt his Gantlet in the pantry, and thereafter followed the Earl to the *Inche*, where he ſaw the ſaid Earl with his Majeſty, the Duke, and the Earl of *Mar*, and came in all together to the Earl's houſe. And after his Majeſty had come to the Earl's houſe, the Maſter of *Ruthven* ſpeird at this Deponent, where the key of the gallery-chamber was? Who anſwer'd, That he handled not the key ſince the Earl came in *Scotland*. Then the Maſter bid this Deponent ſpeak to Mr. *William Rynd* to give to him the ſaid key. And the Maſter paſſing up to the gallery, Mr. *William Rynd* followed him, and gave to him the ſaid key: and thereafter, immediately after his Majeſty's down-ſitting to his dinner, Mr. *Thomas Cranſtoun* came to this Deponent*, and bad him gang to the Earl of *Gowrie*; which this Deponent did. And the Earl of *Gowrie*, in the outer chamber, where the King dined, ſpake to this Deponent ſecretly, and bad him paſs to the gallery to his brother. So he paſſed up, and the Earl follows him; and they being all three together in the gallery-chamber, (whereof he had the key from Mr. *William Rynd*) the Earl ſaid to this Deponent, Tarry ſtill with my brother, and do any thing he bids you. Then this Deponent came to the Maſter, and ſpeird, What will you with me, Sir? Then the Maſter ſpoke to my Lord, Let *Andrew Henryſon* go into the round of the chamber, and I will lock him in, and take the key of the chamber with me; where this Deponent abode half an hour or thereby, locked his alane, having his Secret, Plate-Sleeves, Sword and Whinger with him, and wanting his ſteel bonnet. And all this time, this deponent feared ſome evil to be done: that, upon this, he kneel'd and pray'd to God; and about the end

* Upon the information of *Henderſon*, and other witneſſes, *Cranſtoun* and *Craigingelt* were pannelled before the Juſticiary at *Johnſtoun*; and upon clear teſtimonies, and on their own confeſſion at the bar (which they alſo adhered to on the Scaffold) they were both executed: Only alledging, that they did not know of the deſign to murder the King; but that they intended to force the King to make great reparations for the late Earl of *Gowrie*'s death: and that this Earl of *Gowrie* was to be made a great man.

end of the half hour, Mr. *Alexander* opens the door of the room, and entered firſt within the ſame, having the King's Majeſty by the arm, and puts on his hat upon his head, draws forth this *Andrew Henderſon* Deponent's whinger; and ſays to the King, having the drawn whinger in his hand, Sir, you muſt be my priſoner; remember on my father's death. And, as he held the whinger to his Majeſty's breaſt, this Deponent threw the ſamen furth of Mr. *Alexander*'s hands. And the time that Mr. *Alexander* held the whinger to his Majeſty's breaſt, the King was beginning to ſpeak. The Maſter ſaid, Hold your tongue, Sir, or, by *Chriſt*, ye ſhall die. Then his Majeſty anſwered, Mr. *Alexander*, Ye and I were very great together; and as touching your father's death, Man, I was but a minor. My Council might have done any thing they pleaſed. And farther, Man, albeit ye bereave me of my life, ye will not be King of *Scotland*; for I have both ſons and daughters, and there are Men in this town and friends that will not leave it unrevenged. Then Mr. *Alexander* anſwered, ſwearing with a great oath, that it was neither his life nor blood that he craved. And the King ſaid, what traiks. [what then] albeit ye take off your hat; and then Mr. *Alexander* took off his hat. And the King ſaid, What is it ye crave, Man, and ye crave not my life? who anſwered, Sir, it is but a promiſe. The King anſwered, What promiſe? The ſaid Mr. *Alexander* anſwered, For, my Lord my brother will tell you. The King ſaid, fetch hither your brother. And ſyne the ſaid Mr. *Alexander* ſaid to the King, Sir, you will not cry, nor open the window while I come again? and the King promiſed ſo to do. Then Mr. *Alexander* paſſed forth and locked, and paſſed not from the door, as he believes. In the mean time, the King entered in diſcourſe with this Deponent, How came you in here, man? And this Deponent anſwered, as God lives, I am ſhot in here like a dog. The King anſwered, Will my Lord of *Gowrie* do me any evil, man? This Deponent anſwered, I vow to God I ſhall die firſt. And then the King bad this Deponent open the window and he opened the window that looked to the Spy-tower: and the King anſwered, Fy, the wrong window, man! And thereafter, this Deponent paſſing to the other window neareſt his Majeſty, to open the ſame; before he got to the window, Mr. *Alexander* opened the door, and came in again, and ſaid to his Majeſty, By God! there is no remedy; and then he loups to the King, and got him by both the hands, having ane garter in his hands. Then the King anſwered, I am a free prince, man; I will not be bound: ſo his Majeſty caſt looſe his left hand from Mr. *Alexander*; and at that ſame time, this Deponent draws away the garter from Mr. *Alexander*, and his Majeſty loups free from the ſaid Mr. *Alexander*, and the ſaid Mr. *Alexander* follows his Majeſty, and with his left hand about his Majeſty's craig, puts his right neeve [fiſt] in his Majeſty's mouth: ſo his Majeſty wreſtling to be quite of him, this Deponent put his hand out of his Majeſty's mouth. And thereafter, this Deponent did put his left hand over his Majeſty's left ſhoulder, and pull'd up the broad of the window, whereunto the ſaid Mr. *Alexander* had thruſt his Majeſty's head and ſhoulders; and with the force of the drawing up of the window, preſſes his Majeſty's body about, his right ſide to the window: at which time his Majeſty cries furth, Treaſon! treaſon! So the Maſter ſaid to this Deponent, Is there no help with thee? Wo worth thee, thou villain! we all die. So twining his hand on the guard of his own ſword; and, incontinent, the King's Majeſty put his hand on the Maſter's hands, and ſtaid him from drawing of his ſword: and this ways they both being graſped together, come forth of the cabinet to the chamber: and, in the mean time, this Deponent threw about the key; then ſtanding in the door of the head of the turnpike, which entred to the chamber, and opened the door thereof, to eſchew [eſcape] himſelf, and to let his Majeſty's ſervants in. And how ſoon he opened the door, *John Ramſay* came in at the ſaid door, with an haulk on his hand, and paſſed to the King's Majeſty, and laid about him, and drew his whinger: and as he ſaw him minting with the whinger, this Deponent paſſed furth at the ſaid door, and paſs'd down the turnpike. And, as this Deponent paſs'd through the cloſe, and came to the fore-gate, this Deponent ſaw the Earl of *Gowrie* ſtanding before the gate accompanied by ſundry perſons, of whom he remembers none; but remembers well, that the Earl had this Deponent's knapſchaw, or head-piece, on his head, and two ſwords drawn in his hands: and incontinently thereafter, this Deponent paſs'd to his own lodging, where he remained while the King paſſed furth of the town; and then the Deponent paſs'd to the bridge, and walked up and down by the ſpace of an hour, and returned not again to the Earl's lodging. And the time of of his entry to his houſe that night, this Deponent's wife inquir'd at this Deponent, What trouble was within the place? To whom he anſwer'd, Well is me of one thing, that if I had not been there, the King had been twice ſticked this night: but wo's me for the thing that is fallen out. And this Deponent being demanded by Mr. *John Moncrief*, after his returning from *Falkland*, where have you been with your boots on? anſwered, He had been two or three miles beyond *Erne*, and durſt not tell him the verity, by reaſon the Earl of *Gowrie* had diſcharged him to tell the errand, he ſent him, to any body. And farther, this Deponent declares, That when he ſaw the Earl of *Gowrie* ſtanding with the drawn ſwords before the gate, this Deponent ſpoke not to the Earl, neither yet the Earl to him at that time, but he paſſed to his own houſe.

Sic ſubſcribitur,
ANDREW HENDERSON.

THE Abbot of *Inchechaffrey*, ſworn and examined, depones, That, upon the 5th day of *Auguſt* laſt by-paſt, this Deponent being in *Falkland*, about ſeven hours in the morning, he met Mr. *Alexander Ruthven* accompanied with *Andrew Ruthven*; and, at that time, only ſaluted the ſaid Mr. *Alexander Ruthven*, without any conference farther at that time. And at that time, he ſaw the ſaid Mr. *Alexander* enter into conference with his Majeſty, upon the green, betwixt the ſtables and the park: which conference enduring for the ſpace of a quarter of an hour, and the ſaid Mr. *Alexander* accompanied his Majeſty while they came to the Meadow; and, at his returning from his Majeſty, this Deponent deſired Mr. *Alexander* to disjune with him, by reaſon his own could not be ſo ſoon prepared. To whom Mr. *Alexander* anſwered, He might not tarry, by reaſon his Majeſty had commanded him to await upon him. And, as this Deponent paſſed to *Falkland*, leaving Mr. *Alexander* behind him, met his horſe with his man, coming from *Falkland* to him; and then this Deponent, after he had diſjuned in *Falkland*, he took his journey the high-way to *Inchechaffrey*, and the Deponent being but a mile be-north *Strameglo*, he's incompany'd with my Lord Duke, *Lindores*, the Laird of *Urquhill*, *John Hamilton* of the *Grange*, *Finlay Tailzies*; and Mr. *Alexander Ruthven* came by this Deponent, riding the high-way to *Perth*. Then incontinent this Deponent horſed, and accompanied his Majeſty to *Perth*, where he ſaw the Earl of *Gowrie* meet his Majeſty in the *Inche*, and paſſed in company with his Majeſty, and his Noblemen, and ſervants, to the Earl of *Gowrie*'s lodging, where they dined all together. And after dinner, this Deponent being in the chamber at the north-end of the hall, word paſſed thro' the hall, that his Majeſty was paſſed away, and ridden towards *Falkland*; and then this Deponent, in company with the Lord of *Mar*, and remanent preſent for the time, paſſed to the cloſe, and from that to the high-ſtreet; and the Earl of *Gowrie* being preſent with them, deſired them to ſtay, while he returned and advertiſed them of the verity thereof. And incontinent the Earl of *Gowrie* paſſed up the ſtair, and returned back, and certified the Deponent and his colleagues of his Majeſty's departure. Then the Lord Duke, this Deponent and remanent, cried for their horſes to follow the King. Then, as they were ſtanding upon the high-ſtreet, they heard ane cry, and a voice; and the Duke firſt declared, I am ſure, yon is his Majeſty's voice, be where he will himſelf. And immediately thereafter, this Deponent ſaw his Majeſty looking forth of a window of the round, wanting his hat, and his face red, crying, Fy, help, my Lord *Mar!* Treaſon! treaſon! I am murder'd! And, at the ſame inſtant, to his judgment, was pulled *per* force in at that ſame window. And, incontinent thereafter this deponent paſſed in haſte up with the Earl of *Mar* and my Lord Duke, to the chamber within the gallery; where he ſaw, heard, and did in all things conform to the Earl's depoſition.

Sic ſubſcribitur,
INCHECHAFFREY.

THE Abbot of *Lindores*, ſworn and examined, depones, conform to the Lord Duke of *Lenox*, in all things; *addendo*, That after dinner, when word was of his Majeſty's departure towards *Falkland*, and that they had all together came down to the Porter, and had inquired at him, Gif the King's Majeſty was gone furth? the Porter anſwered, He was not paſſed furth; and the Earl of *Gowrie* affirmed, That he was paſſed furth at the back-gate: and the Porter ſaid to the Earl of *Gowrie*, That cannot be, my Lord, becauſe I have the key of the back-gate. And, after that his Majeſty had cried furth of the window of the round, Treaſon! treaſon! *&c.* this Deponent ſaw *James Erſkin* incontinently lay hands on the Earl of *Gowrie* upon the high-ſtreet; and immediately Sir *Thomas Erſkin* gripped the Earl of *Gowrie*; Fy, Traitor! this is thy deed, thou ſhalt die. Then the Earl of *Gowrie* anſwered, I ken nothing of the matter. Then inſtantly the Earl of *Gowrie*'s men tugged the ſaid Sir *Thomas Erskin* and *James Erskin* from the Earl of *Gowrie*: who incontinently ran the ſpace of half ane pair of butt-lands from them, towards *Glenurchie*'s houſe, and drew furth his two ſwords, and cried, I will either be at my own houſe, or die by the gate: And incontinently thereafter the ſaid Earl, accompanied with thirty perſons, or thereby, paſſed within the ſaid place, wherein his Majeſty was for the time; and ſhortly after, the Deponent, as appeared to him, ſaw a multitude of people carrying a joiſt towards the place.

Sic ſubſcribitur,
LINDORES.

SIR *Thomas Erskin*, of the age of thirty-ſix years, ſworn, depones conform to the Lord *Inchechaffrey*, and Lord of *Lindores*; *addendo*, That immediately after this Deponent heard his Majeſty cry furth of the window of the round, Fy, help! I am betrayed, they are murdering me! he ran with diligence towards the place, to have helpen his Majeſty; and before his entry, ſeeing the Earl of *Gowrie*, this Deponent and his brother gripped him by the neck, and ſaid to him, Traitor, this is thy deed. Whilk Earl anſwered, What is the matter? I ken nothing. Immediately the Earl's ſervants ſever'd him from this Deponent and his brother. And this Deponent entered within the cloſe, he forgathered with Sir *Hugh Herries*, who demanded of the Deponent what the matter meant; and, in the mean time, the Deponent heard Sir *John Ramſay* crying out at the turnpike-head, Fy, Sir *Thomas*, come up the turnpike, even to the head! And, as this Deponent had paſſed up five ſteps of the turnpike, he ſees and meets with Mr. *Alexander Ruthven* blooded in two parts of his body, *viz.* in his face and in his neck; aud incontinent this Deponent cries to Sir *Hugh Herries*, and others that were with him, Fy, this is the Traitor, ſtrike him! And incontinent he was ſtricken by them, and fell; and as he was fallen, he turn'd his face, and cried, Alas! I had not the wyte of it; this Deponent being ſtanding above him in the turnpike. Thereafter, this Deponent paſs'd to the head of the turnpike, and entered within the chamber at the head of the gallery, where the King and Sir *John Ramſay* were there alone preſent; and, at the firſt meeting, this Deponent ſaid to his Majeſty, I thought your Majeſty would have concredited more to me, nor to have commanded me to await your Majeſty at the door, gif ye thought it not meet to have taken men with you. Whereupon his Majeſty anſwered to this Deponent, Alas! the traitor deceived me in that, as he did in the leave; for I commanded him expreſsly to bring you to me, which he promiſed to me to do; and returned back, as I thought, to fetch you; but he did nothing, but ſteiked the door. Shortly thereafter, Sir *Hugh Herries* followed the Deponent into the chamber, and *George Wilſon*, ſervant to *James Erskin:* and immediately thereafter Mr. *Thomas Cranſtoun*, with his ſword drawn in his hand, entered within the ſaid chamber; and the Earl of *Gowrie* followed him within the ſaid chamber, with ane ſword drawn in every one of his hands, and ane knapſchaw on his head. who ſtruck at this Deponent and his colleagues ane certain ſpace. Likeas, they defended them and ſtruke again: and that ſame time, this Deponent was hurt in the right hand be Mr. *Thomas Cranſtoun*; and this Deponent heard my Lord of *Gowrie* ſpeak ſome words at his entry, but underſtands them not. At laſt, Sir *John Ramſay* gave the Earl of *Gowrie* ane dead ſtraik; and then the Earl leand him to his ſword, and the Deponent ſaw a man had him up, whom he knew not; and how ſoon the Earl fell to the ground, Mr. *Thomas Cranſtoun*, and the remanent who accompanied him, departed and paſs'd down the turnpike. And the Deponent remembers,

that at that time, there were more perſons in the chamber with the Earl of *Gowrie* by Mr. *Thomas Cranſtoun*, but knew nane of them, except that he believes that ane black man, that was there in company within the chamber, was *Hugh Moncrief*, brother to the Laird of *Moncrief*; but the Deponent knows not well, whether or not it was *Hugh Moncrief*.

Sic ſubſcribitur,
Sir THOMAS ERSKIN.

SIR *John Ramſay*, of the age of twenty-three years, or thereby, ſworn, depones, That immediately after he had dined, the day libelled, in the Earl of *Gowrie*'s houſe, he took his Majeſty's haulk from *John Murray*, to the effect the ſaid *John* might have dined: and the Deponent miſſing his Majeſty, and forgathering with the Laird of *Pittencrief*, in the Earl of *Gowrie*'s hall; and demanding of *Pittencrief*, where his Majeſty was? the ſaid Laird firſt convoyed the Deponent to the chamber where the King dined, thereafter to the yaird, hoping that his Majeſty had been there: and miſſing his Majeſty in the yaird, convoy'd the Deponent up to ane fair gallery, where the Deponent was never before; where having remain'd a certain ſpace beholding the gallery, they came both down to the cloſs, where they met with Mr. *Thomas Cranſtoun* in the midſt of the cloſs, who ſaid to them, that his Majeſty was away upon horſeback, at the *Inche*: whereupon this Deponent and *Pittencrief* ſindered; and the Deponent paſſed furth of the gate, to his ſtable, to have gotten his horſe, and being ſtanding at the ſtable door, he heard his Majeſty cry, knew his Highneſs's voice, but underſtood not what he ſpake. Whereupon he comes immediately within the cloſs, and finding ane turnpike-door open, he enters within the ſamen, and runs up the turnpike, while he comes to the door upon the head thereof; and hearing ane ſtruggling and din of mens feet, he ran with his hail force at the door of the turnpike-head, which enters to the chamber at the end of the gallery; the Deponent having in the mean time his haulk on his hand, and having dung open the door, he ſees his Majeſty and Mr. *Alexander Ruthven* in others arms, ſtriving and wreſtling together, his Majeſty having Mr. *Alexander*'s head under his arm, and Mr. *Alexander* being almoſt on his knees, had his hand upon his Majeſty's face and mouth: and his Majeſty ſeeing the Deponent, cried, Fy! ſtrike him laigh, becauſe he has ane pyne doublet upon him. Whereupon the Deponent caſt the haulk from him, and drew his whinger, wherewith he ſtrake the ſaid Mr. *Alexander*; and immediately after he was ſtriken, his Majeſty ſhot him down ſtairs whereat this Deponent had entered. Thereafter, this Deponent addreſſes himſelf to a window; and looking furth thereat, and ſaw Sir *Thomas Erſkin*, the Deponent cried, Sir *Thomas* come up this turnpike, even to the head. In this mean time, his Majeſty did put his foot upon the haulk-leaſh, and held her a lang time, while the Deponent came and took her up again: and then Sir *Thomas Erſkin* entered. And in the reſt depones conform to Sir *Thomas Erſkin* in all points; and further ſays, That when the Deponent firſt entered within the chamber, he ſaw a man ſtanding behind his Majeſty's back, whom he no ways knew, nor remembers what apparelling he had on; but after that this Deponent had ſtriken Mr. *Alexander*, he ſaw that man no more.

Sic ſubſcribitur,
Sir JOHN RAMSAY.

John Graham of *Urquhill*, ſworn and examined, depones conform to the Lord Duke of *Lenox* and the Earl of *Mar* in all things, *reddens eandem cauſam ſcientiæ*; adding, That this deponent the time that he was at dinner in the hall, with my Lord Duke and Earl of *Mar*, he ſaw the King and Mr. *Alexander Ruthven* paſs threw the hall up the turnpike, towards the gallery: and, as this Deponent, *John Hamilton*, and others, were following, Mr. *Alexander* cried Back, Gentlemen, ſtay, for ſo it is his Highneſs's will.

Sic ſubſcribitur,
JOHN GRAHAM of *Urquhill*.

John Graham of *Balgowne*, of the age of fifty years, or thereby, married, depones, conform to the Lord Duke in all things; adding, That this Deponent the day libelled, after the death of the Earl of *Gowrie* and his brother, and hearing his Majeſty report, that Mr. *Alexander* preſſed to have bound his Highneſs's hands with a garter; this Deponent found a garter at the cheek of the round door among the bent, and immediately thereafter this Deponent preſented the garter to his Highneſs: and at the ſight thereof, his Majeſty ſaid, That the ſame was the garter wherewith Mr. *Alexander* preſſed to have bound his hands; and then, Sir *Thomas Erſkin* gripped to the ſame garter, and ſaid, That he would keep it, which he has yet in keeping.

Sic ſubſcribitur,
JOHN GRAHAM of *Balgowne*.

I Mr. *John Moncrief* depones as follows, to-wit, That day I was ſtill preſent with my Lord of *Gowrie*, unto the time I heard his Majeſty cry, Treaſon! and ſaw him put his arm furth of the window of the room, and then left him: for I conceived in my heart it was plain treaſon, conſpired againſt his Majeſty, and was induced hereto, in reſpect of theſe preſumptions following: *Firſt*, I ſaw the King's Majeſty and umquhile Mr. *Alexander Ruthven* my Lord's brother go furth at the hall-door their alanes; whereas his Majeſty had no weapons, and Mr. *Alexander* had a ſword. *Next*, I ſaw his Majeſty come in a quiet and ſober manner to the town, wherethrough appeared he would have no evil purpoſe in his mind. *Item*, He ſaid, Mr. *Alexander* riding to *Falkland* in the morning, was obſcured from me and my brother *Hugh* where he was; and I having enquired of my Brother *Hugh* where he was riding to, he knew nothing thereof; ſo that neither he nor I could get trial of the ſame. *Item*, I having enquired at *Andrew Henderſon* himſelf, who rode to *Falkland*, and returned two hours before him, ſaluted me, and anſwered, That he had been two or three miles above the town; and ſays, the ſaid *Andrew* had another doublet on, more than he uſed commonly, and was more bulkſom; and, as appears, might have contain'd ane Secret. *Item*, That day being the Council-day of the town, my Lord excuſed himſelf, in reſpect of his advice. *Item*, I having preſſed him to ſubſcribe ane Confirmation of ane Lady's, firſt refuſed, in reſpect aforeſaid; always paſſed it thereafter. *Item*, my Lord tarried longer from his dinner nor he uſed: and albeit *Andrew Ruthven*, who was with the Maſter, came and rounded my Lord at the board, he made him to miſknow all things, unto the time that the ſaid Mr. *Alexander* came himſelf, and then raiſe from the board and met his Majeſty. *Item*, My Lord obſcured altogether, that he knew of the coming of any man, while the Maſter came. *Item*, Mr. *Thomas Cranſtoun* was the firſt that I heard cry, The King's Majeſty's is away. *Item*, After my Lord Duke and my Lord *Mar*, and his Majeſty's ſervants were in the cloſe, my Lord of *Gowrie* came back again to the hall, ſaying, The King was away: ſo that, as I thought, he would have each man thinking ſo. And I thought his Majeſty was not received with that hearty complement as became. *Item*, After his Majeſty's riding away, my brother *Hugh* came to my houſe, and I enquiring of him what he thought of thir matters; anſwered, Before God, ſo far as I can perceive, I trow, it ſhall kyth ane plain treaſon on my Lord's part. And I ſpeiring at him, If he knew any thing thereof? anſwered, he knew nothing; but he and *Henry Ruthven*, after all things were ended, fell in conference thereanent, and he thought things were likely. *Laſtly*, *Andrew Henderſon*'s Letter moves me moſt of all. And, upon my ſalvation and condemnation, I know no farther in this matter; nor yet can remember of any other circumſtance or preſumption, might have induced me to conceive the former, which I apprehend, in manner foreſaid.

Sic ſubſcribitur,
Mr. JOHN MONCRIEF.

I *Andrew Roy*, one of the Baillies of the Burgh of *Perth*, be thir Preſents teſtifies upon my conſcience, in the ſight of God, as I ſhall anſwer to him in the Great Day, That upon the fifth day of *Auguſt*, one thouſand and ſix hundred years, I being in the umquhile Earl of *Gowrie*'s Lodging, when his Majeſty was there, ſaw his Majeſty, after his dinner, accompanied with the Maſter of *Gowrie*, riſe from the table, and gang furth of the chamber where he had dined; but, to what place, I know not; being beholding the ſaid umquhile Earl of *Gowrie*'s entertainment of the Noblemen, in drinking his Majeſty's Scoll to them; which, his Majeſty, before his riſing from the table, had commanded him to do. And after this, the Lords, *viz.* my Lord Duke, my Lord of *Mar*, my Lord *Lindores*, and my Lord of *Inchechaffery*, with ſundry of his Majeſty's Gentlemen and Servants, accompanied with the Earl of *Gowrie* in perſon; and ſhort ſpace after dinner, had miſſed his Majeſty, and enquired where he ſhould be; they went to the fore-gate, and ſpeir'd at the Porter, If he ſaw the King go furth at the fore-gate? and heard the Porter anſwer, That his Majeſty was not gone furth that way. Alſo, that the Earl of *Gowrie* ſaid to the Porter, Ye lie, knave, he is furth; and the Porter replied, That he ſhould give his head, in caſe his Majeſty were furth.

Yet, upon the Earl of *Gowrie*'s aſſurance, that his Majeſty was furth to the *Inche*, the Lords iſſued out in haſte at the fore-gate, and ſpeiring where the King was, I ſaw ane ding up the long front-window, in the north-ſide of the turret, upon the high-gate; but who dang it up, I know not. And farther, ſaw clearly his Majeſty ſhut furth his head and arm at the foreſaid window, and heard his Majeſty crying loudly, Fy, treaſon! treaſon! and murder! help, Earl of *Mar!* Whereupon, I being very agaſt, and wonderfully aſtoniſhed, at that cruel and terrible ſight, and pitiful and woful cry, I not knowing what the matter meant, but perceiving his Majeſty in extream and great danger, ran with all poſſible diligence thro' the ſtreets, crying loudly, Fy, treaſon; treaſon againſt the King! for God's ſake, all honeſt men, haſte and relieve the King: and commanded to ring the common bell, that all might come in haſte to his Majeſty's relief; and then I returned with all poſſible diligence, with a great number of the people with me, and came before the foreſaid turret and window, where I ſaw his Majeſty firſt cry out; and then I cried out, How is the King? But my Lord Duke and my Lord of *Mar* anſwered, The King is well, (praiſe be to God). Then I cried again up to his Majeſty, and ſhew his Majeſty, That the Baillies and Townſhip were then come, in all haſte, to ſupply and relieve his Majeſty: and therefore beſought his Majeſty to command what was his Majeſty's Will, and beſt to be done. And then his Majeſty beckoned furth his hand to me and to the people, commanding me to cauſe the people retire them to their lodgings. Which commandment I incontinent obeyed, and commanded all manner of men to retire themſelves to their lodgings; and likewiſe paſſed to the mercat-croſs, and, by open proclamation, commanded in his Highneſs's name, that all men ſhould retire them to their lodgings, under the pain of treaſon, who obeyed not incontinent after my charge. And this I teſtify to be of verity, by the faith and truth of my body, ſo far as I juſtly can remember. In witneſs of which, I have ſubſcribed theſe preſents, with my hand, at *Perth*, the thirteenth day of *October*, one thouſand and ſix hundred years, before theſe witneſſes, Mr. *Patrick Gallowah*, Miniſter to his Majeſty; *James Drummond* of *Letchel*; *Oliver Young*, *Conſtantine Wallace*, *Thomas Johnſton*, Baillies; *Henry Elder*, Clerk; *Robert Anderſon*, *Andrew Mowat*, and *William Jack*, Burgeſſes of *Perth*. *Sic ſubſcribitur*, ANDREW ROY, Baillie, with my hand. Mr. *Patrick Gallowah* witneſs; *James Drummond* witneſs; *Oliver Young*, Baillie, witneſs; *Thomas Johnſtoun*, Baillie, witneſs; *Robert Anderſon* witneſs, *Andrew Arnolt* witneſs; *William Jack* witneſs; *Henry Elder*, Scribe, witneſs.

Robert Chriſtie, Porter to umquhile *John* Earl of *Gowrie*, of the age of thirty years, *ſolutus*, depones, That he was Porter to the Earl of *Gowrie*, the fifth day of *Auguſt* libelled: ſicklike he was by the ſpace of five weeks before. And ſhortly after the dinner, this Deponent ſaw my Lord Duke, the Earl of *Mar*, the Earl of *Gowrie*, come to the cloſe: and my Lord Duke ſpeird at this Deponent, if his Majeſty was paſſed furth of the cloſe? The Deponent anſwered, that he was not furth. Then the Lord of *Mar* ſaid, Billy, tell me the verity, if his Majeſty be furth or not? And he anſwered, in truth he is not furth. The Earl of *Gowrie* looking with an angry countenance, ſaid, Thou lied, he is furth at the back-gate, and through the *Inche*. Then this Deponent anſwered, that cannot be, my Lord, for I have the key of the back-gate, and of all the gates of the place. Thereafter, this Deponent heard and ſaw his Majeſty looking furth of the window of the round, and crying, Treaſon! Treaſon! fy, help, my Lord of *Mar!* And incontinent, my Lord Duke, the Earl of *Mar*, and others, ran up the ſtair of the turnpike to the gallery: and thereafter, the Lord of *Gowrie* came from the high-ſtreet, within the cloſe, having a ſteel-bonnet on his head, and a drawn ſword in his hand, accompanied with *Alexander* and *Harry Ruthven*, *Patrick Eviot* and *Hugh Moncrief*, Mr. *Thomas Cranſtoun*; all having drawn ſwords in their hands, and paſſed all together

together with my Lord, up the old turnpike; but what was done within the house and place thereafter, knows not, but by report: neither saw he any joist brought to the place, by any of the town. And knows no more of the matter.

Sic subscribitur,
ROBERT CHRISTIE.

Alexander Blair, younger of *Balthyik*, sworn and examined, depones, conform to *immediate præcedenti*; except, That he saw not my Lord of *Gowrie* pass with his company, and drawn swords, up the turnpike: but saw *Alexander* and *Hary Ruthven*, and *Hugh Moncrief*, come down the little turnpike, where they and my Lord had ascended; the saids three persons having drawn swords in their hands; but saw not *Patrick Eviot* there. And this Deponent says, that after the tumult was risen, and this Deponent pressing to enter within the place, he was a little staid by them in the place; but they yielded at once, and the Deponent got entry. Likewise he saw a joist brought from the town, and set up at the wall of the close; but who brought the samen in, he knows not.

Sic subscribitur,
ALEXANDER BLAIR,
Appearand of Balthyik.

George Hay, prior of *Charterhouse*, of the age of twenty-eight years, or thereby, married; depones, conform to the Lord Duke of *Lenox*, in all things, after his Majesty's entry in *St. Johnstoun*, the day libelled: adding, that, samen day, the Deponent having ado in *St. Johnstoun* with the Earl of *Gowrie*, and speaking with him in his own place, he saw *Andrew Henderson* come in booted from *Falkland*, and heard the said Earl of *Gowrie* enquire of the said *Andrew*, who was with his Majesty in *Falkland?* And thereafter, the said Earl took the said *Andrew Henderson* to the cabinet, and, after a certain space, the Earl coming to the chamber, he gave this Deponent his dispatch; saying, That he had to do that day, and might not await of his errand, and bade him come another day.

Sic subscribitur,
GEORGE HAY.

MR. *Peter Hay*, of the age of thirty years, or thereby, married; depones, conform to *George Hay* in all things, the Witness immediately preceding.

Sic subscribitur,
PETER HAY.

Robert Graham of *Thorink*, sworn and examined, depones, conform to the Duke of *Lenox*, after that his Majesty entered in *Perth*.

Sic subscribitur, ROBERT GRAHAM.

Oliver Young, Baillie in *Perth*, sworn and examined, depones, That the day libelled, this Deponent was in the Earl of *Gowrie*'s lodging, where he saw the King dine; and after dinner, saw the King's Majesty and Mr. *Alexander Ruthven* pass their allanes through the hall, and up the turnpike; and immediately thereafter, this Deponent passed to his own lodging in the town, where he abode while the cry and tumult raise; and incontinent, this Deponent running to the place whereat his Majesty cryed out at the window; and commanded this Deponent, by name, to stay the tumult of the People: the which, this Deponent obeyed and did; and saw *Hugh Moncrief* coming furth of the place; but his face being bloody, and *Hary Ruthven*, one of the defenders, at the mouth of the Water-gate, with a drawn sword in his hand: and knows no more in the matter.

Sic subscribitur, OLIVER YOUNG.

James Drummond of *Pitcarnis*, sworn and examined, depones, *conformis immediate præcedenti in omnibus:* adding, that as the Deponent, immediately after the cry raise, running to the place libelled, he meets upon the high-street *Alexander Ruthven* one of the defenders, having a drawn sword in his hand, and crying fire and powder! And he knows no more of the matter.

Sic subscribitur,
JAMES DRUMMOND.

William Reynd, flesher in St. *Johnstoun*, of the age of thirty years, or thereby, married, depones, That he saw within the close of *Perth*, after fray raise, *Patrick Eviot* and *Hugh Moncrief*, both bloody, having drawn swords in their hands.

Sic subscribitur,
WILLIAM REYND.

Thomas burgess of *Perth*, sworn and examined, depones, conform to *James Drummond* and *William Reyna*; but he saw not *Patrick Eviot* there.

Sic subscribitur,
THOMAS

George Wilson, servant to *James Erskin*, of the age of twenty-four years, or thereby, *solutus*, depones, conform to Sir *Thomas Erskin* in all things; by reason this Deponent was in company with the said Sir *Thomas*, after the first time, that he and *James Erskin* his brother had gripped the Earl of *Gowrie*, and were sindered from him be his servants; and immediately thereafter, this Deponent accompanied the said Sir *Thomas Erskin* up to the turnpike, into the chamber where his Majesty was, where he saw, as the said Sir *Thomas* has deponed, in all things.

Sic subscribitur,
GEORGE WILSON.

David Reynd, flesher in *Perth*, sworn and examined, depones, conform to *James Drummond*, and heard *Alexander Ruthven* cry for powder; but saw not *Patrick Eviot*.

Sic subscribitur,
DAVID REYND.

Gilbert Hutchinson in *Perth*, of the age of twenty-four years, or thereby, *solutus*, depones, conform to *James Drummond* in all things, and *David Reynd*.

Sic subscribitur,
GILBERT HUTCHINSON.

John Murray of *Arkney*, of the age of fifty-eight years, or thereby, married, depones, the day libelled, this Deponent came to *St. Johnstoun* after dinner, where he heard his Majesty crying furth of the window of the round, Fy, Treason, my Lord of *Mar*, help! Immediately thereafter, my Lord of *Mar* and the Duke ran up the broad turnpike; and the Deponer followed them in the close, where he saw the Lord of *Gowrie*, having ane steel bonnet on his head, and two drawn swords, ane in ilk hand; and saw the said Earl pass up the turnpike, accompanied with certain his servants, having drawn swords in their hands; of whom he knows none.

Sic subscribitur,
JOHN MURRAY.

Thomas Burrell, burgess of *Perth*, sworn and examin'd, depones, conform to *James Drummond*, adding, That the time of the fray this Deponent entring within the close of the place, he saw standing in the close, with drawn swords in their hands, *Alexander* and *Harrie Ruthvens*, and *Hugh Moncrief* blooding in his face; and, at the same time, this Deponent saw Mr. *Thomas Cranstoun* come down the black turnpike, and he took forth of his hand his sword; and heard the said *Alexander Ruthven* cry for fire and powder; and saw not *Patrick Eviot* there.

Sic subscribitur,
THOMAS BURRELL.

Alexander Forrest, tailor in *Perth*, of the age of forty years, or thereby, married, depones, the day libelled, he saw *George Craigingelt*, and *Waller Crookshank* a laquey, standing in the yeard with drawn swords.

Sic subscribitur,
ALEXANDER FORREST.

William Robertson, notar in *Perth*, of the age of thirty-four years, or thereby, married, depones, the day libelled, this Deponent being within the close of the place, he saw the Lord of *Gowrie* standing in the close, accompanied with seven or eight Persons, of whom he knew none; the said Earl then having ane steel bonnet on his head, and ane drawn sword in ilk hand; at the whilk sight this Deponent being afraid, past furth of the place, and knows no more in the matter.

Sic subscribitur,
WILLIAM ROBERTSON.

Robert Calbraith, servant to the King's Majesty, of the age of thirty years, depones, conform to the Lord Duke of *Lenox* in all things, by reason this Deponent, all that Day, was in company with his Majesty, and after that his Majesty had cried out at the window, Treason! this Deponent followed the Duke and Earl of *Mar* up the turnpike, and depones, as they have deponed.

Sic subscribitur,
ROBERT CALBRAITH.

Robert Brown, servant to his Majesty, depones, conform *immediate præcedenti in omnibus*, because this Deponent, the time libelled, accompanied Sir *John Hamilton* to fetch the hammers up to the gallery; and this Deponent passed up the little black turnpike, and, at his first entry within the chamber, he saw the Earl of *Gowrie* lying dead; there being at that time in company with his Majesty, Sir *Thomas Erskin*, Sir *Hugh Herries*, Sir *John Ramsay*, and *George Wilson*.

Sic subscribitur,
ROBERT BROWN.

James Bog, porter to his Majesty, sworn and examined, depones, That he saw the King's Majesty and Mr. *Alexander Ruthven* pass through the hall, and saw that day, *George Craigingelt* with ane drawn sword in his hand, accompanied with certain rascals; and, in others, depones, conform to the Lord Duke and Earl of *Mar* in all things.

Sic subscribitur,
JAMES BOG.

John Bog, servant to his Majesty in the ale-cellar, sworn and examined, depones, conform to *James Bog*.

Sic subscribitur,
JOHN BOG.

Alexander Peebles, burgess of *Perth*, of the age of thirty years, or thereby, married, depones, the day libelled, this Deponent being within his own house foranent the Earl of *Gowrie*'s lodging; how soon his mother heard the common bell ring, she locked the door, and held him in all the time; and saw at that time, the Earl of *Gowrie* enter in at the gate with two drawn swords, ane in ilk hand, and ane lacquey put ane steel-bonnet one his head; and, ane certain space thereafter, the Deponent saw *Hugh Moncrief* come furth of the place with ane bloody head, and *Patrick Eviot*'s man likewise blooding; and also saw *Patrick Eviot* come furth of the hall; but remembers not if he had ane sword in his hand: and saw also *Alexander Ruthven* come furth with ane sword drawn in his hand.

Sic subscribitur,
ALEXANDER PEEBLES.

The Sentence and Doom pronounced by the Lords and Estates of Parliament for High-Treason, against John *Earl of* Gowrie, *and his Brother Mr.* Alexander Ruthven.

[To repeat the Libel and Executions, or the Libels *verbatim*, would be uselesly tedious to Readers; therefore I insert the Doom or Sentence *verbatim*, pronounced on the 15th Day of *November* 1600.]

'THE saids Lords and Estates of Parliament finds, decerns and declares, that the said umquhil *John* Earl of *Gowrie*, and Mr. *Alexander Ruthven* his Brother, committed and did open and manifest Treason against our said Sovereign Lord, in all points, articles and matter

'contain'd in the said summons: and therefore it was given for doom, 'by the mouth of *David Lindsay* Dempster of Parliament, in manner 'and form as follows:

'This

'This Court of Parliament ſhowes for law, that the ſaid umquhil *John* 'Earl of *Gowrie*, and umquhil Mr. *Alexander Ruthven* his brother, com-'mitted the foreſaid crime of Treaſon and Leſe-Majeſty in their life-'times, againſt our Sovereign Lord and his Authority Royal, in manner at 'length contain'd in the ſaid ſummons: and therefore decerns and declares 'the name, memory and dignity of the ſaid umquhil *John* Earl of *Gowrie*, 'and umquhil Mr. *Alexander Ruthven* his Brother, to be extinguiſh'd, and 'their arms to be cancell'd and deleted furth of the books of arms and no-'bility; ſo that their poſterity ſhall be unhabile, and uncapable in all time 'coming to bruik, poſſeſs or enjoy any offices, dignities, honours, ſuc-'ceſſions, poſſeſſions, and all goods, moveables and immoveables, rights, 'titles, hope of ſucceſſion, and others whatſomever within this Realm; 'and all goods, lands, rents, offices, benefits, honours, dignities, hope and 'appearance of ſucceſſion, rights, titles, poſſeſſions, and other goods and 'gear, moveable and immoveable, and to theirs whatſomever, whilk is any 'ways pertain'd to the ſaid umquhil *John* Earl of *Gowrie*, and umquhil 'Mr. *Alexander Ruthven* his Brother; or whilk is by any right, title, hope 'of ſucceſſion, poſſeſſion, or any other manner of way might have belong'd 'or pertain'd to them, to be confiſcated, devolved in our Sovereign Lord, 'and to appertain to his Highneſs: and in all time coming, remain in 'property with his Majeſty for ever. And farder, his Majeſty and Eſtates 'foreſaid, in deteſtation of the ſaid horrible, unnatural and vile Treaſon, 'attempted by the ſaid umquhil *John*, ſome time Earl of *Gowrie*, and um-'quhil Mr. *Alexander Ruthven*, againſt his Highneſs's own life; decerns, 'ſtatutes and ordains, that the ſaid bodies of the ſaids Traitors ſhall be 'carried, upon *Monday* next, to the publick croſs of *Edinburgh*: and 'there to be hang'd, quarter'd, and drawn, in preſence of the hail People: 'and thereafter, the heads, quarters and carcaſſes, to be affix'd upon the 'moſt patent parts and places of the Burroughs of *Edinburgh*, *Perth*, '*Dundee* and *Stirling*. And this I give for doom.'

Beſides the perſonal ſentence given againſt the Earl of *Gowrie*, this Parliament did, by diſtinct Acts, diſinherit and inhabilitate the brethren, and all the poſterity of the Earl of *Gowrie*, from enjoying any heritage, place or office within *Scotland*; and diſcharging all Perſons whatſoever to move or interceed for them, under high pains.

By another Act, the ſurname of *Ruthven* is appointed to be extinguiſh'd and aboliſh'd for ever; and ſuch of them as were innocent of this Treaſon, were ordered to take other names, and to be inſerted in publick Records.

By another Act, the 5th of *Auguſt* was appointed to be obſerved for thankſgiving, annually, and in all time coming, for the King's deliverance from the ſaid Treaſon *.

By another Act, the lands and eſtate of *Ruthven* were annexed to the patrimony of the Crown. And, by ſeveral other particular Acts, Sir *Thomas Erſkin*, (afterwards Earl of *Kelly*,) Sir *John Ramſay*, and Sir *Hugh Herries*, and ſome others, who did moſt immediately preſerve the King's Perſon, had benefices and other favours conferr'd upon them in Parliament.

The Sentence and Doom pronounced by the Lords and Eſtates of Parliament, for High Treaſon, againſt Alexander *and* Harry Ruthvens, Hugh Moncreif *and* Patrick Eviot; *who were actors in the ſame crime, and judged by the ſame Parliament, on the* 15*th day of* November 1600.

'THE ſaids Lords and Eſtates of Parliament, finds, decerns, and de-'clares, that the ſaids *Alexander* and *Harry Ruthven*, *Hugh Mon-'creif*, and *Patrick Eviot*, and ilk ane of them, committed, and did open 'and manifeſt Treaſon againſt our Sovereign Lord in all points, articles, 'and manner contain'd in the ſaid ſummons; and therefore it was given 'for doom by the mouth of *David Lindſay*, Dempſter of Parliament, in 'manner and form as follows:

'This Court of Parliament ſhows for law, that the ſaids *Alexander 'Ruthven*, *Harry Ruthven* his Brother, Sons lawful to umquhil *Alexander 'Ruthven* of *Freeland*; *Hugh Moncreif*, Brother to *William Moncreif* of 'that ilk; and *Patrick Eviot*, Brother to *Colin Eviot* of *Balhouſie*; com-'mitted the crimes of Treaſon and Leſe-Majeſty againſt our Sovereign 'Lord and his Authority Royal, in manner at length contain'd in the ſaid 'ſummons: and therefore decerns and declares their Perſons to underly 'the pains of Treaſon and Leſe-Majeſty, and laſt puniſhment preſcrib'd 'by the laws of this Realm; and all their goods, moveable and immove-'able, as well heritages as offices, benefices, and others whatſomever per-'taining to them, or whilk is, might any ways belong, or appertain to 'them, to be confiſcated to his Majeſty, and to remain with his Highneſs 'in property for ever; and their poſterity to be now, and in all time 'coming, uncapable and unhabil to bruik and poſſeſs within this Realm, 'any honours, dignities, offices, benefices, ſucceſſions, or other goods or 'gear, moveable or immoveable. And this I give for doom.'

* See *Rapin* (oct. Edit.) vol. IX. p. 251. for obſervations on this new Holiday.

Lord Chancellor *Bacon* in his Letter to the Marquis of *Buckingham*, dated *Aug.* 5, 1618. (See his Works, vol. IV. page. 670.) ſays, "I am here rejoicing with my neigh-"bours the townſmen of *St. Albans* for this HAPPY DAY."

Mr. *Stephens* in his note on that paſſage in Lord *Bacon*'s Letter, ſays, "*The fifth of Auguſt* being the Anniverſary of the King's deliverance from the Earl of *Gowrie*'s con-"ſpiracy, was by ſome call'd the Court Holy-day, and ridicul'd as a fiction; though the truth thereof being deliver'd down by Archbiſhop *Spotiſwood*, and other good "Hiſtorians, I ſee no great reaſon to call it into queſtion."

In the Parliament which condemn'd *John* Earl of *Gowrie*, and his Brother Mr. *Alexander* in the year 1600, let it be conſidered, that a great part of the Nobility, and many of the Gentry, which did ſit in that Parliament, were deſcended of *Gowrie*'s family, and nearly allied to it. As alſo the Lords of the Articles, who did examine the witneſſes and evidences, ſeveral were of near relation to the Panel, particularly *Lenox* and *Levingſton*; and the Barons and Burgeſſes being elected members, not by the King and Court, but by the Barons and Burroughs, and two Biſhops and four Abbots, Church-men, being alſo of that number; what ground remains for doubting their impartiality and veracity, in making a report of what was aſſerted and ſworn ſo publickly by the witneſſes? And all the depoſitions, and written evidences, being then recorded, do yet remain in *publica cuſtodia*, *Earl* Cromerty's *Account of the conſpiracies of the Earls of* Gowrie, page 13.

VII. The Arraignment and Judgement of Captain Thomas Lee, at the Seſſions-houſe near *Newgate*, on *Monday* the 26th of *February*, 1600 *. for *High Treaſon*, 43 *Eliz.*

The INDICTMENT.

"THAT he plotted and compaſſed to raiſe Sedition and Rebellion "to the Queen's Majeſty's Perſon, to deprive her of her Crown "and Dignity, take away her life, commit her people to ſlaugh-"ter, alter the form of Government and Religion; and upon this wicked "reſolution, on the 12th day of *February*, 1600, in the afternoon about "the hours of four and five, he the ſaid Captain *Lee* repaired to the "chamber of one Sir *Robert* † *Croſſe*, Knt. (*ſic MS.*) in the Pariſh of "*St. Giles* in the Fields, of purpoſe to diſcover his plot to him, and to "perſuade the ſaid Sir *Robert Croſſe* to conſent to join with him; namely "to go to the Royal Palace of our Sovereign Lady, being then at *Weſt-"minſter*, and then and there to lay violent hands on her ſacred Perſon, "and to take her priſoner; thinking by that means to ſet at liberty the "Earls of *Eſſex* and *Southampton*, and other Traitors now in priſon. "But the ſaid Sir *Robert Croſſe* not conſenting to that traitorous practice; "this *Thomas Lee* himſelf repaired to the ſaid Royal Palace between the "hours of eight and nine in the ſame night, and preſſed into the pre-"ſence, even to the Privy-chamber door, with purpoſe to have taken "the Perſon of our ſaid Sovereign Lady, and performed his other trai-"torous deſigns."

But there in that manner was apprehended, and examined, and ſo committed to priſon.

To this being aſked, whether he were guilty, or not?

He anſwered, Not guilty in manner and form as there ſet down.

And by whom he would be tried?

Said, by God and the Country, if he might ſee his Jury. He ſaid farther, (proteſting he was not guilty of any ill intent) that my Lord Admiral had long ſought his life, and now he was like to have it.

The Jury called, he took exception to one, ſaying, he liked not his face; but urged to ſhew other reaſons, he challenged him peremptorily.

But that, the Judges told him, could not be allowed in that caſe.

Capt. *Lee*. Then I am contented; proceed as you will.

My Lord Chief-Juſtice, at the end of the calling and impannelling, adverti ſed the Jury what Treaſon was; namely, to intend to lay violent hands upon her Majeſty, or to take away her life; to raiſe Rebellion even the intent was Treaſon, if it could be diſcovered by any overt-act.

Mr. Attorney-General. That he would prove him that ſtood at the bar, guilty of many foul Treaſons.

Capt. *Lee*. Nay, for all your wit and learning, you ſhall never do that. I care not what you can ſay. I have loſt a great deal of blood in her Majeſty's ſervice, and done good ſervice in *Ireland*.

Mr. Attorney. That we ſhall ſee anon; and proceeded upon the Indictment: Where he ſhewed how, in the late Rebellion of that Arch-traitor *Eſſex*. For, ſaid he, all the Nobility draw their Honour and Dignity of the Queen, as the Stars take their Light from the Sun; and ſo when they enter into any Rebellions and traitorous Practices againſt her Majeſty, they deprive themſelves of the Light, as it were, of that glory and honour which before-time they received from her, the chief and fountain of all their Light: and ſo he doubted not to call thoſe perſons Traitors, who, whilſt they ſtood, were Noblemen; and now, failing of their allegiance, loſt their Titles.

In the late Rebellion of this Traitor *Eſſex*, this *Lee* came *flagrant crimine*, and offered his ſervice to the Lord-Admiral and Mr. Secretary, as he pretended, to kill the Earl, which he ſaid he could do, as being well acquainted, and loved of the Earl: but they refuſing, he would needs have offered ſo much to the Queen's Majeſty; but with what mind, his practice will diſcover.

Capt. *Lee*. It is true, I would have been the firſt man ſhould have gone againſt him whilſt I thought him a traitor, and ſo would have adventured againſt any, to have defended the Queen.

Mr. Attorney-General. How you meant it, that will be plain anon.

After this, he came to Sir *Henry Nevil*, a Gentleman of noble blood, and uttered his mind to him concerning the practice in the Indictment; and after that came to Sir *Robert Croſſe*, as you ſhall hear, and opened his vile purpoſe at large to perſuade him. That theſe worthy men deſerving all honour for their Loyalty, refuſed, and revealed his vile Plot in good time. And thus much he had confeſſed under his hand.

Capt. *Lee*. What I have ſet my hand to, I cannot tell; but I am ſure I had never ſuch intent as you would perſuade the Jury I had.

Mr. Attorney. That is to be proved by Sir *Robert Croſſe*, what you meant when you went about to perſuade him.

Capt.

* From an authentic Manuſcript, lent the Editor.

† Though the name in the MS. is *Croſſe*, yet I take it to be *Crofts*, as *Camden* writes it.

Capt. *Lee*. I perſuaded him not; and he will not ſay ſo.

Mr. Attorney. Well! he ſhall ſpeak it before your face.

Then Sir *Robert Croſſe* was ſworn, and ſet in ſight of the Priſoner; and began to tell,

That upon *Thurſday* about five of the clock at night, Capt. *Lee* came to his lodging, he being ready to go abroad, and told him, he ſhould not go out, yet he muſt ſpeak with him; and ſo taking him aſide, he ſpoke to him of theſe matters of Treaſon, and ſaid, that half a dozen reſolute men, *&c.*

Capt. *Lee* here interrupted him, ſaying; Nay, good *Robin Croſſe* ſpeak all the truth.

Mr. Attorney will'd Capt. *Lee* to give him leave to ſpeak upon his oath.

Capt. *Lee* replied, I would nothing but put him in mind of the circumſtance; and ſaid, good *Robin*, remember how I began.

Sir *Robert* ſaid he would. Thus then you ſpake to me:

I marvel what will become of theſe matters; a man might do a brave act to ſet thoſe Lords at liberty. Why how? quoth I. Marry, Sir *Walter Rawleigh* might get him eternal honour and love more than ever he can otherwiſe, if he would procure her Majeſty's warrant to free them, which he might compaſs by undertaking her perſon. I anſwered, You may be ſure he will not do it. Then Capt. *Lee* reply'd, If half a dozen reſolute men, ſuch as might have acceſs to the preſence, would ſtep unto the Queen, and kneel before her, and never riſe till ſhe had ſign'd a warrant, and then ſend it by the Lord-Admiral, and never ſtir till the Earls of *Eſſex* and *Southampton* were brought to the Queen's preſence, they might do it. And then he named Sir *Henry Nevil*, Sir *Jarvis Clifton*, Sir *George Gifford*, Sir *Richard Weſton*, and themſelves. I objected, how if ſome ſhould offer to come upon us, and remove us from her Majeſty. He anſwered, we might keep any body out by ſhutting the door, and telling them that offered to come in, that if any harm came to the Queen, if ſhe ſhould do otherwiſe than well, be it at their peril; and this was all. To which Sir *Robert* anſwered, he would ſleep upon it.

Capt. *Lee*. But I did perſuade you, Sir *Robert*, with proteſtation, ſaying, I never meant to be an actor myſelf, or perſuade any other to it. And what a wretch am I, to be thought a villain for that I never meant? For my Lord of *Eſſex*, indeed, I loved and honoured him, ſo long as I thought him an honeſt man and a good ſubject. I ſpake theſe words with an *if*; *if* ſuch a thing could be done.

Mr. Attorney. Why preſs'd you to the Privy-chamber door at ſuch a time, where you were not wont to come?

And then was ſhewed the Examination of *William Poynes*, (who was himſelf in the *Fact*) to this purpoſe.

That he ſaw Capt. *Lee* preſs towards the Privy-chamber door, and ſtand very near, and miſtruſting the worſt, drew towards him. When he came near, he mark'd his colour, that was pale, his countenance ſtern, and his face having great drops of ſweat ſtanding on it *. When he came near to him, Capt. *Lee* lean'd hard upon him, and ſaid, It was one of the wonders of God that I was not in this action with the Earl of *Eſſex*. Why? ſaid Mr. *Poynes*. I was ſo well acquainted, and ſo much with my Lord of *Eſſex*, anſwered he. Then they paus'd. And Capt. *Lee* aſk'd, Whether the Queen were at ſupper? Mr. *Poynes* anſwered, No.

Mr. Attorney. Mark, all the reſt was but to bring in this.

Mr. *Poynes* told Capt. *Lee* farther, perhaps he might do good ſervice; if he were ſo well acquainted with the Earl, it was likely he knew ſomewhat of the Plot. Not I, anſwered Capt. *Lee*; but you ſhall hear more villanies and knaveries yet.

Mr. Attorney. Mark: What meant he by that ſpeech?

To this. Capt. *Lee* could not deny but he ſpake it; but ſaid, how was I there? had I any company? had I any dagger, or any thing about me, that might ſhew I meant to do the Queen any harm? No, I had not, neither did I mean any ſuch thing; and for my being at the Privy-chamber door, I had been there five hundred times, and never was noted. And what reaſon had I for my Lord of *Eſſex*, to adventure any ſuch thing. I have ſpent my blood in her Majeſty's ſervice, and ſo would again.

Mr. Attorney. You mark, there was love between him and the traitor *Eſſex*. And then Mr. Attorney cauſed a Letter to be read, which was written in the behalf of Capt. *Lee* to the now Deputy by the Earl of *Eſſex*: 'That he knew it was for one in place to do what he would; and farther, What an unreaſonable thing it was for any to require that at his friend's hands, that were out of time. He deſired his Lordſhip to take notice of the Bearer Capt. *Lee*, one near allied to him, and that ſuffered for him; one that did as good ſervice as any, when himſelf was in *Ireland*, and one that was as well ſeated for ſervice as any; thus, whatſoever he did for the bearer, he would acknowledge as for himſelf: and ſo he concluded.'

Then likewiſe was read the confeſſion of Capt. *Lee* to this purpoſe, That he loved and honoured the Earl of *Eſſex* as much as any man in *England*, ſaving Sir *Henry Lee*.

Mr. Attorney. This being but the prologue to an enſuing Tragedy, he would give a taſte of the practices and treaſons of the Earl of *Eſſex*, and his complices.

Capt. *Lee*. He doubted the treaſon would light on ſome of them that held the Earl a traitor.

Whereat a confuſed noiſe there was, that he was a villain to defend a traitor.

Mr. Attorney proceeded to ſhew the Queen's great grace in ſending to him the ſaid Earl, and the contempt and indignities offered to thoſe honourable Perſons and Counſellors ſent to call him to his allegiance.

The Lord Chief-Juſtice ſpake to this point, confirming of his own knowledge what the Attorney ſaid, much after the manner it was delivered at the Earl's arraignment. The Attorney, continued he, would of his own knowledge affirm, that all the aſſociates and complices of the Earl in this practice, were of theſe three ſorts; either *Atheiſts*, *Papiſts*, or *Men of broken Eſtates:* for he had looked into them all particularly. Then named he Sir *Chriſtopher Blunt* and Sir *John Davis*, known Papiſts: *Catesby* and *Treſham* likewiſe; the laſt of which he ſaid was a ſtock, that was *genere minax Dei*, and was he that abuſed the Lord-keeper in *Eſſex*-houſe; *Salisbury* alſo he named to be a notable villain, and theſe ſeven years together laid out for by the Lord Chief-Juſtice: and ſo of the reſt he ſaid he could ſpeak.

Mr. Attorney. Beſides in *Ireland*, it is plain to be proved, how he held intelligence with Seminaries and Prieſts, entertaining them to deal with the King of *Spain* and the Pope, to make himſelf King of *England*.

Capt. *Lee*. Who! my Lord of *Eſſex* deal with Seminaries and Prieſts? nay, it is well known he too much diſliked thoſe *Pater-noſter* fellows to call them to a reckoning in any ſuch matter.

Mr. Attorney ſaid further, It is well known that the Earl of *Eſſex* uſed this Capt. *Lee* as a meſſenger to *Tyrone*, and *Tyrone* made him his bedfellow, and Capt. *Lee* brought a meſſage back to the Earl of *Eſſex*, as he had confeſſed. Then there was ſome mention of a Letter between them; but I could not well hear what. Then was read Capt. *Lee*'s confeſſion to that point, how Sir *Chriſtopher Blunt*, being Marſhal, ſent him to *Tyrone*, and when he came, he found him very peremptory, uſing inſolent ſpeeches, and condemning our nation as a baſe People, and ſaid the Earl of *Eſſex* was ſent to kill him, but he ſhould not compaſs it; any of his ſlaves might eaſily kill the Earl, but he would not take the life of any. And further, if he would (meaning the Earl of *Eſſex*) follow his plot, he would make him the greateſt in *England*. Capt. *Lee* had them read out all: they left out much matter that ſhould be known.

Mr. Attorney would not have any further thing read, and preſſed further, the circumſtances that Capt. *Lee* had confeſſed, that made him think the Earl of *Eſſex* know of his going; namely, for that the Marſhal was well known not to do ſuch things, of far leſs conſequence, without the Earl's privity and conſent. Again, the Earl of *Eſſex* made a private ſudden journey to the then houſe of the ſaid Capt. *Lee*, where the ſaid Sir *Chriſtopher Blunt* lay ſick, and within a day after, Sir *Chriſtopher* ſent him to *Tyrone*.

To theſe confeſſions read, Capt. *Lee* anſwered nothing, as not belonging to the matter of his Indictment.

Mr. Attorney urged, That it was very likely that this man had been made acquainted with theſe late practices; which Capt. *Lee* with proteſtation denied.

Mr. Attorney Nay, it could not be but he muſt have an ill meaning, that he ſhould offer, as he did, to kill the Earl of *Eſſex*, *flagrante crimine*, in that ſort, and after enter into this plot and practice. Mark, ſaid the Attorney, he ſaid they might *force* her Majeſty to do it: mark this word, *force*, (which, as I remember, was in ſome part of his own confeſſion) *Go in unto her, and never leave her till ſhe had done it.*

Capt. *Lee*. Why I did ſay, with an *If*; and then I am not a fool, but I know they muſt have been of a reſolution that ſhould have undertaken ſuch a thing, and ſuch as would not fear to diſpleaſe her Majeſty for half an hour, to pleaſe her all her life after: but I never meant to have been an actor myſelf.

The Court affirmed it was Treaſon to undertake to *force* her Majeſty to do any thing againſt her will.

Capt. *Lee*. I never undertook it.

Mr. Attorney urged his words to Sir *Robert Mansfield* riding in his coach after he was apprehended, that ſhewed himſelf guilty, and ſo willed Sir *Robert Mansfield* ſhould be ſworn.

Sir *Robert Mansfield* affirmed, That Capt. *Lee* ſhould ſay, that he had humbly ſued to her Majeſty this twelvemonth, that he might be employed in ſome ſervice, wherein he might have ſome throats cut; and now he thought he had done ſomewhat to bring him to his end.

Captain *Lee* ſeemed to take ſome exceptions againſt Sir *Robert Mansfield*.

Sir *Robert Mansfield* proteſted he would neither wrong him, nor any man; and but for this cauſe, he had no reaſon to think otherwiſe than well of Capt. *Lee*.

Captain *Lee* confeſſed he had lived in miſery, and cared not to live, his enemies were ſo many and ſo great.

Mr. Attorney urged her Majeſty's pardon to him heretofore; for he ſaid, he was a man many ways having paſſed the danger of the law, being full of cruelty and blood.

Capt. *Lee* anſwered, it was the worſt thing her Majeſty did for him, to pardon him.

Mr. Attorney. Hark, how ungrateful he is!

Capt. *Lee*. Nay, I humbly thank her Majeſty for that her Grace; but it had been better for me I had died then. I have loſt a great deal of blood ſince, and now am like to end worſe: and for that it is ſaid I am a bloody man and cruel; I proteſt I have been in her Majeſty's ſervice forward, and indeed in fair fight I would do the worſt againſt her Majeſty's enemies: but when they ſubmitted to my mercy, I ever uſed them but as became a Soldier and a Gentleman, as merciful as any.

My Lord of *London* told him, he knew it was a common thing in *Ireland*, they would not believe a man was dead till his head were off; and ſo you would not have any body perſuaded that you were a traitor, unleſs her Majeſty (God bleſs her) were dead.

Capt. *Lee*. No, my Lord, I never meant any ſuch thing. You know, my Lord, it was ever my fault to be looſe and laviſh of my tongue; and that was my fault now, and I am like to pay for it.

Then the Jury were put together, who quickly found him guilty.

Upon Verdict given,

Mr. Attorney ſaid, Now Capt. *Lee*, you may do well to confeſs this matter, what you know, and who ſet you on.

Capt. *Lee*. What? I am not a fool to be ſet on like a dog upon a bear; nobody ſet me on, for I endeavoured nothing.

* On the 12th of *February*, *Thomas Lea* (a kinſman of Sir *Henry Lea*, who had wore the honour of the garter) told Sir *Robert Crofts*, Captain of a man of war, that it would be a glorious enterprize for ſix brave mettled fellows to go to the Queen, and compel her to diſcharge *Eſſex*, *Southampton*, and the reſt that were in priſon. He was a man himſelf of great aſſurance and reſolution, had commanded a company in *Ireland*, was very intimate with *Tir-Oen*, and an abſolute creature of the Earl of *Eſſex*'s. This did *Crofts* immediately diſcover to the Council; inſomuch that *Lea* was ſought for, and found in the duſk of the evening about the door of the Queen's Privy-chamber. He ſeemed very thoughtful, was extreme pale, and in a great ſweat, and frequently aſked, *Whether her Majeſty was ready to go to ſupper?* and, *whether the Council would be there?* In this poſture he was ſeized, and examined, the next day had his trial, and by *Crofts*'s evidence and his own confeſſion, condemned, and carried away to *Tyburn*; where he owned that he had been indeed a great offender: but as to this deſign was very innocent; and having moreover proteſted, that he had never entertained the leaſt ill thought againſt the Queen, he was there executed. And this, as the times were, appeared a very ſeaſonable piece of rigour. *Camden*'s *Eliz.* in the complete Hiſtory of *England*, vol. II. p. 632. edit. 1706.

Mr.

Mr. Recorder with a very grave admonition to him, to make him ſee his fault and fly to God's mercy for pardon, pronounced Judgment; which he took patiently.

They aſked him, what he had to ſay: he anſwered, nothing; but deſired my Lord of *London*, that he might have one ſent to him, fit for a man in his caſe.

Lord of *London*. What? you would not have a Jeſuit or a Prieſt?

Capt. *Lee*. No, I am a Proteſtant: I never liked thoſe *Pater-noſter* fellows; but I deſire a miniſter, and to receive the ſacrament: and further I deſire, my Lord-Chief-Juſtice, that my ſon may have no wrong, and that he may have that little that he had got together, and ſhould leave behind him; for it was his by right, and his ſon might prove an honeſt man, and do his Country good ſervice one day.

Lord-Chief-Juſtice. He ſhould have his right; nobody ſhould be wronged.

So the Court broke up.

Captain *Lee* ſtill proteſting he never intended any ſuch thing againſt the Queen as was laid to his charge; which he continued to affirm afterwards to Mr. *Paſfield*, to whom he confeſſed his other ſins very freely, even taking his death upon it.

He died the next day at *Tyburn* very chriſtianly, confeſſing his other vices, but ſtill denying this.

VIII. *The Trial of Sir* Chriſtopher Blunt, *Sir* Charles Davers, *Sir* John Davis, *Sir* Gilly Merrick, *and* Henry Cuffe, March 5, 1600. 43 Eliz. *at* Weſtminſter; *for* High-Treaſon *.

The Commiſſioners were,

The Earl of *Nottingham*, Lord High-Admiral.
The Lord *Hunſdon*, Lord-Chamberlain.
Mr. Secretary *Cecil*.
The Lord-Chief-Juſtice *Popham*.
Sir *John Forteſcue*, Chancellor of the Exchequer.
Mr. Secretary *Herbert*.
With divers of the Judges.

THE Commiſſion being read, the Court, proceeded to the Indictment, which was in ſubſtance as follows:

" That on the 8th day of *Februaty* laſt, at *Eſſex-houſe*, they conſpired " the death and diſinheriſon of the Queen's Majeſty, and on that day " cauſed an inſurrection of the ſubjects, and made war in *London* againſt " the Queen, and intended altering the Government, State, and Reli- " ligion now eſtabliſhed, and to ſurprize the Court at *Whitehall*. The " Queen underſtanding of their intended Treaſons, for preventing " thereof, upon the 8th of *February*, ſent the Lord-Keeper, the Earl of " *Worceſter*, Sir *William Knowles*, and the Lord-Chief-Juſtice, to *Eſſex*- " houſe; they then commanded the Earls of *Eſſex* and *Southampton* upon " their allegiance to deſiſt from their purpoſes, to diſperſe their forces " aſſembled, and to demean themſelves as dutiful ſubjects. But they " refuſed to obey their command; and committed them the ſaid " Lord-Keeper, Earl of *Worceſter*, Sir *William Knowles*, and the Lord- " Chief-Juſtice, to be ſtrictly kept and detained in *Eſſex*-houſe, by the " ſaid Sir *John Davis*, keeping them in by force; and theſe words being " uſed by ſome, Kill them! Kill them! And that the Earl of *Eſſex*, upon " his going out of the houſe, commanded that if they ſhould offer to de- " liver them out of their cuſtody, or if the ſaid Earl ſhould miſcarry in " *London*, then they ſhould kill the ſaid Privy Councillors and the Earl " of *Worceſter*. And that the ſame day they, with the number of " 300 men went into the City of *London*, ſeeking to ſtir up ſuch citizens " as they could move to their Rebellion. And that the ſaid Sir *Charles* " *Davers*, Sir *Chriſtopher Blunt*, and Sir *John Davis*, on the ſaid 8th " day of *February*, together with the Earl of *Eſſex*, did fortify the ſaid " houſe, and armed themſelves againſt the Earl of *Nottingham*, the " Queen's Lieutenant, and againſt the Queen's Army and Forces ſent " for the ſuppreſſing of the ſaid Rebels."

The Priſoners being demanded, whether they were guilty, or not guilty, of the ſeveral Treaſons whereof they were indicted?

Sir *Chriſtopher Blunt* confeſſed ſeveral of the things contained in the indictment, and would have pleaded not guilty to the reſt †; but the Court told him he muſt plead general, either guilty or not guilty to the whole Indictment: and upon evidence excuſe himſelf in what parts he can. Whereupon he pleaded to the Indictment, Not guilty; and put himſelf for his trial to God and his Country.

Sir *Charles Davers* made the like proteſtation, but was directed by the Court to plead to the Indictment: and ſo he pleaded, Not guilty.

Sir *John Davis* ſaid, his Caſe was different from the reſt; but ſeeing he muſt plead negatively to all, he pleaded, Not Guilty.

Sir *Gilly Merrick* and Mr. *Cuffe* were arraigned upon another Indictment, but upon the points of the former Indictment, ſaving for levying of war in *London*, and aſſaulting the Queen's forces there, and conſpiring and plotting at *Drury*-houſe.

Yelverton, the Queen's Serjeant, began the Evidence and opened the Indictment, ſhewed the act itſelf to be Treaſon by the Statute of 25 *Edw.* III. therefore for the priſoners to pretend an intent to another purpoſe, is no excuſe.

To alter the State, change the Religion, inforce the Prince to ſettle power, and for ſubjects to ſway things at their liſt, is *crimen læſæ majeſtatis*; and all Indictments term this Treaſon: for that ſubject that will rule his Prince, will never be ruled by his Prince; and to rule with his Prince, the world may as well bear two ſuns as the ſtate ſuffer two ſuch Governments.

For particular proofs and plain convincing of the parties, there need no other but their confeſſions; which he proteſted, as he would be credtied in the world, came voluntarily from every man examin'd, no man being racked or tormented.

It is not unknown with what clemency the Queen let paſs the offence committed by the Earl in *Ireland:* ſome of as great place as he, have ſuffered for leſs offence than was proved againſt him at his convention before the Lords. But ſuch was her Majeſty's clemency towards him, as not to ſuffer him to be brought to public trial for thoſe offences; but he, to ſhew the mind he bore, impatient to expect the Queen's leiſure and grace, gives himſelf wholly to think how he may wreſt the Queen to his fancy. He being priſoner in the Lord-Keeper's houſe, the Queen was contented to let him take his choice of any Country in *England* where to live, only confined with this, that he ſhould hold himſelf a ſubject under her Majeſty's diſpleaſure; yet left to be guarded only with his own diſcretion. This grace notwithſtanding, he ceaſed not to plot with divers foreigners, he ſends to the low Countries, practiſes in *Ireland*, raiſes ſpirits at home in *Drury*-houſe and *Eſſex*-houſe, for ſuppreſſing the Queen, calling of a Parliament, taking the Tower, poſſeſſing of *London*; and this cannot be intended without the deſtruction of her Majeſty: and all theſe Plots, by all their own confeſſions, were conferred and diſputed of divers times. Being ſent for to come before the Lords of her Majeſty's Privy-Council, the Earl refuſes to come; and the ſame night ſends for all his friends and followers to repair to him. The Queen hearing of this, ſends the Lord-Keeper, the Earl of *Worceſter*, Sir *William Knowles*, and the Lord-Chief-Juſtice unto him. Theſe Councillors find the outward Court guarded; theſe Councillors coming to the Earl, commanded the Earl and all his accomplices to lay down force, and deſiring private conference with the Earl; he refuſeth, and ſaith he will go into *London*, and take order with the Mayor and Sheriffs of the City, and will then return to them again; ſo confident he was of his own ſtrength and favour of the City. The other matters opened by Mr. Serjeant were the former points laid in the Indictment.

Mr. Attorney-General *Coke*, coming to urge the evidence, deſired, becauſe the bar was peſtered, to have Sir *Gilly Merrick* and Mr. *Cuffe* removed for a time, which was done. Then Mr. Attorney ſaid, he was now to ſpeak, not before common Judges, nor of common matters, but the greateſt and the weightieſt cauſe that ever he had to deal in, tho' he had now ſerved the Queen ſome time.

The Queen's Serjeant hath generally delivered the matter, and he was now to prove what had been opened, wherewith he had ſtriven with himſelf to have ſpoken nothing of him that dead is; but unavoidable neceſſity forced to name him, but it ſhould be with theſe two cautions: firſt, to ſpeak nothing but what the very matter enforceth; ſecondly, to ſay nothing but that without all contradiction was true, The queſtion now is not to

* This is printed from a MS. purchaſed at the Sale of the MSS. of *Peter Le Neve*, Eſq. *Norroy* King at Arms; and tho' in the MS. it is wrote to Sir *Charles Davers*, yet on the margin is wrote in Mr. *Le Neve*'s hand, Sir *Charles Danvers*; and ſo it is in *Camden*'s *Eliz.* in the complete Hiſtory of *England*, vol. II. p. 638.

‡ *Bacon*, who by command of Queen *Elizabeth*, publiſhed a declaration touching the Treaſons of the Earl of *Eſſex* and his accomplices, (ſee his Works, vol. IV. p. 534.) in that part which relates to what paſſed at the Arraignment of *Blunt*, *&c.* ſays, There were arraigned and tried by a Jury both of Aldermen of *London*, and other Gentlemen of good credit and ſort, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, Sir *John Davis*, Sir *Gilly Merrick* and *Henry Cuffe*; the three firſt, whereof before they pleaded, aſked this queſtion of the Judges, *Whether they might not confeſs the Indictment in part, and plead Not guilty to it in the other part?* But being reſolved by the Judges, that their pleading muſt be general; they pleaded Not guilty, as did likewiſe the other two, without any ſuch queſtion aſked. The reaſon of that queſtion was, as they confeſſed, in reſpect of the clauſe laid in the Indictment: *That they intended and compaſſed the death and deſtruction of the Queen's Majeſty*; unto whoſe perſon (although they confeſſed at the bar, as they had done in their examinations, that their meaning was to come to her in ſuch ſtrength, as they ſhould not be reſiſted, and to require of her divers conditions and alterations of Government, ſuch as in their confeſſions are expreſſed), nevertheleſs they proteſted they intended no perſonal harm to herſelf. Whereupon, (as at the Arraignment of the two Earls) ſo, then again the Judges delivered the rule of the Law; that the wiſdom and foreſight of the laws of this land maketh this judgment, *That the ſubject that rebelleth or riſeth in forcible manner to over-rule the royal will and power of the King, intendeth to deprive the King both of crown and life: and that the law judgeth not of the fact by the intent, but of the intent by the fact.* And the Queen's Council did again inforce that point, ſetting forth, that it was no myſtery or quiddity of the common law, but it was a concluſion infallible of reaſon and experience: for that the crown was not a ceremony or garland, but conſiſted of pre-eminence and power.

And therefore, when the Subject will take upon him to give law to the King, and to make the power ſovereign and commanding, to become ſubject and commanded; ſuch ſubject layeth hold of the Crown, and taketh the ſword out of the King's hands. And that the Crown was faſtened ſo cloſe upon the King's head, that it cannot be pulled off, but that head and life, and all will follow, as all examples, both in foreign ſtories, and here at home, do make manifeſt. And therefore, when their words did proteſt one thing, and their deeds did teſtify another, they were but like the precedent of the proteſtation uſed by *Manlius* the lieutenant of *Catiline*, that conſpired againſt the ſtate of *Rome*, who began his letter to the Senate with theſe words, *Deus hominesque teſtor, Patres conſcripti, nos nihil aliud, &c.*

And it was ſaid further, that admitting their proteſtations were ſo far true, that they had not at that time in their minds a formed and diſtinct cogitation to have deſtroyed the Queen's perſon: yet nothing was more variable and mutable than the mind of man, and eſpecially *Honores mutant mores:* when they were once a-loft, and had the Queen in their hands, and were Peers in my Lord of *Eſſex*'s Parliament, who could promiſe of what mind they would then be? Eſpecially, when my Lord of *Eſſex*, at his arraignment, had made defence of his firſt action of impriſoning the Privy-Counſellors, by pretence that he was inforced to it by his unruly company. So that if themſelves ſhould not have had, or would not ſeem to have had that extreme and deviliſh wickedneſs of mind, as to lay violent hands upon the Queen's ſacred Perſon: yet, what muſt be done to ſatisfy the multitude, and ſecure their Party, muſt be then the queſtion. Wherein the example was remembered of *Richard* the Third, (who though he were King in poſſeſſion, and the rightful inheritors but infants) could never ſleep quiet in his bed till they were made away. Much leſs would a Catilinary knot and Combination of Rebels (that did riſe without ſo much as the fume of a title) ever endure, that a Queen that had been their Sovereign, and had reigned ſo many years in ſuch renown and policy, ſhould be no longer alive, than made for their own turn.

This ſhort Extract from *Bacon*, is the chief part of what is *call'd*, The Trial of Sir *Chriſtopher Blunt*, in State-Trials, vol. I. p. 202. Edit. 1730.

you, my Maſters of the Jury, whether Sir *Chriſtopher Blunt* is guilty of Treaſon, yea or no; for he confeſſes himſelf guilty of matter which is rebellion and inſurrection, and that of itſelf is flat Treaſon.

Sir *Chriſtopher Blunt* ſaid hereupon, that he was now a man, what through weakneſs of his hurt, and through grief of his action, not himſelf, ſcarce *compos mentis*; therefore deſired not to be concluded by what he ſaid, for he hoped the Lords had call'd him thither rather to confeſs his faults, than to excuſe or defend them.

Mr. Attorney ſaid, they muſt now proceed, and Sir *Chriſtopher Blunt* is not now alone in queſtion: but as the Earl is concerned and intereſted in this cauſe, for order of proceeding, there was no man in the world but muſt be ruled by reaſon and by precedent; therefore if by theſe all men muſt, then would he ſo proceed againſt him.

Sir *Chriſtopher Blunt* deſired them to proceed againſt the others, for he would confeſs all that had been ſaid. But Mr. Attorney deſired to be heard againſt him, *ut pœna ſit paucis culpa ab aliis*. Now, to ſhew this point of treaſon, the indictment containeth the matters touching the Queen's perſon. In private caſes, if ſervants ſhall come to their maſters with armed petitions, this is a ſhew of diſobedience, and tendeth to deſtruction. To prove the point of *notiora*, 8 *Hen.* VIII. the Labourers of *Kent* made an inſurrection againſt the Statute of Labourers, for the increaſing of their wages. *Finieux*, and all the Judges then reſolved this to be Treaſon. *Trin.* 37 *Eliz.* the Prentices in *London* making a rout in *Southwark*, upon information made againſt them in the *Star-Chamber*, ſome of them were ſentenced to be whipped; whereupon others conſpired to riſe at *Bunhill*, and agree to whip the Mayor for ſuffering the Prentices to be whipped. And this intending to riſe and make an inſurrection, was reſolved by all the Judges to be Treaſon.

39 *Eliz. Bradſhaw*, and others in *Oxfordſhire*, riſing to overthrow cloſes, and to reſtore tillage; the riſing was at *Inſlow-hill*, the indictment was of Treaſon and conſpiring the Queen's death, and adjudged treaſon againſt the Perſon of the Queen. Now, if the law make this conſtruction of the acts of mechanical men, what ſhall be thought of the acts of Earls, and other ſtrong Perſons intending to ſurprize the *Tower*, to take the City, poſſeſs themſelves of the Court, to call a Parliament, to change Government, to tolerate Religion? Theſe intents of force muſt needs tend to Treaſon. The Prentices of *London*, the men of *Oxfordſhire*, were hanged, drawn and quartered.

The Chief-Juſtice *Popham* delivered the reaſons of all this to be, for that by force to compel the Prince in any government, is in itſelf Treaſon.

The *Attorney*. He that conſpires to take *London*, and to ſurprize the Court, this doth merely concern the State: but this *Catiline* company, to conſpire againſt the Queen herſelf, this concerns more! but the toleration of Religion, this of all things concerns moſt! for from before her coming to the Crown, her Majeſty having holden ſo conſtant profeſſion of the Religion now eſtabliſhed, and ſince her reign ſo bleſſed of God in it; and for her now, by compulſion or otherwiſe, to be drawn to change it, what impiety and ingratitude againſt God were it to think it? This quarrel for the changing of Religion, was the great cauſe of the *Spaniſh* Invaſion intended in 88, and the many treacheries againſt the Queen's Perſon, by poiſoning her gloves, the Pomel of her ſaddle, and many other ways: therefore at the requeſt or compulſion of a ſubject to change this true profeſſed Religion, her Majeſty would rather loſe her Crown, and venture her Perſon itſelf in defence thereof, than ever ſuffer or endure it. *Adeo periculoſum* is this to think? Theſe things I have ſhewed for precedents. Now for ſtory, ſee the Chronicles of our own Kingdoms. Queen *Iſabel*, in the time of King *Edward* II. aſſembles great numbers, pretending for the good of the King and the Church; this was a glorious pretence! but ſhe being upon the wings of her power, calling a Parliament in the name of the King, ſeeks the overthrow of the King, *ſpecioſaque nomina culpis imponit*. But the cataſtrophe, the concluſion was the ſmothering of the King, and putting to death the Treaſurer and Chancellor: for, ſaid ſhe, the letter of the law is ſuch, as we are all traitors, therefore ſo long as the King lives, we are all in danger. The ſtory of *Richard* II. the Act of 1 *Henry* IV. calling a Parliament, putting the King in *Pomfret*-Caſtle, and the King's death following, are dangerous precedents, and too fitting theſe indictments. This treaſon's bird hath been long a-hatching, like unto an Elephant's whelp, long a-breeding, but bred in a hollow tree, and diſcovered before it was fledged.

It was forecaſt, that if they were few, it would not be acted; if they were many, it would not be concealed: therefore reſolved few ſhould know it. And upon the ſudden, even when the matter was to be acted, then all to have notice of it. And for the tale of being to be murdered in his bed, or to be ſet upon by Sir *Walter Raleigh* going to the Lord-Treaſurer's, this was but a buz, and ſo invented by them for a buz: but on the other ſide, it ſhall be proved directly, that they intended to kill Sir *Walter Raleigh*. It was objected, that the Queen's forces that would be ſuddenly raiſed would be an impediment to this action; but to prevent this, it was reſolved to pretend that the State generally was with them now, where it may be ſome may think themſelves excuſable of Treaſon, becauſe they knew not of the Treaſon intended, tho' they were preſent in the thing acted. For the clearing of this, Mr Attorney referred himſelf to the opinion of the Judges in the point; whereupon it was delivered by my Lord-Chief-Juſtice,

That in caſe, where ſome pretended Treaſon, and others accompanied and aſſiſted them in any action, tho' not knowing of the Treaſon intended, yet were they all offenders in Treaſon.

And for the honour of the Indictment, and manifeſting the due of their proceedings, Mr. Secretary deſired their judgments, whether in caſe, *when men were actors and abettors in ſuch a matter, whether the law charged them not in this point with direct Treaſon againſt the Perſon of the Prince?* Which was affirmed by the Judges to be ſo, and the indictment muſt ſo charge them.

Now, for ſeveral proofs againſt every ſeveral perſon then arraigned, he would firſt begin with Sir *Chriſtopher Blunt*, and with his own confeſſion againſt him. The confeſſion of Sir *Chriſtopher Blunt* * contained this, That the 20th of *January*, he was ſent for by the Earl of *Eſſex* to come up to *London*; whereupon he came, and was at *Drury*-houſe when the conference was there the *Sunday* or *Monday* ſevennight before the going into *London*, but came when the conference was ended. The reaſon of their going into *London*, as they did on *Sunday* the 8th of *February*, was, becauſe the alarm was given at the Court, and knowing into what hazard the Earl adventured, he went with him for ſafety of the Earl's life, as far as there might be power in him, and thought it lawful for ſubjects to uſe force for their ſafety, and the ſettling of true Religion. And being aſked by Mr. Attorney, whether he was privy to the purpoſe of taking the Court? Said, he was privy to the conference of going to take the Court, but it was a thing firſt to be conſidered of, but not reſolved. And being further aſked by the Secretary, if in their conference it was not reſolved, that if the Earl prevailed, and came to the authority he ſhot at, he would have ſuffered Toleration of Religion? anſwered, That he thought ſo; and ſaid, he ſhould be to blame to deny it; for the Earl had many times ſaid to him, that he liked not the forcing of men's conſciences; and in his uſual talk would ſay, he miſliked that any ſhould be troubled for their conſcience. And in a ſecond confeſſion, he ſet down, that the Earl, five days before his going into *London*, wrote down with his own hand certain articles to be diſputed upon; whereof one was, whether they ſhould take the *Tower*? another, touching the ſurprizing of the Court? and that the Earl uſually ſpoke of this purpoſe to alter the government of the Realm. But the Examinant deſired that might not have been ſet down, becauſe it was no grace unto the reſt.

Mr. Secretary deſired to know the reaſon wherefore he would not have had this ſet down, which he underſtood to be, for that the confeſſion was ſo liberal of matters ſo foul, as this being added, it would embroider the reſt?

But Sir *Chriſtopher Blunt* ſaid, he was miſtaken; but the altering of the Government being moved, and the removing of the Secretary, he deſired forbearance to expreſs any further matter, for gracing of himſelf. And in the ſaid confeſſion, Sir *Chriſtopher Blunt* ſeemed to diſſuade from the attempt intended, but utterly diſliked the taking of the Court at that time of the night.

For a farther proof againſt Sir *Chriſtopher Blunt*, that he had wrought with the Earl for a Toleration of Religion, and ſought to ſeduce Sir *John Davis*; the confeſſion of Sir *John Davis* was read, wherein it was ſet down, that Sir *John Davis* aſking of Sir *Chriſtopher Blunt*, if the Earl had promiſed Toleration of Religion, the Catholic Religion? Sir *Chriſtopher Blunt* anſwered, that the Earl gave good hope of it. And *Davis* in his confeſſion ſet down that principally by the perſuaſion of Sir *Chriſtopher Blunt*, he became a Catholick; therefore being taken and committed to Mr. *Mompeſſon*'s, he deſired Mr. *Mompeſſon* to help him to a Prieſt. But at the Bar, *Davis* ſaid, that many times he had conferenee with Sir *Chriſtopher Blunt* touching Religion, but he was not the original perſuader of him unto that Religion; but being bred up in *Oxford*, his Tutor, Mr. *Allen*, was a Catholick, and from him he took it, and hath ever lived free from giving offence by his profeſſion; and ſaving this unhappy action, he hath always been loyal and obedient to law, hath accompanied the Earl ordinarily at ſummons, and communicated with him; and the reaſon of his words upon his firſt commitment, was ſuppoſing Mr. *Mompeſſon* to have been a Catholick, did requeſt him to help him to a Prieſt, but grieved afterwards he was deceived in Mr. *Mompeſſon*. And the Lord-Admiral proteſted he knew that Mr. *Mompeſſon* was not affected to that Religion, which Sir *John Davis* thought to be true; but ſaid, Mr. *Mompeſſon* had not kept word with him, for he promiſed upon his credit not to reveal his requeſt.

And to prove Sir *Chriſtopher Blunt* was an author, and a chief ſtirrer of the Rebellion in *London*, the confeſſion of Lord *Sands* was read, wherein was ſet down, that he went with the Earl to Sheriff *Smith*'s, but went not into the houſe: but being ſent for by the Earl, went with him, and came back with him towards *Ludgate*; and Sir *Chriſtopher Blunt* and the Lord *Sands*, at the chain before their coming to *Ludgate*, gave charge upon the Queen's forces, and were both hurt at that place.

Sir *Chriſtopher Blunt* at the Bar confeſſed he was too forward in that action, and gave charge upon the Pikes, but denied the killing of ..... at that place, which Mr. Attorney charged him withal; but he deſired Mr. Attorney to think charitably of him, and not to charge him with that man's blood.

Then Mr. Attorney proceeded to prove, that where it was pretended and given out for a buz, that Sir *Walter Raleigh* ſhould have ſought to have murdered the Earl, that indeed they ſought to murder Sir *Walter Raleigh*, to which purpoſe the confeſſion of Sir *Ferdinando Gorge* was read; wherein was contained, that the Earl and Sir *Chriſtopher Blunt*, that *Sunday*-morning that Sir *Walter Raleigh* had ſent to ſpeak with him, Sir *Chriſtopher Blunt* adviſed *Gorge* to kill him: and to this end, Sir *Chriſtopher Blunt* ſent four ſhot after him when he went to ſpeak with Sir *Walter Raleigh*.

But *Blunt* ſaid, that Sir *Ferdinando Gorge* did much wrong him in ſo ſaying; but confeſſed, that in reſpect Sir *Ferdinando Gorge* was to be one of the principal executioners in this buſineſs, he wiſhed *Gorge* not to go naked to Sir *Walter Raleigh*, nor to go home to him, but to meet him upon the water, and to take ſome piſtols with him, that in caſe Sir *Walter Raleigh* ſhould not ſuffer him to come off, that then he ſhould be of force to come away, and bring Sir *Walter Raleigh* with him; and this was his advice.

And being aſked by Mr. Secretary, whether he thought, or was perſuaded that my Lord *Cobham*, or Sir *Walter Raleigh* intended any ſuch thing againſt the Earl?

Sir *Chriſtopher Blunt* anſwered, that he did not believe that they ever meant any ſuch matter, nor the Earl himſelf feared it not, only it was a word caſt out to colour other matters.

Gorge alſo confeſſed, that the Earl intended, after he had poſſeſſed himſelf of the Court, then to have gone into *London* with ſome principal officers of the State carried with him, and after a while to have called a Parliament, and ſettled things to his liking.

* See alſo *Bacon*'s Works. Vol. IV. p. 537. for the ſeveral confeſſions relating to *Eſſex*'s conſpiracy, as ſigned before the Lords, and others of the Council.

And Mr. Secretary ſaid, that Sir *Ferdinando Gorge* being confronted with the Earl, had ſaid as much; and to ſatisfy thoſe queſtions, would have *Gorge* ſent for.

To prove that Sir *Chriſtopher Blunt* would not take notice of the Proclamation publiſhed in *London* by an Herald at Arms, the confeſſion of Capt. *Edward Bromley* was read, wherein was ſet down, that the Earl coming from Sheriff *Smith*'s houſe, ſaw in *Gracechurch-ſtreet* an Herald at Arms, and ſent Sir *Chriſtopher Blunt* to him, to tell him, that he ſhould not approach the Earl, for he would not hear him abuſe the Queen's name. And to prove that Sir *Chriſtopher Blunt* was a chief director of things done in the houſe that *Sunday*-morning the 8th of *February*, it was ſhewed, that *Mr.* Killegrew *of the Privy-chamber* coming that morning to *Eſſex*-houſe, Sir *Chriſtopher Blunt* meets him in the Court, and Mr. *Killegrew* told him, that he had a meſſage from the Queen to Sir *William Knowles*; and hearing by Sir *Chriſtopher Blunt* that Sir *William* was gone, he would have gone back again; but Sir *Chriſtopher Blunt* ſaid, he muſt not go; and ſmiling upon him, wiſhed him not to take it diſcourteouſly, for he muſt ſtay him.

But *Sir Chriſtopher Blunt* ſaid hereupon at the Bar, that the reaſon of the ſtaying of Mr. *Killegrew* was this; Mr. *Killegrew* being a Gentleman whom he knew the Queen truſted, he told him, he would deſire him to ſtay in the houſe, and hear the matter, and ſee their proceedings, that ſo he might truly inform the Queen of that which he knew would be diverſly and ſtrangely ſpoken of.

But againſt this, Mr. *Killegrew* himſelf ſaid, that he was ſtaid by Sir *Chriſtopher Blunt* by theſe words; "I muſt deal ſomewhat unmannerly "with you, and ſtay you now till you have ſpoken with my Lord;" and ſent Sir *John Davis* to go tell my Lord of *Eſſex*: whereupon the Earl, accompanied with divers others, came to Mr. *Killegrew*.

Mr. Attorney perceiving ſome ſhiftings in Sir *Chriſtopher Blunt*'s anſwers, willed him to confeſs things plainly, otherwiſe he would prove him guilty of the Earl's death.

Whereupon Sir *Chriſtopher Blunt* wiſhed that his death were worthy to reſtore the Earl to life again; but for his confeſſions, they had always been plain and true from the firſt, and plain to all he knew: wherein he appealed to Mr. Secretary, if he had found other by him.

Mr. Secretary acknowledged that he had always found him to deal honeſtly and plainly.

Now, to come to the great matter againſt Sir *Chriſtopher Blunt*, and the reſt. The Queen's Majeſty having intelligence of their intended treaſons, yet graciouſly diſpoſed to extenuate the offence of the Earl, commands her Privy-council to meet at the Lord-Treaſurer's houſe on *Saturday* at night, and that night ſends Mr. Secretary *Herbert* to the Earl, to ſignify unto him, that it was the Queen's pleaſure he ſhould repair unto her Council there; but the Earl refuſed to come. Mr. Secretary *Herbert*, the rather to invite his coming, offered to go in the coach with him alone without any light, or take boat and go by water, that they ſhould go and come without being diſcerned by any; but the Earl ſtill refuſed.

Sir *Chriſtopher Blunt* confeſſed he heard of Mr. Secretary *Herbert*'s coming, but wiſhed to God he had dealt more peremptorily with the Earl.

Mr. Secretary *Herbert* ſaid, he was not to be more peremptory with him than in the words of the Queen's own meſſage, which he delivered directly.

Mr. Secretary *Cecil* affirmed, that ſuch was the reſpect given to the Earl, and that nothing ſhould break out to the underſtanding of others, as it was once reſolved all the Council to have gone home to him to his own houſe.

Sir *Chriſtopher Blunt* ſaid, that the Earl kept very ſecret to himſelf the cauſe of his ſending for to the Lords of the Council, and what Mr. Secretary *Herbert*'s meſſage was; for being aſked what it was, he ſaid, that ſuch was the Queen's opinion of him, for all thoſe diſgraces, as her Council being to conſult of great matters, ſhe had ſent to have him amongſt them, and to have his opinion.

Mr. Attorney further urged, that the Queen's exceeding favour reſted not there; but even the ſame *Sunday* morning before his going into *London*, the Queen ſent Mr. Secretary *Herbert* to him, to ſignify to him, that her pleaſure was he ſhould come before her Council, which he refuſed again; and thus was it true with him, that *conſuetudo peccandi*, did *tollere ſenſum peccati*. Her Majeſty notwithſtanding, after both theſe refuſals, vouchſafeth again the ſending unto him, maketh choice of his beſt friends and neareſt allies he had in the Court; the Lord-Keeper, the Lord-Chief-Juſtice, two that oved him exceedingly well while he ſtood a good ſervant and a true ſubject; the Earl of *Worceſter* and Sir *William Knowles* his near kinſmen. Theſe Lords valiantly, (for ſo I will term it, and to their honours I will ſpeak it, that it ſhall appear that in ſome gown-men there reſts as valiant minds, where the cauſe requires it, as in them that wear ſwords:) The Lord-Keeper ſtoutly, in the midſt of his armed troops, commands the Earl upon his allegiance to deſiſt from his purpoſe, and to lay down arms; when others in the tumult cried, My Lord, my Lord, you ſtay too long; others ſaid, Kill them! kill them! and, at this time, *Blunt* adviſed the Earl to impriſon them, which is Treaſon in itſelf.

But Sir *Chriſtopher Blunt* ſaid, that his advice to my Lord then was, that the place was unfit to talk in, being openly in the Court, and that therefore he would withdraw into ſome private place.

But my Lord-Chief-Juſtice *Popham* ſaid, that he himſelf hearing the company tumultuouſly cry, *Away, away, you loſe time*; hereupon he ſtept to the Earl, and perſuaded him to withdraw into ſome place private, and there to conſult with them. And to manifeſt in what manner the Lords were received and uſed, and how they found the houſe at their coming in, a Narrative was read, ſet down by my Lord-Keeper, all under his own hand-writing, which was thus: That coming to *Eſſex*-houſe the 8th of *February*, about ten of the clock in the morning, they found the gates ſhut. Upon their knocking, the wicket was opened, but none of their ſervants ſuffered to enter in with them, ſave only *J. Hughs*, who carried the Great Seal. From the gate to the houſe-door ſtood a guard of ſhot on both ſides; at their coming in, the company aſſembled tumultuouſly together; before their coming to the hall-door, the Earls of *Eſſex*, *Rutland*, and *Southampton* came and met them, and divers others flocked about the Earl. The Lord-Keeper ſtepping to the Earl of *Eſſex*, told him, that they were ſent to know the cauſe of their grievance; if there was any the Queen would hear it; but hearing that he had aſſembled ſo many into that houſe, and not knowing for what cauſe, the Queen had commanded them to command him to diſperſe thoſe companies. The Earl anſwered, that his life had been ſought; he had been preſidiouſly dealt with, and for his defence that company of his followers and friends were gathered together. The Lord-Keeper anſwered, if any ſuch matter was, he ſhould be heard and relieved. Hereupon the Earl of *Southampton* ſaid, *that he was aſſaulted in the ſtreet by the Lord* Gray. The Lord-Chief-Juſtice anſwered, he had Juſtice for that. The company gathering thick about them, the Lord-Keeper deſired the Earl of *Eſſex* to draw aſide; and they conferring ſecretly, the company cried, *All, All.* The Lord-Keeper told the Earl, that if he had any wrong done him, he ſhould be honourably righted. Then the company cried, *Away, away, my Lord, they betray you, they undo you.* All this while they were bare, but hereupon the Lord-Keeper put on his hat, and commanded the Earls upon their allegiance to deſiſt, and lay down their weapons: and private conference being again deſired, they were carried up into the great chamber, and as they went, ſome ſaid, *Throw the Great Seal out of the window*; ſome ſaid, *Kill them, kill them*; others cried, *Away, away.* Then they were led into one of the Earl's cloſets. The Lord-Keeper preſſing to ſpeak with the Earl, he ſaid, my Lord, be patient a-while; I will go take advice, ſpeak with my Lord-Mayor, and the Sheriffs of *London*, and will be with you again within this half hour. Then the Earl departed, and left them to the cuſtody of Sir *John Davis*, Sir *Chriſtopher Blunt*, and Sir *Gilly Merrick*. The Lords being thus in cuſtody, deſired leave to be gone, or that they might ſend one to the Queen to let her know how they were uſed; but this was denied them; and anſwered, that the Earl would return ſhortly, and till his return they muſt not let them go.

The Earl of *Rutland*'s confeſſion being read after the former narration of the Lord-Keeper's; thereby it appeared, that the Earls of *Eſſex* and *Southampton*, and Sir *Chriſtopher Blunt* of long time had been diſcontented, and that *Blunt* many times adviced the Earl to ſtand upon his guard; and it was the advice of the Earl of *Southampton*, *Blunt*, and *Davis*, that the Lords ſhould be detained.

For the Earl of *Rutland* himſelf, Mr. Secretary ſaid, he thought him not to be acquainted with the plot; and the Earl of *Eſſex* himſelf had ſaid, that the Earl of *Rutland* was not privy to it: for his conceit of him was, and thus ſaid, that the Earl of *Rutland* knew it but two hours before. And, ſaid Mr. Secretary, if equality of Juſtice would ſuffer it, he wiſhed that no blood more might be ſpilt; for it was not the blood of any man that was required, and the Queen ſhould gain more by their lives than by their deaths; and doubted not but her Majeſty, in this lamentable accident, would triumph in mercy, but where and when there ſhould appear no other cauſe but merely her exceeding mercy. The Earl of *Rutland*'s confeſſion ſhewed further, that *Blunt*, when their going to the Court was intended, ſaid, O how fearful, and of how ſeveral humours ſhall we find them, when we come to the Court!

Further, to enforce the hard uſage of the Lords, the confeſſion of one *Whittington* was read, who ſaid, That after the Lord-Keeper and the other Lords were in the inner room, other company coming up towards the place, ſwore they would ſtab and kill the Councillors; whereupon *Whittington* ſent to the Earl of *Eſſex*, how violently ſome men preſſed, how cruelly they meant againſt the Councillors? Sir *Chriſtopher Blunt* hearing theſe words, ſaid, it was no time now to make orations. Whereupon the Earl of *Eſſex* preſently departed, and word left, that if the Earl of *Eſſex* miſcarried in *London*, or if they offered to eſcape before his return, then the Lord-Keeper and the Chief-Juſtice ſhould be killed.

The Lord-Chief-Juſtice hereupon aſked Sir *Chriſtopher Blunt*, Why they ſtood at the great chamber-door with muſkets charged and matches in their hands; which, thro' the key-hole, the Lord-Chief-Juſtice ſaid, he diſcerned?

Davis anſwered, and ſaid, he was charged with the cuſtody of the Lords, but againſt his will, for he much more deſired to have gone with the Earl into *London*, and that the Earl of *Southampton*, Sir *Charles Davers*, or ſome other might have kept them; but the Earl of *Eſſex* ſaid, No, he would but go take order with *London*, and come again within half an hour, in the mean time he ſhould keep them. Then Captain *Salisbury* having the guard of the muſkets, was very violent and ſo diſordered, as he doubted what he would attempt, and, contrary to the will of others, brought up the ſhot ſo near the door. And Sir *John Davis* ſaid, that leſt the fury of *Salisbury* ſhould attempt beyond that was meant, he ſometimes paſſed amongſt the ſhot, and to ſatisfy the Lords that no harm was meant them, he came in to them, whom when he perceived in ſome fear, he aſſured them that there ſhould be no force offered them.

But the Lord-Chief-Juſtice told Sir *John Davis* at the Bar, that he had no reaſon to think they were in fear, and bade him tell what words the Chief-Juſtice then uſed, which were theſe: If they did take their lives, it was but the cutting off of a few years; and when *Gorge* came, and would have let out the Lord-Chief-Juſtice only, he refuſed to go except they might all go; and ſaid, as they came together, ſo they would go together, or die together.

And Sir *John Davis* ſaid, that the better to aſſure the Lords that no harm was meant them, he went up to the Ladies, and intreated the Counteſs of *Eſſex* to come down, and be amongſt them: ſhe making ſome pauſe at it, ſaying, With what comfort can I go amongſt them? He perſuaded her to go and be amongſt them, the better to aſſure them that no barbarous uſage ſhould be offered unto them. And that he behaved himſelf reſpectfully towards them, being uncovered before them, when others ſtood covered by them: and ſuch proviſions as the houſe had, he prepared for them, and ſet them a dinner.

But the Lord-Chief-Juſtice ſaid, My Lord-Keeper and he told *Davis*, they would eat none of my Lord's meat.

But at the coming down of the Counteſs amongſt the Counſellors, Sir *John Davis* ſaid, that he perceiving the Lords in great doubt what the Earl meant, and hearing them ſay to my Lady, what a ſtrange courſe is this the Earl of *Eſſex* taketh? Thereupon Sir *John Davis* ſaid, that if he did perceive that the Earl intended any hurt unto the Queen, his ſword ſhould be the firſt that ſhould be drawn againſt him. And the Lord-Chief-Juſtice aſking what

what was become of the Earl all that while, they having then ſtaid from eleven of the clock till it was almoſt two, ſaid, the Earl will be deceived of his purpoſe if he hope upon the City, for the Citizens are faithful to the Queen. Then *Davis* anſwered, the Earl had good hope of the City. It being replied, That perhaps ſome looſe people might fall in to him, but he could have no good hopes of any that were ſubſtantial and good citizens; *Davis* ſaid, my Lord is ſure of the City, for of twenty-four Aldermen he is ſure of twenty-one; and my Lord in this action will ſet ſuch aids in the City in all places, as no ſpoil ſhall happen.

But to the honour of the City of *London*, Mr. Attorney often repeated, that of all the City, not one Man, ſave only one ſorry prentice, was found to take part with with, and of Inns-of-Court-Men, not one man that followed him.

Sir *John Davis* being farther aſked, when he firſt was made acquainted with this purpoſe of the Earl's? He ſaid he knew not of it till the *Sunday* ſevennight before their riſing, and then their purpoſe was to ſurprize the Court at ſuch a time as he ſhould have ſmall oppoſition; and that they met twice that *Sunday* or *Monday* before their riſing, at *Drury*-houſe, when they conſulted about ſurprizing the *Tower* and the Court. But debating long, they could not agree; whereupon breaking off, the Earl ſaid, he would ſet order for all himſelf, ſince they could not agree on it; which were the Earl of *Southampton*, Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis*.

Hereupon Mr. Secretary told Sir *Chriſtopher Blunt*, that the Earl had confeſſed that he had been a principal inſtigator of him to theſe acts, and a mover of him to plots more pernicious to the State than theſe.

Sir *Chriſtopher Blunt* ſaid, Hath my Lord that gone is, ſaid ſo by me? Well, ſince I am ſo nearly touched in honour, and my reputation ſo far charged, I will tell you, Mr. Secretary, what I have counſelled him, and what I have kept him from.

Mr. Secretary ſaid, the Earl for part of his Sacrifice to God, had left it under his own hand all that he could diſcloſe of all confederation in this matter.

Sir *Chriſtopher Blunt* ſeemed ready at the Bar to have diſcloſed farther matter againſt the Earl; but referred to my Lord-Admiral and Mr. Secretary, whether he ſhould there utter it, or privily deliver it to them two? Which afterwards he did, being brought into the Court of Wards to them after Judgment was given.

Mr. Attorney proceeding with his evidence, deſired attention, ſaying, That the laſt day he gave evidence againſt the Earl, ſince which time it had been rumoured, that tho' the letter of the law was ſtrong againſt the Earl, and his act expounded by the Law to be treaſon, yet his intention was not to touch the Queen's perſon or her State. But the Earl himſelf (whoſe Soul he doubted not but was with God, for his end was moſt penitent and Chriſtian) before his death revoked all his Juſtifications made at his arraigning, ſave only one original purpoſe, not to lay hands upon the Queen; and took it upon his death, that he meant not to lay violent hands upon the Queen's perſon; yet remembring the tumultuous behaviour of them in his company at his houſe, ſaid, that he feared he ſhould have been forced to ſome wrong againſt the Queen's perſon.

Whereupon the Lord-Admiral affirmed, that the Earl of *Eſſex* ſaid, It was fit he ſhould die, for the Queen could not live and he too.

Mr. Secretary alſo delivered how clear a confeſſion the Earl had made of all things; how long time four of them of her Majeſty's Privy-Council at his intreaty had ſpent with him in the *Tower* upon *Saturday* before, and how he had revoked thoſe imputations he had caſt upon ſome men, and thoſe aſſeverations he had in his own defence. Therefore, for his part, he muſt needs judge charitably of him, and forgive ſuch wrongs as the Earl had done him; and if the diabolical imputation which the Earl at his arraignment caſt upon him, further moved him to impatiency than his wont was, or was fit, he deſired them that heard it to pardon him, for the provocation made him to forget all bands of ſpeech.

Now was read ſome parts of the Earl's laſt confeſſion, which contained four ſheets of paper, all written with the Earl's hand; and it being ſhewed to *Cuffe* at the Bar, he acknowledged it to be the Earl's hand-writing. Out of the Earl's confeſſion this was only read: That *Blunt*, *Cuffe*, *Temple*, and ſome others, tho' they were not preſent at *Drury*-houſe, yet they were privy to more dangerous practices and plots than theſe. And *Cuffe* being brought face to face before the Earl, the Earl charged him to call to God for mercy, and deal truly with the Queen; for he being to go out of the World, muſt deal truly with his ſoul. *Cuffe* ſaid, it was long before he could be allowed pen and ink to write; elſe the Earl himſelf would have cleared him, as he did in theſe things, that in a few words he ſet down; which being read to the Earl, he ſaid, true; and ſtill as he read, he ſaid true; out of which *Cuffe* would infer, that the Earl being truly remembred of things paſſed, would have cleared, and not left an accuſation upon him. But theſe ſeemed to be other matters than ſuch wherewith the Earl had charged him. And *Cuffe* denied not, but being confronted by the Earl, the words aforeſaid were uſed to him. Then was read an abſtract of the Earl's confeſſion in theſe words:

He thanked God that he was thus prevented, for otherwiſe he knew not what miſery might have befallen this land. He ſaid, that men would wonder, if they knew how many motions had been made unto him, to remove the evils of the Common-wealth. He confeſſed that his rebellion was firſt plotted when he was priſoner at the Lord-Keeper's houſe; he intended to have ſurprized the Court with a power of men, and afterwards the *Tower*, to have countermined his actions, and been a bridle to the City, and then to have called a Parliament. He ſaid, that *London* was a danger unto his ſoul, and the cauſe of his rebellion; for if he had not truſted to thoſe of *London*, he had not taken this courſe. He called the men of *London* a baſe and cowardly people, ſaying, That he drove them from their barricadoes with two rapiers a-croſs, and would undertake to ſack *London* with four hundred men. He called himſelf a burden unto the Commonwealth to be ſpewed out. He called this his ſin, a great ſin, a bloody ſin, a crying ſin, and an infectious ſin, infecting with a leproſy both far and near. He deſired his life to be ſhortened, for that he knew the Queen could not be ſafe ſo long as he himſelf was living. He deſired private death, to avoid the acclamations of the People.

This abſtract read, Sir *Chriſtopher Blunt* ſaid, he muſt needs confeſs he was privy to the ſpleen that was carried againſt Mr. Secretary, and was too far conſenting to his hurt; but never gave allowance, or was mover of the Earl to this plot.

Mr. Secretary interrupting him, wiſhed him to conceal nothing that tended to the diſcovery of theſe treaſons. For matter of injury intended againſt him, he wiſhed not the naming of them, he did forgive them.

Sir *Chriſtopher Blunt* ſaid, that was favour out of his charitable diſpoſition, more than he himſelf was worthy of.

Mr. Attorney proceeding, ſaid, the Queen had charged thoſe of her Council to ſay nothing in this buſineſs, but what might plainly be prov'd, if it were objected; for ſhe would go with her juſtice untouched: therefore he would open matters, and which though they of the Jury need not to take as any part of their evidence; yet becauſe they were true, and fortified the matter divulged and proclaimed through the Realm, for the honour of the Queen, though againſt an Earl that was executed, he would diſcloſe unto them how this Treaſon had a deeper root than moſt were aware of: wherefore you ſhall plainly have it proved unto you, That there was a correſpondence *betwixt the Earl of* Eſſex, *Sir* Chriſtopher Blunt, *and the Arch Traytor* Tyrone; and this ſhall be proved unto you by the Earl's own creatures. Thus it fell out, after he had ſixteen thouſand foot, and thirteen hundred horſe under his charge; ſuch an army, as he himſelf ſaid, ſhould make the earth to tremble where he went. It was pretended by him that he would go into the North againſt the Rebel, but never intended; as appeared; for *Lee* muſt go to the Rebel, but the Earl muſt not know it; *and* Blunt *muſt ſuffer it, being Marſhal, but give no warrant for it.* *Lee* goes to *Tyrone*, finds the Rebel up in proud terms againſt the *Engliſh* nation, railing againſt the Earl of *Eſſex*, as that he ſought his life, and hired ſome about him to perform; which was a baſer thing than ever he had offered to his father, or would do againſt him: but theſe terms were after qualified. *Lee* returning, brings anſwer from *Tyrone*, that he deſired conference with the Earl; and would give his ſon for pledge; and ſends word, that if the Earl would follow his counſel, he would make him the greateſt man that ever was in *England*. *Lee* being returned, the Earl of *Eſſex* repairs to the place where Sir *Chriſtopher Blunt* lay, where this being told him, he ſhook his head at it; but ſaid nothing. Now the Earl of *Eſſex* gathers his army towards winter, takes his journey towards the North, goes with pretence to fight; but coming there, entertains a parley with the Rebel; being jealous leſt any ſhould hear it, takes order that the Earl of *Southampton* ſhould keep all men from coming near, and he alone goes to parley with the Rebel. The effect of this was confeſſed by *Lee* while he lived, and to make it evident, the plotting of Treaſon between thoſe two Earls, you ſhall underſtand it by an intelligence that paſſed, which, were it not the thing had been ſeverally plotted, it had been impoſſible to have been advertiſed, for no bird upon her wing could have carried the news in that time. Sir *William Warren*, a man moſt truſted by the Rebel of any *Engliſhman*, he went to *Tyrone* the 28th of *September*; the Earl of *Eſſex* landed in *England* but the 26th of *September*; and *Tyrone* could then tell *Warren*, that he ſhould ſee a ſtrange alteration in *England* ſhortly, and it ſhould not be long ere he ſhould ſee him have a good ſhare in *England*. This paſſed in the North of *Ireland*: In the South of *Ireland*, one *Mac Pueys*, Secretary, confeſſed, That it was agreed the *Earl of* Eſſex *ſhould be King of* England, *and* Tyrone *Viceroy of* Ireland. In the middle of *Ireland*, *Fitz-Maurice*, ſiſter's ſon to *Tyrone*, affirms the ſame, and ſays, that whenſoever the Earl of *Eſſex* ſhould need men; then it is agreed, that *Tyrone* ſhall find him a continual ſupply of 8000 men; and *Fitz-Maurice* hearing theſe things agreed betwixt the Earls, ſends to know what he will have to do, leſt he enter into attempt to the croſs of their pruposes. The Earl of *Eſſex* being commanded by expreſs Letters that he ſhould not come over, he notwithſtanding comes over, brought all the ſtrongeſt proviſions away with him, left the Kingdom at all adventures, only truſts the rebel *Tyrone*'s word for the ſafety of that whole Kingdom. It may be thought theſe things more fitly ſhould have been urged againſt the Earl himſelf; but the cauſe was, one, the ſhortneſs of time; another, becauſe all the Lords were ſatisfied, and ſaid there was Treaſon full enough proved againſt him, and it ſatisfied to condemn him. And when I was there entering into this matter, the Lord-Steward ſaid to me, Mr. Attorney, I perceive you have more to ſay, but I enjoin you ſilence for the reſt.

Now for proof of theſe things thus plotted in *Ireland*, the confeſſion of *Lee* was read, who was a man the Earl had good opinion of, and he ſo devoted to the Earl, as he wiſhed his own head might have ſuffered for him, *Lee* confeſſed, that on the *Sunday*, when he heard they were proclaimed Traitors, he was mightily diſcontented and grieved at the impriſonment of the Earls, and ſtuck not to profeſs unto ſome, that he could be contented to ſpend his life for their delivery, and thought it an eaſy matter to be performed, if ſix reſolute Gentlemen would undertake it, and named them. And whereas the Earl denieth that ever he ſent him to *Tyrone*, yet he thought the Earl knew when Sir *Chriſtopher Blunt* ſent him, for this reaſon, that the Marſhal never did any great matter without the Earl's privity: And that this matter was ſuch, as the Marſhal would give him no warrant in writing for it. And when he was returned from *Tyrone*, the Earl of *Eſſex* then made a ſecret journey to Sir *Chriſtopher Blunt*'s houſe, where Sir *Chriſtopher Blunt* lay hurt. And *Lee* ſaid, that at his coming to *Tyrone*, he found him proud, and railing at our nation, and ſaid that the Earl had hired ſome to take his blood; but afterwards told *Lee* that he had ſent *Eſſex* a meſſage by *Snode* his Secretary, that if he would agree with him, he would make him the greateſt that ever was in *England*. And *Lee* further confeſſed, that he knew *Eſſex*, *Blunt*, and *Tyrone* were all one, and all held one courſe.

Sir *Chriſtopher Blunt* confeſſed, he knew of *Lee*'s going to *Tyrone*, but denied that he had ever notice what he ſaid to *Tyrone*. It was true, he gave leave unto *Lee* to go to *Tyrone*, and the Earl of *Eſſex* was privy to it; yet the Earl in his life denied it.

But my Lord-Chief-Juſtice noted, That it was a thing agreed upon betwixt them, that *Lee* and *Blunt* ſhould take this upon them; and for the fact, *Lee* and *Blunt* ſhould have a pardon granted them, which was done by the Earl: this being about the 8th of *Auguſt*; yet the Earl of *Eſſex* wrote over hither to the Lords of the Privy-Council, the 14th of *Auguſt*, in theſe words: "Your

"Lord-

" ſhips would not think what cowardice theſe fellows are grown to; yet " muſt theſe fellows be taught courage to fight, or elſe this Rebel will " never be ſubdued."

Further was read, a letter all of the Earl's own writing, dated the 8th of *October*, written to the Lord *Mountjoy*, after his being in *Ireland*, and the Earl here in *England*; ſignifying " that *Lee* is one ſo near to me, as " I muſt needs intreat your Lordſhip to do what you can for him, tho' " it is not in your power to do what you would; you ſhall find him a " man of better ſervice than any is in *Ireland*. When I came thither, I " found him in good place, and ſometimes he entertained me to his great " charge; which with your favour you muſt enable him to again. And " let it be my ſuit to you, to do him what good you can."

From out of theſe letters, it was urged by Mr. Attorney, that *Lee* was a man wholly plotted for him. The 26th of *September*, the Earl of *Eſſex* came to the Court; the 28th of *September*, Captain *Warren* talks with *Tyrone*. *Warren* confeſſeth, that *Tyrone* ſware, that within two months he ſhould ſee the greateſt alteration, and the ſtrangeſt that ever he ſaw; but *Warren* underſtood him not. Then ſaid *Tyrone*, I hope ere long to have a good ſhare in *England*.

The confeſſion of one *Knowd*, Secretary to *Owney Mac-Rorey*, taken the 16th of *February*, was read, wherein was ſet down, That *Owney Mac-Rorey* having ſecret intelligence of the plot betwixt the two Earls, *Eſſex* and *Tyrone*, wrote and ſent ſo twice, and deſired to be adverti ſed thereof, that he might do nothing contrary to their deſigns. But *Tyrone* grew ſuſpicious, leſt the matter ſhould break out too ſoon: yet the effect of the anſwer was this, that the Earl of *Eſſex* ſhould be King of *England*, and he Viceroy of *Ireland*. And that for a while he ſhould attempt nothing upon the *Engliſh*; and proved, that the Earl had left ſixteen barrels of powder in the North. And *Knowd* being aſked by a Gentleman, upon his returning out of the North, what news? Said, it was agreed, that *Eſſex* ſhould be King of *England*, and *Tyrone* Viceroy of *Ireland*.

Turlagh Mac-Davy O Kelly, being a meſſenger from the M . . . . rebels, and brought the anſwer to . . . ſaid, the Earl of *Eſſex* was to go for *England*, and take that kingdom, and they to help him; and among thoſe rebels it was reported, the Earl of *Eſſex* wrote a letter to the Earl of *Tyrone*, to follow his matter thoroughly: for now was the time.

The confeſſion of *Thomas Wood*, ſiſter's ſon to *James Fitz-Maurice*, Baron of *Lixnow*, and a man in great credit with this Baron, was read; wherein he ſheweth, that being with *James Fitz-Maurice* at his houſe, about *Michaelmas*, when the Earl of *Eſſex* came over from *England*, *Fitz-Maurice* aſked him what friends the Earl of *Eſſex* had in *England*? Who ſaid, he knew not; but heard the Earl was well beloved in *England*. Then *Fitz-Maurice* told him, that the Earl of *Eſſex* was gone for *England*; had diſcharged many of the forces, and that the Earl of *Deſmond* had ſent him word, that it was agreed the Earl of *Eſſex* ſhould be King of *England*, and *Tyrone* Viceroy of *Ireland*.

Hetherington's confeſſion, and ſome others, were ſpared reading, becauſe they only concerned the Earl of *Eſſex*.

Now Mr. Attorney opened, that notwithſtanding all thoſe plots, practices, and treaſons, were known to the Queen; yet, after all this ſo graciouſly her Majeſty regarded him, and was pleaſed to cover his offences, as to have him privately to come before ſome of her Privy-Council only at the Lord-Treaſurer's, ſent one of her Secretaries twice to him, offered to paſs in all ſecrecy; nay, Mr. Secretary ſaid, for ſaving his honour, that none ſhould take notice of any thing. They once all propoſed to have gone home to *Eſſex*-houſe to him, and during all the time of his reſtraint from Court, his letters have always had free paſſage to the Queen, and ſhe ever gave the reading to any thing he ſent. Wherefore, Mr. Attorney ſaid, the action of breaking out into that it did, it was a great mercy of the Queen's, that *in flagrante crimine* he was not, according to the martial law, preſently put to the ſword.

And here the evidence ended againſt Sir *Chriſtopher Blunt*.

And then Mr. Sollicitor General urged new evidence againſt Sir *Charles Davers*.

Mr. Sollicitor *Flemming* beginning, ſaid, He would prove Sir *Charles Davers* guilty of all the Treaſons charged againſt Sir *Chriſtopher Blunt*, and that he was a principal plotter, diſputer, officer and actor in all their treaſons. In fine, he was aſſigned to be keeper of the preſence-chamber; where, upon a ſignal given, all the Nobles to aſſemble, and paſſing to the privy-chamber to preſent themſelves to the Queen: and for making their way firſt, they ſhould apprehend Sir *Walter Raleigh*, captain of the guard; and afterwards ſome of the privy-counſellors, and ſome other Lords. Theſe being ſeized upon, they ſhould afterwards have been put to an honourable tryal, and afterwards a Parliament ſhould be called, and government eſtabliſhed; and ſo principally did the Earl of *Eſſex* count upon this gentleman, Sir *Charles Davers*, and ſo ſecret did he hold him to him, as that before *Chriſtmas* laſt the Earl diſcovered his intent to him, and told him he would lay ſuch a plot for taking the Court, as he would not be reſiſted. And when Sir *Charles Davers* was in the Country, the Earl would not enter into conſultation about the buſineſs, until Sir *Charles Davers* came up; and meſſengers were diſpatched preſently for him. Upon his coming up, a meeting was had at *Drury-houſe*, where divers projects were made, *Davis*, *Davers*, *Blunt*, *Gorge* and *Southampton* being preſent, amongſt whom it was agreed, the taking of the *Tower* to be very fit, for the better countenancing of the action.

The chieſeſt defence and pretence that Sir *Charles Davers* uſed, was the great love he bore to the Earl of *Southampton*, who heretofore had cauſed him his pardon, and having gained him his life, he thought he owed his life unto him in any thing he ſhould command him.

But Mr. Sollicitor ſaid, it behoved him rather to have been grateful and ſerviceable to the Queen, who gave him life, more than to him that ſued for his life. But this was the juſt revenge had of God, that followed for the foul murder he had committed.

Sir *Charles Davers* perceiving that his act had extended to Treaſon, altho' he intended no harm unto the Queen's perſon, ſaid he was ſorry he had ſo far forgotten himſelf as to plead Not guilty; for it was not his purpoſe coming thither to defend, or deny any thing, but to confeſs all things that could be ſaid againſt him: Therefore confeſſed, that before *Chriſtmas* the Earl adviſed with him, how he might make his way ſo to the Queen, as that his acceſs to her ſhould not be reſiſted. But this was not reſolved till his return out of the country. When at *Drury-houſe*, they meeting, and *Littleton* coming thither; at the laſt, it was reſolved, the plot ſet down by the Earl's own hand, were firſt, to take the Tower: for reaſon he yielded this, it would be a countenance to the action; the taking of the Court, for which he would have ſo many able men, as they would at any time poſſeſs all the places of the Court. The manner to be this: Sir *Chriſtopher Blunt* to have the gate; Sir *Gilly Merrick*, the hall; Sir *John Davis*, the great chamber; Sir *Charles Davers*, the privy-chamber; the Earl himſelf ſhould come all along by land: at his coming into the great chamber, he ſhould put himſelf betwixt the halberts, (meaning, that he ſhould ſtep to the corner where the guard uſually ſet up their halberts againſt the wall) and poſſeſs himſelf of them, ſo as by them he would have no hurt; and perhaps he ſhould find of the guard apt to take his part.

My Lord-Admiral ſaid, it was a fair warning to the guard, that they uſe not that faſhion of ſetting up their halberts in that manner.

When the Earl was thus come into the great chamber, divers of the Lords ſhould come out of the preſence thither, and ſaluting him, to welcome his coming to the Court; then the Earl with ten or twelve Noblemen, to take their way into the Privy-Chamber.

It being aſked, what ſhould be done with them that ſhould make reſiſtance to this attempt; it was anſwered, it was meant they ſhould be ſeized upon. And the Court being quieted, then to ſend to ſatisfy the City; and then not long after, to call a Parliament.

A further confeſſion of Sir *Charles Davers* being read, there were ſet down the ſubſtance of the Earl's former articles, and theſe queſtions farther propounded; as, whether the Court and Tower ſhould be attempted at one time; and whether this attempt ſhould be with many, or with few; if with many, where the number ſhould aſſemble; and whether it ſhould not be fit for the Earl and ſome others to be armed with Privy-Coats; and who were fitteſt Perſons to have cuſtody of the Lord-Admiral and the Secretaries?

Theſe and ſome further matters alſo, Sir *Ferdinando Gorge* had confeſſed were diſputed upon.

And ſaid Mr. Secretary, ſince this is a World wherein Princes muſt be accountable for their doings to their Subjects, that men ſhould not marvel why like proceedings were not had againſt Sir *Ferdinando Gorge* as theſe, the reaſon of forbearance was not that he had deſerved better, or was otherwiſe conceited of, than to be an *Arch-Traitor*; but becauſe he was *the inſtrument of ſaving and letting go thoſe that were ſent from the Queen to* Eſſex-*houſe*: and for this cauſe divers of her Majeſty's Privy-Council had been ſuitors to her Majeſty for ſparing his life for a time, though for their opinions of him, they held him an original and principal Traitor; and that he adviſed more miſchievouſly than any other, for he would have had the Court fired upon the taking of it. Sir *Charles Davers* ſtill profeſſed, as he had done often, that he was privy and a diſputer of all theſe plots, but never was any deviſer of any, or inſtigator of my Lord in theſe things: Sir *Chriſtopher Blunt* for further clearing himſelf, ſays, he knew not of this plot till his coming to *London*, upon the Earl's ſending for him; that they had allotted him to place, he knew; but to what office, he knew not. And the more to be commiſerated, he beſought the Lords Commiſſioners to remember what natural conſiderations were to tie him to the *Earl*, *having married his Mother*. Now to how many adventures the obligations of love, and following of that Earl, had before carried him, the World did know; and how liberal, prodigal and venturous I was of this life of mine, while it was my own, good Mr. Secretary, pleaſe to remember and report truly to the Queen. I beg it of you, becauſe I have moſt offended you, and have no cauſe to expect it, but from the bounty of your honour and charity.

Mr. Secretary told him he freely forgave whatſoever he conceived might give cauſe to him to be offended, and would truly perform for him what he deſired, and would deſire my Lord-Admiral to join with him in it; though he ſaid he need not ſeek it of them, for the Queen would require it at their hands, to be truly informed of all their deſires.

Then ſaid Sir *Chriſtopher*, I muſt needs confeſs that heretofore, I having done much to her Majeſty's ſervice, adventured my life many times, as the marks of this my wretched carcaſe will ſhew; hazarded my fortune when it was at the beſt, and all for the honour of her Majeſty, and in her ſervice, and yet ſhe never vouchſafed notice of me or my ſervice: it gave no little diſcontentment to me, but this never had the power to have an ill thought againſt her Majeſty. Therefore once again I beſeech you, that being as I was to that Earl, you pleaſe to relate to her Majeſty what you find by me, and what I have ſaid to you. And to ſtay any fury going upon me, I here confeſs myſelf guilty of all that can be ſaid againſt me, and moſt worthy to have deſerved death; wherefore renouncing all juſtification or extenuation of my offence, I wholly caſt myſelf at her Majeſty's mercy. Sir *Charles Davers* made the like proteſtation.

And ſo ended the evidence againſt Sir *Charles Davers*.

Againſt Sir *John Davis*, Mr. *Francis Bacon* urged the evidence, beginning with diſcourſe upon the former ground of Mr. Attorney's, that every rebellion implied deſtruction of the Prince, and that in the precedents of *Edw.* II. and *Hen.* IV. the pretence in both was as in this, againſt certain Subjects, the *Spenſers* in one, and the Treaſurer in the other. And this ſtile of proteſtation that no harm was intended to the perſon of the Sovereign, was common in Traitors. *Manlius*, the lieutenant of *Catiline*, had that very proteſtation; but the proceeding is ſuch in this, as no long diſcourſing needs to prove it Treaſon, the act itſelf was Treaſon. The principal offences charged upon Sir *John Davis* were two, one that he was a plotter, and of the Council at *Drury*-houſe: Another that in the inſurrection he had the cuſtody of the Privy-Counſellors in *Eſſex*-houſe, which had a correſpondence with the action in the ſtreet. The plot and inſurrection entered into, was to give laws to the Queen; the preparation was to have a choice band of men for action; men not met together by conſtellation, but aſſembled upon ſummons and letters ſent: for, ſaid Mr. *Bacon*, I will not charge Sir *John Davis*, although he be a man ſkilful in ſtrange arts, that he ſent ſpirits abroad, but letters were ſent about this matter. The things to be acted were the matters conſulted of, and then to deſign fit perſons for every action; and for mutual encouragement there was a liſt of names

drawn by the Earl, and theſe Councillors out of them were to elect fit perſons to every office. The ſecond plot was in taking of the Court, and in this conſultation he was *penna Philoſophi ſcribentis*; you were clerk of that Council-Table, and wrote all: and in the detaining of the Privy-Councillors, you were the man only truſted. And as the Earl of *Rutland* ſaid, you held it a ſtratagem of war to detain pledges, and was meant to have carried the Lord-Keeper with the Great Seal into *London*; and to have had with you the Lord-Chief-Juſtice, a man for his integrity, honoured and well-beloved of the Citizens; and this *Achitophel* plot you thought to have followed.

Sir *John Davis* hereupon told Mr. *Bacon*, that, if with good manners I might, I would long ſince have interrupted you, and ſaved you a great part of labour; for my intent is not to deny any thing I have ſaid, or excuſe that I have done, but to confeſs myſelf guilty of all, and ſubmit myſelf wholly to the Queen's mercy. But in that you call me Clerk of that Council, let me tell you, Sir *Charles Davers* was writing, but his hand being bad, I was deſired to take the pen and write. But by and bye the Earl ſaid he would ſpeed it himſelf; therefore we being together ſo long, and doing ſo little, the Earl went to his houſe, and ſet down all with his own hand, which was formerly ſet forth, touching the taking and poſſeſſing of the Court.

The examination of Sir *John Davis* was read, which was to the effect as before is ſet down touching their conſultations of taking of the Court; but added, it was agreed they ſhould all come by land, and make their way to the Queen's own perſon, and hoped to find way in the Court indifferent.

The Lord-Admiral then charged Sir *John Davis* again with the detaining of the Lords in *Eſſex*-houſe, and his unwillingneſs to have let them go, though Sir *Ferdinando Gorge* came with a meſſage, as he ſaid, for letting them all go. And ſaid the Lord-Admiral, the caſe was hard with theſe worthy Councillors: for by God he ſwore, though theſe Councillors had been in the houſe, yet being as he was, General of the Forces, and ſent to force the houſe, he muſt and would have battered and blown it up, tho' it had been the death of them as well as the reſt; and had all his own ſons been there, he would have done it.

It was alſo charged againſt Sir *John Davis*, that not ten days before this action, Sir *John Davis* and Sir *Charles Davers* were ſeen upon the top of the *White Tower* within the *Tower*, viewing and ſurveying the place; but they ſaid it was only for pleaſure, to take view from thence, being there confeſſed, that they affirmed the *Tower* was a place of ſmall ſtrength.

And here ended the evidence againſt Sir *John Davis*.

Then Mr. Attorney took in hand the evidence againſt Sir *Gilly Merrick* and Mr. *Cuffe*. To *Cuffe*, Mr. Attorney ſaid, that he was the arranteſt Traitor that ever came to that Bar; he was *Poly* . . . . . the very ſeducer of the Earl; and ſince he was a Scholar and a Sophiſter, he would frame him a ſyllogiſm, and bade *Cuffe* deny what part he would. The ſyllogiſm was this, *Whoſoever commits rebellion, intends the Queen's death; but you committed rebellion:* Ergo, *you intended the Queen's death.* For the *polypragma*, this fellow, the cunning coiner of all plots, how to intrap a worthy gentleman, whom I am ſorry to ſee ſo overtaken, I muſt name Sir *Henry Nevil:* This *Cuffe* hearing of Sir *Henry*'s landing out of *France*, watches his coming to *London*, preſently comes to him, and tells him, he had commendations unto him from the Earl of *Eſſex*, and ſecretly lets him know what private intelligence my Lord had received from Court by ſome his inward friends; that much miſlike was taken at Court with Sir *Henry*'s ſervice in *France*; eſpecially that at *Bullen*. Sir *Henry Nevil* ſaid, it was more than he knew or had heard, but recommends his ſervice with thanks to my Lord. Shortly after Sir *Henry Nevil* came to the Court, the Queen uſed him very graciouſly. The Lords interpreted very well of his ſervice; now at his next meeting Mr. *Cuffe*, Sir *Henry* told *Cuffe*, he found no ſuch matter at Court as he told him. Hereupon *Cuffe* replied, Oh, Sir, things are altered ſince I ſaw you laſt, and ere long you ſhall ſee a change: my Lord is like to come in favour again, and be reſtored to his greatneſs; and uſing one other verſe, concluded with this, *Arma ferenti omnia dat, qui juſta negat. Cuffe* ſtill making reſort to Sir *Henry Nevil*, finds opportunity when to diſcloſe unto him all the Earl's plot of going to the Court; who hearing it, objects againſt it, that it was a thing could not be executed but by many, and all would not keep Counſel. *Cuffe* anſwered, that for execution they had ſo many come in to them, that they knew not to entertain all. A further objection being made, that tho' all places in the Court were poſſeſſed, yet *Weſtminſter* would riſe, and make force; *Cuffe* anſwered, we having the face of the State, all will follow and take with us.

For manifeſtation of all, the Narration penned by Sir *Henry Nevil* himſelf, was read in theſe words: "Their honours commanding him to diſcloſe all, and his duty and conſcience binding him to the ſame, he hath "in that ill-couch'd Narration ſet down all his knowledge. *Firſt*, at his "arrival out of *France*, he was told that he had ill offices done him in Court "by divers, and ſome of great place; and his actions at *Bullen*, and carriage there greatly blamed, as cauſing the ill ſucceſs of the peace. And by "*Cuffe* it was told him, the Earl would have him know he was wronged, "becauſe he was one that loved him. After this, *Cuffe* brought him a letter from the Earl, thereby deſiring his love, and to hold it to him, beſides many other words only of compliment. To which letter Sir *Henry* "returns an anſwer ſuitable to ſo kind provocations. But all this while "I never went to him; and being in the country within ten miles of the "Earl, yet I never went to viſit him. But *Cuffe* came to me from him, "and told me the Earl was now at liberty, and all the World that would, "might now freely come unto him: but ſtill I put off my going, till at "one time *Cuffe* came and told me my Lord expected my coming to him, "and ſuch a day he would ſtay ſupper for me; and if I came, and "he chanced not to be in the way, a Gentleman of my Lord's ſhould attend my coming, and bring me to my Lord's cloſet. About eight of the "clock that night I came to my Lord, and was met by a Gentleman, and "brought up to my Lord; who entertained me kindly, and after a while, "after many queſtions of his hopes, but uſed no undutiful words of the "Queen or State, I parted with my Lord, there having nothing but ordinary terms of Compliment paſſed us. Afterward Mr. *Cuffe* repairing "often to me, I aſked him at one time how his Lord's matters ſtood in "Court. At one time he anſwered me, well; and told me of great hopes "conceived; at ſome other time he anſwered me very diſcontentedly in theſe "things, ſaying, it made no matter, it would cauſe my Lord to take other "courſes; and ſaid, there was a pretext to lay up the Earl of *Southampton*, "which was a warning that they meant to lay up the Lord of *Eſſex* after "him: but my Lord was reſolved they ſhould never curb him up any more. "Then told me, my Lord had in purpoſe ſome matters, but I ſhould not "embark myſelf further in them than I liſted; and deſired me to give a "meeting to the Earl of *Southampton* and Sir *Charles Davers*. I ſaid, "I would, but with this limitation, that nothing was intended againſt the "Queen's perſon: which was promiſed. But I detained them at two "meetings, which cauſed them to make an ill judgment of my meaning "towards them and the intendment. *Monday* on *Candlemas-day* I ſtanding in *Serjeants-Inn Gate*, the Earls of *Eſſex*, *Southampton*, and Sir *Chriſtopher Blunt* paſſed by in a Coach, whom I ſaluted paſſing, and was the firſt "time I had ſeen them of long. Anon after, *Cuffe* coming to me, told "me he had a commiſſion to deliver a ſecret unto me; which was, that my "Lord finding his life ſought by men potent about her Majeſty, he was "adviſed to make his appearance to the Queen, and go with ſtrength for "that purpoſe; deſcribing the ſame manner of taking the Court, and making way to the Queen, as before is ſet down by others. This *Cuffe* ſaid "he was to impart to me, as one in whoſe love the Earl was confident. (But "Mr. Secretary ſaid, as he was grieved to think of this Gentleman's full "reſpect, his worth and abilities to have done the Queen great ſervice, ſo "this right he would do him, that however the Earl was perſuaded of him, "yet he ſo far tendered his duty to the Queen, that I think the firſt ſuſpicion given of the Earl's mind grew from this Gentleman.) The matters being propounded unto me, I made many objections, and put great "difficulties in the execution; eaſy perfecting of things being promiſed, "my anſwer was, *Multa ſunt quæ non laudantur niſi cum aguntur.* When "ſome perſons were named for the actors, I objected, that if many knew "it, it would not be concealed; if few were uſed, it would not be performed. The Earl of *Rutland* being named for one, ſaid they would "not truſt him long aforehand; for if he knew it but two hours before, "he would tell. In concluſion, I was deſired to think of the things propounded in caſe they were ſhewed unto me. Afterward *Cuffe* came unto "me, to whom I related all the ſpeeches uſed in that conference, and told "him I would not allow it, except they would conjure and take an oath to "tempt nothing againſt the Queen's perſon; and againſt Mr. Secretary, "I would never do nor conſent to any thing, for he was nearer unto me, "therefore they muſt *duce pudicè*, ſpare me in that. *Cuffe* ſaid to me, they "would only have me preſent when things were doing; and if it fell out ſo, "that I ſhould be haſtened to diſpatch into *France* before that time, I "might defer it by feigning ſickneſs. By their appointment I ſhould have "been Secretary." (Here Mr. Secretary ſaid, *Cuffe*, this was great preſumption, for though to remove me had been no great matter, yet to take upon you to place another, this was high ambition.) "Further, it was "required that Sir *Henry Nevil* ſhould have ſent a miniſter into *London*, "to find how the City ſtood affected to the Earl."

(Mr. Attorney here ſaid, it was in their plot, to have had two hundred miniſters in the City and Country, to have blazed in pulpits the ſincerity of this Earl's intentions.) "*Cuffe* further told Sir *Henry Nevil* of a buz "in many men's mouths in *London*, and that there had been warning given "to the Mayor and Aldermen to look to the City; but of twenty-four "Aldermen he doubted not of twenty at the leaſt."

Mr. Secretary here ſpeaking, opened what he found had reſolved the Earl to ſo free a confeſſion and diſcovery of all things that he did. *Aſhton*, who was his miniſter, and as I may term him his confeſſor, was a man much deſired by the Earl; her Majeſty was willing to yield any thing that might give comfort to the Earl's conſcience, and be good for his Soul, ſent Mr. Doctor *Dove*, a very worthy man, to confer with him, and prepare him to a chriſtian end. He perſuading confeſſion as the way to repentance, and amongſt other ſins charging the Earl with this offence, his taking arms againſt his Prince, and refuſing to come upon the command of his Prince; the Earl anſwered, he thought that refuſal no fault; and for inſtance ſhewed, that *David* refuſed to come to *Saul* in the like caſe, being ſent for. Mr. *Dove* ſo ſufficiently anſwered the Earl in his arguments, and ſatisfied him in this example, how different it was from his caſe, and upon what ground that was, that the Earl in a kind relenting and falling from defences, deſired earneſtly confeſſion with his own miniſter *Aſhton*; which was yielded him. *Aſhton*, like a godly and very learned man, and one deſerving much for this ſervice, dealt ſo roundly and feelingly with him, as that he made the Earl know that there was no ſalvation for him to hope for, if he dealt not clearly with his own conſcience in the confeſſions of his ſins, and high offences in this kind. His words ſo pierced and moved, as that to this man he diſcloſed the very ſecrets of his heart, to the purging of his ſoul and conſcience, from the concealment of any thing he knew; and afterwards ſpent all the time he had to live in holy meditations, and revealing the ſecrets concerning the State, and diſcourſing of the miſchief intended; and moſt penitently ſorrowed for the accuſations and imputations he had caſt upon others touching the *conſpiring with Spain* and the Infant of *Spain*.

And being aſked touching ſome men ſuppoſed to be confederates in the taking of the City, he ſaid that Captain *Bromley*, brother to Sir *Henry Bromley*, and Sir *John Scot* would aſſiſt him: and that Sheriff *Smith*, being a Colonel of a thouſand men, would bring them in aid of him. And confeſſed by the Earl himſelf, that at ſuch time as the Earl had purpoſed to lay down the thought of theſe ambitions, and had reſolved contentedneſs in a private life, *Cuffe* comes to the Earl, and tells him he had indignities offered him, and his ſufferance was ſuch, as his friends ſaid he had loſt his courage with praying and hearing of ſermons, and now was become a coward. Whereupon *Cuffe* perſuaded him to let Sir *Charles Davers* come to him, who would let him know the mind of his friends; and after ſuch time as the Earl had accuſed his confederates, being aſked how he could prove the things diſcovered, anſwered, ſome of them have ſo much grace, as if I ſend but to them, they will confeſs it. Whereupon he wrote a ticket to the

Earl of *Southampton*, who upon veiw thereof confeſſed all to be true, and ſaid my Lord had the ſtart of him; for if I had had pen and paper, I had confeſſed theſe things firſt.

Whereupon Mr. Secretary ſaid, that he muſt needs ſpeak of a difference he found between Noble and Generous-minded Men, and others baſer born; from the Earls and other the Gentlemen of birth and of good houſe, all their confeſſions came freely and liberally from them without concealment or covering any thing with untruths. By *Cuffe*, and ſome others of baſer ſort, nothing would be confeſſed, but what they were convinced of, and ſhadowed with untruths ſo far as their wits could do it. The Earl of *Eſſex* alſo in his life-time confeſſed to the Lords, that *Cuffe* was a principal inſtigator of him; and though of theſe plots himſelf had been a principal contriver, yet Sir *Chriſtopher Blunt*, Sir *Charles Davers*, and Sir *John Davis* were privy to more dangerous and pernicious purpoſes than this action tended to; as might appear by their counſel given him that morning when he went into the City of *London*.

Cuffe being willed to ſpeak for himſelf, ſaid, The matters objected againſt him were many, and forced againſt him with all force of wit: therefore for the help of his weak memory, he would reduce all unto two heads: things plotted, and things acted. For the firſt, in them Mr. Attorney thinks he hath concluded me in mood and figure; but my anſwer is, that if a man may be excuſed of Treaſon by committing nothing, I am clear. Yet the number of matters heaped upon me, and the inferences and inforcements of the ſame uſed againſt me to make me odious, make me ſeem alſo as a monſter of many heads in this buſineſs; but ſince by the law all accuſations are to be believed, and facts weighed as by evidence they are proved; and things are beſt proved being ſingled; I will beſeech Mr. Attorney that we may inſiſt upon ſome point certain, and not as in a ſtream have all things at once brought upon me with violence. For my being in *Eſſex*-houſe the *Sunday*, I hope it ſhall be conſtrued as in the caſe of others. Then if thoſe who only had their being within the walls of that houſe, and no hand nor head in that action, were not Traitors; I hope that in favour and in charity you will accordingly judge of me, who ſpent all that day locked up in my chamber amongſt my books, and never appeared unto any man till all was yielded up to my Lord-Admiral. To conclude me to be a Traitor, becauſe I was in the houſe where Treaſon was committed; by the ſame reaſon if a lion had been there locked up in a grate, he had been in caſe of Treaſon. But whereas your argument, Mr. Attorney, is this, That whoſoever intends Treaſon, and the ſame is afterwards acted by others, there the intender as well as the actor is a Traitor: But I intended Treaſon, and others acted it; *Ergo*, Mr. Attorney, it is not your *Major* that I deny, becauſe my Lords the Judges have determined that; but I deny your *Minor*; for if the thing intended was the going to the Court; yet the thing acted was the going into *London*.

But Mr. Attorney General taking him ſhort upon his own confeſſion, concluded him a Traitor; for in Treaſon *the very intent is Treaſon*, if the ſame can be proved. Now, it is confeſſed by Mr. *Cuffe* that he intended the taking of the Court, which in itſelf is Treaſon.

Mr. *Cuffe* ſaid, My Lords, the matters forced upon me ſo amaze me, as I know not what to ſay; but I beſeech you, even as yourſelves ſhall be judged, judge ſo of me both by my words and deeds, for this is the law both of God and man: and let not the accuſations of others, or arguments now forced, ſo far have power againſt me, as to take from me my juſt defence. I am further charged with contriving plots for reſtoring the Earl to greatneſs. True, I muſt confeſs, as a ſervant that longed for the honour of his maſter, I have often wiſhed to ſee his recalling to the Court, and reſtored to her Majeſty's former favour; but beyond the limits of theſe deſires, my thoughts never carried me, nor aſpired to other greatneſs than to ſee him again in place of a ſervant and worthy ſubject, as before he had been. And whereas I ſtand accuſed to be as one that turned the wheel which elſe had ſtood, and to be the ſtirrer of his mind, which otherwiſe had ſettled to another courſe; to clear this, I had written two lines, which you, Mr. Secretary, knew the Earl would have ſubſcribed, if he might have been ſuffered.

But Mr. Secretary affirmed he perceived no ſuch purpoſe in the Earl, neither remembred any ſuch matter in that which is written.

Said *Cuffe*, You know, Mr. Seeretary, my paper being read to the Earl, as he read, he ſaid ſtill as he went, *True, true.*

At the importunity of Mr. *Cuffe*, Mr. Secretary willed the paper ſhould be read; but it tended only unto this, That if he knew of the Earl's intent to go to the Court, 'twas with ſuch limitations as the Earl had propounded, otherwiſe not, for he had not ſuggeſted any of theſe new practices.

Mr. Attorney ſtill following the matters ſtrongly againſt him, told *Cuffe*, that he would give him a cuff that ſhould ſet him down, and called to have read the Earl's confeſſion, and ſome part of Sir *Henry Nevil*'s confeſſion; which both were full plain and againſt him, as he had not to anſwer them. Only to the conference with Sir *Henry Nevil* he ſaid, Whereas Mr. Attorney would make me a *Mercury* and a Meſſenger only from the Earl to Sir *Henry*, herein Mr. Attorney errs, not knowing, or not reſpecting the antient familiarity and love that for theſe many years ſpace have been betwixt Sir *Henry Nevil* and me, for the delight we took together in conference of Learning, and diſcourſes of Travels and States. And whereas I am charged with deviſing a lye, thereby to bind Sir *Henry Nevil* faſter unto the Earl; it is well known to others, the Earl firſt ſent me to Sir *Henry Killegrew* to tell him of it, and that from him it might come to Sir *Henry Nevil*'s ear. But Sir *Henry Killegrew* not being in town, and I afterwards meeting with Sir *Henry Nevil*, imparted it to him; therefore deſired that he might not be wronged, and wiſhed that *juramantum cal*..... might be forborn as a fault in any man. And for the ſpeech uſed of twenty-one Aldermen in *London* that were ſure to my Lord, there were ſome at the Bar as well as he, that had heard the Earl uſe the ſpeech; and vouched Sir *Gilly Merrick*, but he denied it. For the buz that was given out, he ſaid likewiſe, that Sir *John Davis* heard what my Lord ſaid of this; but Sir *John Davis* being aſked, denied the hearing of it.

And *Cuffe* being anſwered by Mr. Secretary, what he meant by having a Parliament? He anſwered, that it was conceived theſe things would work great alteration; and for ſettling of all things, they thought, that ſhortly would follow a Parliament.

Mr. Attorney ſaid, that it was meant that *Cuffe* ſhould have been Speaker of that Parliament.

And here ended the Evidence againſt *Cuffe*.

Againſt Sir *Gilly Merrick*, Mr. Artorney urged firſt, that he was the man who fortified *Eſſex*-houſe againſt the Queen's forces; and if God had not otherwiſe guided it, that day he had been the death of a noble perſon the Lord *Burleigh*, for he ſet one with a muſket-ſhot to ſhoot at him, but miſſing the Lord *Burleigh*, Captain *Lovel*'s horſe was killed under him at *Eſſex*-gate with that ſhot. And the ſame day that the Earl went, Sir *Gilly Merrick* comes to Mr. *Brown*'s houſe, being adjoining to the Tennis-Court, and ſhuts all his ſervants out of his houſe, and all that *Sunday* walked up and down the houſe, with muſketeers following him. And the ſtory of *Henry* IV. being ſet forth in a play, and in that play there being ſet forth the killing of the King upon a ſtage; the *Friday* before Sir *Gilly Merrick* and ſome others of the Earl's train having an humour to ſee a play, they muſt needs have the play of *Henry* IV.

The players told them that was ſtale, they ſhould get nothing by playing of that, but no play elſe would ſerve; and Sir *Gilly Merrick* gives forty ſhillings to *Philips* the player to play this, beſides whatſoever he could get.

It was urged alſo, that the Earl's purpoſe was to have againſt this time appointed men of his faction placed in all the houſes near about him. To which end the confeſſion of *Arthur Smith*, dwelling hard-by the Tennis-Court, was read; who ſaid, that the week before, Sir *Gilly Merrick* came to his houſe, and enquired who lay there. It was told him of a lodging there that was kept for Sir *Walter Harcourt*; which being denied unto Sir *Gilly Merrick*, he railed and reviled the good man of the houſe with foul words, and willed him to diſcharge Sir *Walter Harcourt* of that lodging, for my Lord would have his friends to lie about him. Now the men that Sir *Gilly Merrick* would have lodged in that houſe, were *Owen Saliſbury*, Capt. *Gwynne*, and *John Saliſbury*.

Then was read a letter of Sir *Gilly Merrick* writ to his brother *John Merrick*; the effect was to pay money to Mr. *Devereux*, and himſelf to come up to *London*, and Captain ..... and Captain *Damnye*, to come up alſo, and my Lord would take it thankfully.

The confeſſion of *Thomas Johnſon* was read, who ſaid he ſaw Sir *Gilly Merrick* all that day walk in his doublet and hoſe up and down the houſe, with muſkets following him, and went down to the banqueting-houſe in the garden with his hat full of ſhot.

Sir *Gilly Merrick* ſaid, his going with muſkets after him, was to keep the Privy-Counſellors the ſafer from the fury of *Owen Saliſbury*, who had ſworn that if the houſe was forced, he would ſend them to go to the Devil. And *Johnſon* ſaid, that he ſaw one *Wever* follow Sir *Gilly Merrick* to the gate with a muſket to have ſhot out there.

And by the confeſſion of one *Watts*, it appeared that there was a watch in the houſe all *Saturday* at night, and none of the company went to bed, but for a while's reſt threw themſeves upon their beds in their clothes; and that Sir *Gilly Merrick* cauſed certain hogſheads to be broken up, to fortify againſt the Tennis-Court. That the Earl had a hundred muſkets in the houſe, but wanted flaſkets and much other furniture for them.

And here ended the evidence againſt Sir *Gilly Merrick* and the reſt.

Now Mr. Attorney General deſired to have a word unto all the priſoners at the Bar, and that he might not miſreport, deſired to have a paper read, ſubſcribed by the hand of Mr. *Aſhton*, Dr. *Mountford* and Dr. *Barlow*, for that it was ſpoken in their hearing. The Earl thanked God, that he had given him a deep inſight into his ſins, ſince his juſtifications uſed at the Bar then before; thanked God that his courſe was prevented; acknowledged that all confidence in man was vain; that he was worthily ſpewed out: and further, as in the Earl's confeſſion. Now to conclude, at the Earl's arraignment I uſed a ſentence, ſaying, *O tempora, O mores!* according to that againſt *Cataline*, *Hic tamen vivit*; for which ſaying, divers have ſince charged me, but I will ſay it again; and add this to it,

Dixerat O mores, O tempora! Tullius olim,
Romanum ſtruerat cum Catilina nefas.
O tempora dicimus, &c.
Et cur non dicimus, O mores!

Now the jury went out to agree upon the Verdict, which after half an hour's time and more, they brought in, and found every of the five Priſoners ſeverally guilty of High-Treaſon. The Verdict being entered, and the Jury diſcharged, the Queen's Serjeant prayed Judgment. The Chief-Juſtice then demanded of the Priſoners, what they had to ſay for themſelves, why Judgment ſhould not be given againſt them?

Sir *Chriſtopher Blunt* then ſaid, My Lords, for my high offence tending to Treaſon, in that I have riſen in Rebellion againſt her Majeſty, I have nothing ſo ſay to excuſe myſelf, or extenuate my fault. But of any intention of Evil againſt her Majeſty's perſon, my own thoughts cannot accuſe me. My deſerved, but unfatal fall, I muſt needs impute to my overmuch love to that unhappy Earl. How I have followed him, how I have loved him, as being bewitched with too good an opinion of him, I now with grief feel it! But ſince this my too much fondneſs of him hath only led me into folly with him, and no other ambition, hope, or honour, I beſeech your Lordſhips, and you my Lord-Admiral and Mr. Secretary eſpecially, right me ſo much with your favours, as to relate truly to her Majeſty what my heart and words are before you this day, and let her Majeſty underſtand that it was the fair face of that Earl's pretences, and my near ties unto him, I having *married his mother*, that carried and allured me to that I did, and no diſloyalty or undutifulneſs of mind towards her. What the ſervices be that I have done, and adventures made in ſervice for her Majeſty, others have ſeen, and know what I have felt. This carcaſs of mine, when it ſhall be diſſolved, will ſhew the marks, ſuch was my readineſs in all actions to the honour of her Majeſty; as when my fortune was at the beſt, ſo good as that I enjoyed *two thouſand pounds* a year at the leaſt, beſide other wealth by an honourable Lady whom you all know I married, yet when no commands enforced me, for her Majeſty never commanded my going with the Earl in any journey, yet voluntarily I left all to adventure with the Earl in ſervice for her Majeſty into *Portugal*, at *Cales*, *the Iſlands*, and in *Ireland*,

Ireland, I was with him. And altho' all this be nothing to weigh againſt this preſent fact, and ſo I have nothing of deſert that may plead mercy for me, yet if her Majeſty, out of the abundance of her grace and mercy, ſhall afford me life, I doubt not but as I have done, ſo I may live to do; and if I live, I will be as ready as any ſubject the Queen hath to do the ſervice for her Majeſty which ſhall deſerve my life. And this is all I wiſh, that ſince I have but a life to give unto her Majeſty, that I might give it to the performance of ſome more acceptable ſervice rather than to this end. But if it be reſolved, as I have deſerved, that die I muſt, it is not life I care for; for a death I owe unto her Majeſty, and will yield it chearfully. And ſince the Earl that gone is, whoſe undue courſe hath brought us to this due puniſhment, hath left a blot upon me, and ſo far touched me in reputation and credit, as if I had been plotter and procurer of him to more dangerous practices than theſe, I muſt needs clear myſelf, that neither in foreign practices, which I count confederacies with *Spain*, nor in domeſtical dealings, which I count that with *Scotland*, in reſpect of their nearneſs to us, I have ever had to do ſo far, as to allow or adviſe any thing to the hurt of this State. Againſt you, Mr. Secretary, I cannot but confeſs I have aſſented to too great wrongs, and beyond that I am worthy, it pleaſeth your Honour of your charitable diſpoſition to forgive me; otherwiſe of the State I have never deſerved evil. And for my further clearing, I deſire humbly to be permitted to private conference with your honour, my Lord-Admiral, and with Mr. Secretary.

Which was yielded to. And that night he was brought into the Court of Wards, after the Court roſe.

Sir *Charles Davers* being demanded what he had to ſay, why Judgment ſhould not be given againſt him, uſed theſe words: I have nothing to ſay in ſtay of Judgment, for it is but juſt that I be adjudged to die: only this I ſay, my greateſt fault was to conſent unto things propounded, for my intention was far from thought of hurt unto her Majeſty. I was never any perſuader or inſtigator of the Earl in theſe things; nay, till I was ſent for purpoſely by the Earl out of the country, I was a ſtranger to theſe purpoſes: then finding my Lord of *Southampton*, to whom I owed my love and life itſelf, that he was ſo far engaged in the buſineſs, and deſired my aſſiſtance, I yielded advice to him, and gave conſent to that I now repent; for there was no reaſon in me to ſeek changes, the preſent being better to me than alteration could promiſe. Ambition I had none, for my eſtate was good; diſcontentment could not trouble me, for I had been well uſed: but by all this my offence was the greater, in giving offence to the Queen, who had been ſo gracious unto me. Contrary to the reſolution I came with, I have pleaded Not guilty, but this grew through the error of my underſtanding; but to the juſtifying of what is found, I alſo confeſs myſelf guilty. And though I have no cauſe to hope, yet do I not deſpair of her Majeſty's mercy; and if it ſhall be her Majeſty's pleaſure to ſhew mercy, your Lordſhip and all here ſhall ſee, that none lives that ſhall better deſerve life. But if her Majeſty's pleaſure be to execute Juſtice, I only requeſt this with my beſt prayer, that I may die in her Majeſty's favour. And theſe few requeſts I have to make, which I recommended unto your Lordſhips, my Lord-Admiral, and to your Honour, Mr. Secretary, that if I muſt die, that I may have ſome time given me to ſettle my conſcience, and reſolve my ſoul, becauſe hitherto my hoping having been much, my care hath been the leſs this way; and if it may be thought fit, I deſire to have one of my ſervants to repair to me for ordering of ſome things I have to do. And laſtly, that your Honour, Mr. Secretary, remembring what your promiſe was to me, in reſpect of my deſcent and alliance to ſome noble blood, you will ſo far grace me, as to beg the favour of her Majeſty, *that I may be beheaded*. And one requeſt more, I beſeech you, let me make ſuit to ſee the Earl of *Southampton* before I die.

Sir *Chriſtopher Blunt* upon this ſaid, My Lords, this weak, bruiſed head of mine made me forget that which I minded to have begged: That in reſpect I have always profeſſed Arms, and been Marſhal of the Field, a place of Honour, I may have ſo much grace as *to be beheaded*.

My Lord-Admiral and Mr. Secretary told them both, they would remember it to the Queen.

Sir *John Davis* ſaid, I have nothing to ſay, but only to appeal to mercy. I confeſs I have highly offended, yet if it pleaſe her Majeſty to extend mercy unto me, it ſhall not be to an unworthy ſervant: my former anſwers and diſcloſes have not been to purchaſe favour, but to diſcover truth; and though by this I challenge no mercy, yet it intimates deſert of favour. My great remorſe and grief is for my poor *wife's eſtate*, to think that I being ſo much benefited and advanced by her, muſt now be the means to undo her; for I hear all her eſtate is ſeized on. Wherefore I beſeech this favour, that ſhe be not afflicted for my offence, but may enjoy what was her own.

Mr. Secretary, upon occaſion of this ſpeech of *Davis*, what he diſcloſed, ſaid, Tho' his place did appropriate that to him to be the deliverer and reſtorer of requeſts; yet in this buſineſs nothing had been done or ſaid by any, but three at leaſt of the chief Counſellors of State have been privy to all that paſſed, and I only the Regiſter of things moved unto them. And this I will ſay, that during all the time of the Earl's reſtraint from the court, his Letters have always had free paſſage to the Queen, and he might write what he liſted, the Queen would ever read that.

Sir *Gilly Merrick*. I have little to ſay; but let what I have done be conſidered, and my offence will be found leſs than others: but the law hath adjudged it Treaſon, and I muſt die, and not unwillingly; for the tree being fallen, the branches muſt not ſtand. I did the office of a ſervant as my maſter bade me, but it was my fault to obey what was not juſt in him to command. My poor eſtate I pray you let be conſidered, it may be thought better of than it is. What it is, I ſhall ſet it down, and humbly pray that my poor wife and children may be pitied.

Cuffe confeſſed the Jury had done but right, in diſcharging their conſciences; yet it was true that Divines held, *condempnatum eum aliquando faciunt quem dampnatum non faciunt*. The gracious proceeding afforded, and all reaſonable requeſts yielded, emboldeneth me to make ſome ſmall requeſt: When I was reſtrained, I had not about me above two ſhillings. I had 350*l*. of ready money ſeized upon in my chamber. When I came into the *Tower*, I was put into a dark place; but afterwards Mr. Lieutenant pitying me, relieved me, and put me in a better place. Wherefore I pray to be returned unto the ſame priſon, for there I am now provided of things neceſſary: otherwiſe perhaps I may be caring for things of this world for neceſſary ſuccour of life, whenas I would now more willingly ſpend all my thoughts in other meditations.

This requeſt was granted.

My ſecond requeſt is to you, Mr. Secretary, that I may have the company of ſome Divine repairing to me for the comfort of my ſoul, and crucifying of my fleſh, that ſo at my farewell to this world with joyful arms I may embrace my Saviour; and for human reſpects, I deſire the law may be ſatisfied with my life, without torturing or quartering my fleſh; and the rather for favour's ſake unto learning, though I have neither place nor great birth to ſpeak for that. To plead for longer or other mercy I will not; but when my body ſhall be executed, ſorrow be unto my ſoul, if ever I intended evil unto her Majeſty's perſon. Alas! it was my too much love unto my Maſter that brought me unto this; but as that Earl, my Maſter, ſaid, now the ſcales were taken from his eyes, and he ſaw his faults; ſo do I, but too late; heretofore in the courſe of my private ſtate, things went ſo ſmoothly with me as I could deſire; my religion was always ſorting to the profeſſion at this day. Some further things I would utter, but I deſire to know whether now I muſt ſpeak, or that I may be allowed pen and paper to write them hereafter.

It was allowed he ſhould have means to write what he would.

Here ended all that paſſed before Judgment.

The Lord Chief Juſtice of *England*, Sir *John Popham*, being now to pronounce Judgment, uſed theſe words:

" I am ſorry to ſee any ſo ill affected to this State as to become plot-
" ters and practiſers againſt the State, and that ſo ſtrongly as you and
" others in this action have done. And my grief is the more in this,
" men of worth, ſervice and learning are the actors in that conſpiracy!
" Shall it be ſaid in the world abroad, that we *Engliſhmen*, now after for-
" ty-three years peace under ſo gracious and renowned a Prince, are be-
" come weary of the Government of ſuch a Queen, whom all the world
" elſe admires for her government? Conſider it well, whoſoever had beſt
" hopes in this attempt of change, what would have followed upon it?
" Let me tell you of the ſmalleſt hurt, the blood of children, families and
" friends; for none of yourſelves can otherwiſe think but this action
" would have coſt much blood. And I am ſorry to think, that *Engliſhmen*
" ſhould ſeem to excuſe themſelves by ignorance of the law, which all
" ſubjects are bound to know, and are born to have the benefit of. Some
" of you now at the Bar are Chriſtians; Where, I pray you, did you ever
" read or hear that it was lawful for the ſubject to command or conſtrain
" his Sovereign? It is a thing againſt the law of God, and all Nations.
" God forbid but that by actions men ſhould be allowed to expound in-
" tents. Now your actions tending to a ſovereignty, cannot but by your-
" ſelves be expounded Treaſon. But your intents, if they were other-
" wiſe, as you pretend, yet are not they to expound the law. For know
" this, that the law, which tends principally to the preſerving of the
" Prince's perſon, is more tender and preciſe in this than in any other
" point.

" And although your Example be pitiful, yet by this, let all men know
" and learn how high all actions treaſonable do touch, and what they
" tend to. To leave off from further diſcourſe, I ſhould now remember
" one thing to you all, but I ſee you all careful of it; that is, the care of
" your ſouls, to keep them from death, whereof ſin is the cauſe; and ſin
" is not removed but by repentance, which being truly and heartily per-
" formed, then follows what the Prophet *David* ſpake of, *Bleſſed are they*
" *to whom God imputeth no ſin!* There will be a courſe taken to inſtruct
" you how to kill ſin in this world, which otherwiſe ſhall not be killed in
" the world to come; for as you leave this world, ſo ſhall it be with you
" in the life to come."

And then pronounced Judgment againſt every of them, as in caſe of High-Treaſon *.

* For *Blunt*'s and *Cuffe*'s Speeches at Execution, ſee *State-Trials*, vol. I. p. 203, 204.

IX. The

IX. The Trial of Sir *Griffin Markham*, Knt. Sir *Edward Parham*, Knt. *George Brooke*, Esq. *Bartholomew Brookesby*, Esq. *Anthony Copley*; *William Watson*, Priest; *William Clarke*, Priest, for *High-Treason*, at *Winchester*, *November* the 15th, 1603. 1 *Jac.* 1*.

The Names of the Commissioners.

The Earl of *Suffolk*, Lord-Chamberlain.
Charles Earl of *Devonshire*.
Henry Lord *Howard*.
Robert Lord *Cecil*, Secretary.
Edward Lord *Wotton*, Comptroller.
John Stanhope, Knight and Chamberlain.
Lord-Chief-Justice of *England*.
Lord-Chief Justice of the *Common-Pleas*.
Justice *Gawdy*.
Justice *Walmesley*.
Justice *Warburton*.
Sir *William Wade*, Knight.

ON *Tuesday* the 15th of *November*, were arraigned at *Winchester*, *George Brooke*, Esq. Sir *Griffin Markham*, Knt. *Bartholomew Brookesby*, Esq. *Anthony Copley*, Gent. *William Watson*, Priest; *William Clarke*, Priest, and Sir *Edward Parham*, Knt.

The Effect of the INDICTMENT.

" FOR consulting with the Lord *Gray* and others, traitorously to surprise the King and young Prince at *Greenwich*, to carry them to the " Tower guarded with some, that after the slaughter of many of the " guards, should put on the guards coats, and so bring them, sending " the Lord-Admiral before to signify the distress where the King was, " and escape he made by the guards from *Greenwich*; and therefore desired to be taken in there for more safety. Which, if they could have " effected, the treasures and jewels in the Tower should serve the turn " for the effecting of their further purposes; that some of those of the " Privy-Council, *viz.* the Lord-Chancellor, Treasurer *Cecil*, Chief-" Justice, should be removed and cut off: and Mr. *Watson* should be Chan-" cellor, *Brooke* Lord Treasurer, and *Markham* Secretary; *Gray* Lord-" Marshal and Master of the Horse, if the now Master of the Horse were " otherwise preferred; but for the Lord-Chief-Justice no man named. " If their project for bringing them to the Tower failed, then to convey " the King to *Dover*, where *George Brooke* presumed upon his interest " with *Thomas Vands*; but Mr. Attorney justified his Assurance of the " Lord *Cobham*. In one of these places they meant to have kept the King " for the space of three months, and at their first entrance, they should " require three things. 1. A general pardon of all their purposes and in-" tentions against the King and Prince. 2. The King should yield to a " Toleration of religion; with an equality of all Counsellors and other " Officers, as well Papists as Protestants, within his Court or otherwise. " 3. That he should remove and cut off the fore-mentioned Counsellors, " and others who should be thought to hinder this designment, for which " purpose *Watson* named *Veale*, alias *Cole*, to alledge sufficient matter " against them.

" And for the better effecting of this their purpose, *Watson* had devised " under writing an oath should be administred for the preservation of the " King's person, for the advancement of the Catholick religion, and for " the concealing of all secrets that should be revealed unto them. That " all the actions should be proceeded withal in the King's name, and they " meant to send for the Lord-Mayor and Aldermen of *London*, that the " King would speak with them: whom they meant to keep in safe custody, " till they had delivered hostages to them not to withstand their assign-" ments, and to furnish them with all such necessaries as they should re-" quire from them. *Watson* was the villainous hatcher of these Treasons; " and *Brooke*, upon the learning of them, was as eager a prosecutor; and " the Lord *Gray* more eager and violent than he, purposing to make a suit " to the King for carrying over a regiment for the relief of *Ostend*, which " he would have ready for the defence of his own person in this action, " fearing the greatness of the catholick forces according to the promises " of *George Brooke*, *Markham* and *Watson*, and knowing not how he might " be dealt withal amongst them."

Mr. *George Brooke* said little or nothing in his own defence, only he made a ridiculous argument or two in the beginning: *viz.* that, that only could be the judge, and examiner of any action, which was the rule of the action: but the Common Law was not the rule of the action, *Ergo*, it could not be judge or ruler of the action: and therefore appealed to the person of the King. 2. That the Commissioners or Common Law had no authority over them; because it is a maxim in the law, *ejus esse condemnare, cujus est absolvere:* but the Common Law could not absolve him, being guilty, therefore could not condemn him.

Mr. Attorney to this would have answered particularly, but was by the Commissioners and Judges willed to reduce himself to his own element.

My Lord *Henry Howard* undertaking to have answered him, my Lord-Chief-Justice told him, that the King, by reason of his many causes, had many under him to execute the law of Justice; but he kept in his own hands the key of Mercy, either to bind or loose the proceedings, as in his own princely wisdom he should think fit.

Therefore said Mr. Attorney, you, Mr. *Brooke*, professing yourself to be learned, cannot be ignorant that both your ancestors have been, and you must be liable and subject yourself to the trial of the law of this nation, wherein you were born, and under which you live, & *ignorantia juris non excusat*. These treasons were term'd by the Lord *Cobham The Bye*, as Mr. *George Brooke* confessed to *Watson* and the Lord *Gray*; but, said he, *Walter Raleigh* † and I are chanced at the *Main*. Whereupon Mr. Attorney gave a touch of the treasons of the Lord *Cobham* and *Raleigh*, who had procured from *Aremberg* five or six hundred thousand Crowns, to be disposed by the Lord *Cobham*, who should therewith raise forces for the extirpation of the King and his Cubbes, and putting both *Scotland* and *England* in combustion; and so upon *Cobham*'s return out of *Spain*, to meet *Raleigh* at the isle of *Jersey*, and so to put on foot both titles, both within and without the land.

Mr. *George Brooke*, after his first arguments, spake little or nothing for himself, more than his own confession led him otherwhiles to excuse or qualify his own offence; only he gave cast of a letter, which, he said, he received from his Majesty, wherein he had liberty and authority to deal in the sounding out of these practices; but neither at any time before nor at his arraignment, could shew the said letter. And the King being by some of the Lords Commissioners questioned withal on that point, requireth his letter to be produced, and denieth he wrote any such letter.

Sir *Griffin Markham* answered exceeding well, and truly to all things; denying nothing for his fault of Treason; but that he deserved death upon the persuasion of *Watson*, by whom he was misled, and assured that the King before his Coronation was not an actual, but a political King: only he desired to avoid the imputation of effusion of blood in that enterprize, and (if it were possible) the brand of a Traitor for his house and posterity, protesting how careless he was of his own life, which he desired to be exposed to any hazard or sacrifice (tho' it was never so desperate;) which if the King would not (in mercy) yield him, yet he desired their Lordships to be intercessors, that he might die under the Axe, and not by the Halter.

Watson spake very absurdly and deceivingly, without grace, or utterance, or good deliverance; which (added to his foresaid villainy) made him more odious and contemptible to all the hearers.

Clarke, the other Priest (an excellent nimble-tongu'd fellow), of good speech, more honest in the carriage of the business, of an excellent wit and memory, boldly, and in well-beseeming terms, uttering his mind, not unwilling to die, but desireth to avoid the imputation of a Traitor.

Copley, a man of a whining speech, but a shrewd invention and resolution.

Brookesby drawn in merely by *Watson* to take the oath before-mentioned, for some of the particularities, as the bringing the King to the Tower for the advancement of religion; but spake with nobody to incite them to the business, nor came himself according to his Time appointed by *Watson*, the 23d or 24th of *June*, but at that instant attended upon the Queen.

Sir *Edward Parham* was also by that villain *Watson* dealt withal after he had tendered him the oath to this purpose: that he understood the Lord *Gray* meant with forces to set upon the King, and to surprize him, that against that time, whether he would not draw his sword against the Lord *Gray* with the King's servants and friends? And if the King's servants were discomfited, whether with the rest of the Catholics he would not encounter the Lord *Gray*, and if he could bring him to the Tower for his relief and the advancement of the Catholick religion?

Parham told him, that he would so, if he was persuaded that his intendment of the Lord *Gray* were true, which at that time *Watson* could not assure him of; for he did but hear of so much: but said he, when I have better assurance thereof, which will be within these three days, you shall further hear of me. He staying the time, *Watson* came not, and so *Parham*'s proceedings went no further: but being urged in the point for bringing the King to the Tower, for the advancement of the catholick

* Copied from a MS. in the *Bodleian* Library, *Rotulæ in Archivo.* A. 3033. 44. 8.

† Sir *John Hawles* (Sollicitor-General *Temp. Will.* III.) in his reply to Sir *Bartholomew Shower*'s *Magistracy and Government of England Vindicated*, &c. pag. 32, says, the King came to *London* in *May*, and in *July* following was the pretended plot discovered; and in *November* following, the pretended delinquents were tried at *Winchester*, together with *Watson* and *Clarke*. Their accusations were in general.

First, To set the Crown on the Lady *Arabella*'s head, and to seize the King.

Secondly, To have a toleration of Religion.

Thirdly, To procure aid and assistance from foreign princes.

Fourthly, To turn out of Court such as they disliked, and place themselves in Offices.

Of these the first article is treason; what crimes the rest are, is doubtful. What of them was proved against the Lords *Cobham* and *Gray*, *Watson* and *Clarke*, or how their Trials were managed, doth not appear: but Sir *Walter Raleigh*'s Trial does appear, and is much like the Lord *Russel*'s, and therefore of some circumstances of it, I think, it is fit to take notice. Instead of consults, &c. in the Lord *Russel*'s Trial, the cant words of the surprizing *the Bye*, and *the Main*, were made use of in Sir *Walter*'s, interpretable as the Council thought fit; at least it was astonishing to the Jury, which was all that was designed by the Council, and fatal to the Prisoners. I have no mind to run through all the ramble of Sir *Walter Raleigh*'s Trial, as it is printed before his History of the World, because the parallel is too exact, and sticks too close to the memory of Persons gone: only I will say, That if Sir *Walter Raleigh* was guilty of the thing he was accus'd of by the witnesses, though the accusation did not amount to a legal proof, it was High-Treason; but if the Lord *Russel* was guilty of the things he was accused of, he was not guilty of High-Treason.

And the same Author, says, pag. 35, I think it is plain at this day, that of Sir *Walter Raleigh*'s is thought a sham plot; what the Lord *Russel*'s is thought, let the Author say, I am loath to enumerate all, but if any person will give himself the trouble of reading and comparing the Trial of the Lord *Russel* with that of Sir *Walter Raleigh*, they will find them exactly parallel in a number of other particulars.

religion

Religion, he ſaid, he made no doubt, but that he with others, adventuring their lives for the reſcuing the King from the Lord *Gray*, and bringing him for his ſafety to the Tower, this then would not but merit ſome grace from the King, for the advancement of the Catholic religion.

Sir *Francis Darcy* being Foreman of the Jury, and excellently commended for this Day's carriage and behaviour, made two or three doubts concerning Sir *Edward Parham*'s caſe, and received reſolution from the Bench in ſome points, and the reſt left to his conſcience and underſtanding, went with the reſt of the Jury, and found all guilty, ſaving *Parham*, and ſo he was diſcharged; and upon the reſt ſentence of death was pronounced by the Lord-Chief-Juſtice.

The Copie of a *Letter* written from Maſter *T. M.* neere *Salisbury*, to Maſter *H. A.* at *London*, concerning the proceeding at *Winchester*; where the late Lord *Cobham*, Lord *Gray*, and Sir *Griffin Markham*, all attainted of hie Treaſon, were ready to be executed, on *Friday* the 9th of *December*, 1603.

At which time his Majeſties Warrant, *all written with his own hand*, (whereof the true Copie is here annexed) *was deliured to Sir* Benjamin Tichbourne, *High Sheriffe of* Hampſhire, *commanding him to ſuſpend their execution till further order.*

Imprinted at *London*, 1603.

SIR

I Haue receiued a letter from you; by which I perceiue howe much you deſire to be particularly enſourmed of the cauſe and manner of the ſtay of the late Lord *Cobham*'s, Lord *Graye*'s, and Sir *Griffin Markham*'s execution, appointed at *Winchester*; wherein, although there are many better able to diſcourſe at large of ſuch an action then myſelfe, yet I conceiue when you have peruſed this plaine and true relation, of that which all men there behelde that day, and many more ſince haue heard, from perſons of the beſt qualitie and knowledge, you will thanke me more, for ſuffering the trueth to ſhew itſelf vnclothed, then if I had laboured to haue deliuered you a tale well painted with curious words and fine phraſes.

You muſt therefore vnderſtand, that as ſoone as the arraignments were paſſed at *Winchester*, his Majeſties Priue-Counſel (to the number of fourteene or fifteene, of which companie all of them had either beene tryers of the Noblemen as their Peers, or ſitten as high Commiſſioners vpon the Gentlemen) were called before his Majeſtie (in his Priue-Chamber) at *Wilton*, where he commanded them to deliuer (without reſpect to any perſon) the true narration onely, of the order in the Triall of theſe perſons that had beene condemned by the lawe, and of the nature and degree of their offences, as had appeared in euery one of them, by their ſeueral anſweres.

All which being cleerely and juſtly reported by them (each ſpeaking in the hearing of the reſt) his Majeſtie, for his part, uſed himſelf ſo grauely and reſeruedly in all his ſpeeches, as well to themſelues at that time, as alſo to all other perſons after, in priuate or publique, as neither any of his Priue-Counſell, Nobilitie, or any that attended neereſt to his ſacred perſon, durſt preſume to mediate for any, or ſo much as to enquire what ſhould be the concluſion of this proceeding.

In the meane time, while the Court was full of uariety of diſcourſe, ſome ſpeaking out of probabilitie, others arguing out of deſire, what was like to be the fortune of all, or of any of theſe offendours, his Majeſtie hauing concluded onely in his own ſecret heart (which is the true oracle of grace and knowledge) in what manner to proceed; and that without aſking counſel of any earthly perſon; it pleaſed him to reſolue betweene God and himſelfe, that their execution ſhould be ſtayed, euen at the inſtant when the Axe ſhould be layde to the trees rootes. For the ſecret and orderly carriage whereof, his Majeſtie was careful to preuent all cauſe or colour of ſuſpicion, of that judicious, royall, and vnexpected courſe which followed. And therefore, after the two Prieſts were executed, on *Tueſday* the 29th of *November*, and Maſter *George Brooke* on *Monday* following, his Majeſtie on the ſame day, being the 1ſt of *December*, ſigned three Warrants, for the execution of the late Lord *Cobham*, Lord *Gray*, and Sir *Griffin Markham*, Knight, with particular direction to the Sheriffe, to performe it on *Friday* after, before ten a clocke in the morning.

All theſe directions being now become notorious, both by the writs of execution (which paſſed vnder the Great Seale) and by the making readie the Scaffolds at *Winchester*, his Majeſtie uery ſecretly (as now appeareth by the ſequele) drewe himſelfe into his cabinet, on *Wedneſday* before the day of execution, and there priuately framed a Warrant, written all with his own hand, to the Sheriffe, by vertue whereof he countermaunded all the former directions, alledging the reaſons therein mentioned. Of which ſeeing no man's pen can ſo well expreſſe, as his owne, I ſend you the Copie *verbatim*, as I took it out of the originall, which many read in my couſin Sir *Benjamin Tichbournes* hand.

And now to come to the ordering of this buſineſſe; among many other circumſtances, it is uery remarkable, with what diſcretion and foreſight that perſon was elected, which muſt be vſed in carriage of the Warrant. Firſt, his Majeſtie reſolved it ſhould be a *Scottiſhman*; being thereby like to be freeſt from particular dependencie vpon any Nobleman, Counſellors, or others, their friends or allyes. Next hee reſolued, to ſend a man of no extraordinarie ranke, becauſe the ſtanders-by ſhould not obſerue any alteration, nor the delinquents themſelves ſhould take any apprehenſion of ſuch a man's being there at that time: this being his Majeſties ſpeciall deſire, that euery one of them (being ſeuerally brought vpon the Scaffold) might quietly breath foorth their laſt wordes, and true confeſſion of his ſecreteſt conſcience. And ſo (to be ſhort) his Majeſtie made choice of Mr. *John Gibb*, a *Scottiſhman* (as aforeſaid) a man that had neuer dealt with any Counſellor, or other, for ſuite or buſineſſe, but one that had (within ſhort while after the King's firſt entrie) bene ſent backe into *Scotland*, from whence he was but freſhly arriued at *Wilton*, ſome fewe dayes before.

This party being by the King approoued for an ancient, truſtie, and ſecret ſeruant (as a Groome of his Majeſties bed-chamber) and a man (as is ſaid before) little knowen, and leſs bound to any Subject in *England* for any benefit, receiuing the Warrant ſecretly, on *Thurſday*, from the King's owne hand, and telling his fellowes (who would otherwiſe haue miſſed him) that he muſt lie that night at *Salisbury* vpon ſome priuate buſineſſe of his owne, he rode directly to *Winchester*, and there, keeping himſelfe priuate all night, roſe earely in the morning on *Friday*, and went obſcurely to the Caſtle-greene, where the people flocking in all the morning, as the time drewe neere, he put himſelfe with the throng, cloſe by the Scaffold, and there leaned till the Sheriffe brought up Sir *Griffin Markham* to the place, who was the man appointed firſt to die.

There the ſayd Sir *Griffin Markham*, hauing ended his prayer, and made himſelfe readie to kneele downe, Mr. *John Gibb* finding it fit time, while the axe was preparing, to giue ſome ſecret notice of his charge, called to my couſin *Tichbourne*, the Sheriffe, to ſpeake with him, and then deliuered him (priuately) his Majeſties Warrant, with further directions uerbally, how he ſhould vſe it.

Herevpon the Sheriffe, perceiuing fully his Majeſties intention, ſo warily and diſcreetly marſhalled the matter, as hee onely called Sir *Griffin Markham* vnto him on the Scaffold, and told him, that he muſt withdraw himſelfe into the hall, to be confronted (before his death) before thoſe two Lords, that were to follow him, about ſome points that did concern his Majeſties ſeruice; and ſo carrying *Markham* into the hall, he left him there, and went vp haſtily, for the Lord *Gray*, to the Caſtle, who being likewiſe brought vp to the Scaffold, and ſuffered to powre out his prayers to God (at great length) and to make his laſt confeſſion, as he would anſwere it upon his ſoule, when he was readie to kneele downe, to receiue the ſtroke of death, Maſter Sheriffe cauſed him to ſtay, and told him that he muſt goe downe for a while into the hall, where finding Sir *Griffin Markham*, he willed him to tarry there till he returned.

Laſt of all, he went for the Lord *Cobham*, who hauing alſo ended his deuotion to God, and making himſelfe ready to receiue the ſame blow, the Sheriffe finding the time come to publiſh the King's mercie to the worlde, and to reueale his myſterie, he cauſed both the Lord *Gray* and Sir *Griffin Markham* to be brought backe to the Scaffold, and there, before them all three that were condemned, and in the hearing of all the company, notified his Majeſties Warrant, by which he was authoriſed to ſtay the execution. Which ſtrange and vndeſerved Grace and Mercie, proceeding from a Prince, ſo deeply wounded without cauſe, or colour of cauſe giuen by himſelfe toward them in any thing, but meerely contrary (to both the Lords eſpecially) bred in the hearts, as well of the offenders as of the ſtanders-by, ſuch ſundry paſſions, according to the diuers tempers of their minds, as to ſome that ſhall receiue thoſe things by report, which others did behold with their eyes, my relation may rather ſeeme to be a deſcription of ſome ancient Hiſtory, expreſſed in a well-acted comedy, than that it was euer poſſible for any other man to repreſent, at one time, in a matter of this conſequence, ſo many liuely figures of Juſtice and Mercy in a King, of Terror and Penitence in Offenders, and of ſo great Admiration and Applauſe in all others, as appeared in this Action, carried only and wholy by his Majeſties owne direction.

The Lord *Cobham* (holding his hand to Heauen) applauded this incomparable Mercie of ſo gracious a Soueraigne, aggrauating his owne fault, by comparing it with the Princes Clemencie, wiſhing confuſion to all men aliue, that ſhould euer thinke a thought againſt ſuch a Prince, as neither gaue cauſe of offence, nor tooke reuenge of ingratitude.

The Lord *Gray*, finding in what meaſure this rare King had rewarded good for euill, and forborne to make him an example of diſcouragement and terror to all men that hereafter might attempt to break the bonds of loyalty, vpon the paſſions of any ambition, began to ſob and weep for a great while, with moſt deep contrition, proteſting now, that ſuch was his zeale and deſire to redeeme his fault by any meanes of ſatisfaction, as he could eaſily ſacrifice his life, to preuent the loſſe of one finger of that royall hand, that had dealt ſo mercifully with him, when he leaſt looked for it.

Sir *Griffin Markham* (ſtanding like a man aſtoniſhed) did nothing but admire and pray. The people that were preſent witneſſed, by infinite applauſe and ſhouting, the joy and comfort which they took in theſe wonderfull effects of Grace and Mercy, from a Prince whome God had inſpired with ſo many royall gifts for their conſeruation, and would conſerue for his owne glorie.

The crie being carried out of the Caſtle-gates into the Town, was not onely ſounded with acclamation of all ſexes, qualities and affection, but the true report, diuulged ſince in all partes, hath bred in the wooriſt diſpoſed mindes, ſuch remorſe of iniquitie, in the beſt ſuch incouragement to loyaltie, and in thoſe that are indifferent ſuch feare to offend, and generally ſuch affection to his Majeſties Perſon, as perſwades the whole world, that Sathan himſelfe can neuer ſo far prevail with any, as to make them lift vp their hearts or hands againſt a Prince, from whom they receiue ſuch true effects of Juſtice and Goodneſs.

To conclude, therefore, I haue now done my beſt to ſatisfy your deſire, though I feele (to my griefe) how ſhort I come to my own wiſh; becauſe I would haue expreſſed to the life (if it had been poſſible) both the matter and the forme of this proceeding; of both which the wiſeſt men, that haue ſeene and vnderſtoode all particular circumſtances, are at the ende of their wits, to giue an abſolute cenſure, whether of them both deſerue greater recommendation: this being moſt aſſured, that there is no Record extant, wherein ſo great wiſdome and vnderſtandinge, ſo ſolid judgement, ſo perfect a reſolution, to giue way to no requeſt, or mediation: ſo inſcrutable a heart, ſo royall and equal a tempered Mercie, after ſo clear and publike Juſtice, haue euer concurred ſo demonſtratiuely as in this late Action, wherein this bleſſed King hath not proceeded after the manner of men and of Kings, *Sed cæleſtis Judicis, æternique Regis more*, whereof he ſhall be moſt aſſured to reape theſe laſting fruites, of being beloued and feared of all men, obeyed with comfort, and ſerued with continuall joy and admiration. And ſo forbearing to hold you any longer at this time, I end. From my houſe, neere *Salisbury*, the 15th of *December*, 1603.

Your Lovin Couſin and Friend,

T. M.

His Majeſties *Warrant*, written with his own hand.

ALTHOUGH it be true, that all vell gouernid and flouriſhing Kingdomes and common Vealthis are eſtabliſhed by Iuſtice, and that theſe tuo Noblemen by birthe, that aire nou upon the point of Execution, aire for thair treaſonable practices condemnid by the Lawe, and adiudgit worthy of the

the execution thaireof, to the example and terror of otheris; the one of thaim hauing filthily practiſed the ouerthrow of the quhole kingdome, and the other for the ſurpriſe of our owin Perſonne; Yet it in regaird that this is the firſt yeere of our Raigne, in this Kingdome, and that neuer King was ſo farre obliſheid to his people as ve haue bene to this, by our entrie heere vith ſo hairtie and generall an applauſe of all ſorts; Among quhom all the kinne, friendis, and allies of the ſaidis condemnit perſonnis vaire as forduart and duetifull as any other our good Subiectis, as alſo that at the very time of thair Arrainement none did more freely and reddily giue thair aſſent to their conuiction, and to deliuer thaim into the handis of Iuſtice, then ſo many of thair neereſt Kinſmen and Allies (as being Peeris) vaiere vpon thair Iurie; As likeuaiſe in regard that Iuſtice hath in ſome ſort gottin courſe alreadie, by the execution of the tuo Prieſtis, and George Brooke, *that vaire the principall plotteris and intiſairs of all the reſt, to the embracing of the ſaiddis treaſonabill Machinations;* Vee *thairfore (being reſoluid to mix Clemencie with Iuſtice) aire contented, and by theſe Preſentis command you, our Sheriffe of* Hampſhire, *to ſuperſeide the Execution of the ſaidis tuo Noblemen, and to take thaim backe to thair priſon againe, quhile our further pleaſure be knowin. And ſince vee vill not haue our Lawis to haue reſpect to perſonnis, in ſpairing the great, and ſtrikking the meaner ſort; it is out pleaſure, that the like courſe be alſo taken with* Markham, *being ſorry from our hairt, that ſuch is, not only the heynous nature of the ſaidis condemnid perſonnis crime, but euen the corruption is ſo great of thair naturall diſpoſition, as the care vee haue for the ſafety and quiet of our State, and good Subiectis, vill not permit vs to vſe that clemencie tovardis thaim, quhich, in our owin naturall inclination, vee micht very eaſily be perſuadit vnto.*

X. *The Caſe between Sir* Francis Goodwin *and Sir* John Fortescue, *in the Reign of King* James I. *as it ſtands upon the Journals of the* Houſe of Commons.

[*Mercurii* 14 *die Martii*, 1604.

Ordered,
That what ſtands upon the Journal of this Houſe, of King *James* I. in the Caſe between Sir *Francis Goodwin* and Sir *John Forteſcue*, be printed.

Paul Jodrell, Cl' Dom' Com'.]

Die Jovis 22° *Martii*, 1603-4.

THE firſt motion was made by Sir *William Fleetwood*, one of the Knights returned for the County of *Bucks*, on the behalf of Sir *Francis Goodwin*, Knight; who, upon the firſt Writ of Summons directed to the Sheriff of *Bucks*, was elected the firſt Knight for that Shire: but the Return of his Election being made, it was refuſed by the Clerk of the Crown (*quia utlagatus:*) and becauſe Sir *John Forteſcue*, upon a ſecond Writ, was elected, and entered in that place, his deſire was, that this Return might be examined, and Sir *Francis Goodwin* received as a Member of the Houſe. The Houſe gave way to the motion; and for a more deliberate and judicial proceeding in a caſe of Privilege ſo important to the Houſe,

Ordered, 'That the Serjeant (the proper Officer of the Houſe) ſhould 'give warning to the Clerk of the Crown to appear at the Bar at eight 'a-Clock the next morning, and to bring with him all the Writs of 'Summons, Indentures, and Returns of Election for the County of *Bucks*, 'made and returned for this Parliament; and to give warning alſo to Sir '*Francis Goodwin* to attend in perſon, whom their pleaſure was to hear, '*ore tenus*, to deliver the ſtate of his own cauſe, and the manner and rea-'ſons of the proceeding in the Election of the Knights of the Shire for that 'County.'

This being a motion tending to matter of privilege, was ſeconded with another by Mr. Serjeant *Shirley*, touching an arreſt of Sir *Thomas Riley*, &c.

Die Veneris, *viz.* 23° *Martii*, 1603-4.

SIR *George Copping*, Knight, Clerk of the Crown in the Chancery, this day, (according to former Order) being attended by the Serjeant of the Houſe with his Mace, appeared at the Bar, and produced all the Writs of Summons, Indentures, and Returns made of the Knights for *Buckinghamſhire* for this Parliament; which were ſeverally read by the Clerk of the Houſe, and then the Clerk of the Crown commanded to retire to the door: And after, Sir *Francis Goodwin* himſelf (whom it ſpecially concerned) attending to know the pleaſure of the Houſe, was called in, to deliver the ſtate of his own cauſe, *ore tenus*; wherein he was heard at large, and commanded again to retire until the Houſe had determined what to do.

In this mean time the whole caſe was at large opened, and argued *pro & contra* by ſundry learned and grave Members of the Houſe, and after much diſpute the queſtion was agreed upon, and made.

Queſt. 'Whether Sir *Francis Goodwin* were lawfully elected and re-'turned one of the Knights for *Bucks*; and ought to be admitted and 'received as a Member of this Houſe?

Upon this Queſtion it was

Reſolved in the affirmative, That he was lawfully elected and returned, and (*de jure*) ought to be received.

Hereupon the Clerk of the Crown was commanded to file the firſt Indenture of Return: and order was given, that Sir *Francis* ſhould preſently take the oath of Supremacy uſual, and his place in the Houſe; which he did accordingly.

Die Martis, *viz.* 27° *die Martii*, 1604.

SIR *Francis Bacon*, in reporting a conference with the Lords, touching Wardſhip and other things, reported that a Lord touched the Caſe of Sir *Francis Goodwin* as a thing he had heard at large, but did not underſtand it; and therefore deſired to know it more particularly from this Houſe.

Anſwer was made, That they had no Warrant from the Houſe to ſpeak of it.

Sir *Edward Coke*, his Majeſty's Attorney-General, and Mr. Doctor *Hone*, bring a Meſſage from the Lords, expreſſing with what acceptation their Lordſhips entertained their motion yeſterday, not only for the matter being of very great weight and conſequence, but eſpecially for the manner; namely, That, touching Wardſhip, they would not petition for eaſe in it as a matter of wrong, but of grief; and pray to be relieved by grace, and not by juſtice: And their Lordſhips for anſwer were deſirous, and moved at that time to couple in the ſame petition the matter of grievance, of reſpite of homage, which his Majeſty, out of his gracious favour and love to his people, had himſelf taken knowledge of. "And as they con-"ceive it to be likely, that the conference may continue between "the two Houſes, touching the ſaid matters; as they are very zealous of "the furtherance of their purpoſe, ſo are they jealous of any impediment "that may breed lett, or hindrance therein: therefore they deſire, for a "more clear proceeding and removing of all ſtumbling-blocks, that the "former Committees may, in a ſecond conference to be had, have autho-"rity to treat touching the Caſe of Sir *Francis Goodwin*, the Knight for "*Buckinghamſhire* firſt of all, before any other matter were farther pro-"ceeded in."

A. The anſwer to this meſſage, (as in ſuch caſes is for the more part uſual) 'That they would return anſwer by meſſengers of their own.'

Upon this meſſage it was argued by ſome, 'That in no ſort they ſhould 'give account to the Lords of their proceedings in the Houſe; but that 'Mr. Speaker ſhould from the Houſe be a Suitor to his Majeſty, to have 'acceſs, and as their common mouth give his Highneſs ſatisfaction by 'direction from the Houſe: That now the judgment of Sir *Francis Good-'win*'s caſe having paſſed the Houſe, it could not, nor ought not, to be 'reverſed by them. A precedent, *Anno* 27 *Eliz.* cited; where a bill 'brought down from the Lords, upon the firſt reading was rejected; the 'Lords ſent meſſengers to demand a reaſon of their judgment. It was 'denied to yield any reaſon.'

This argument brought forth this queſtion, which Mr. Speaker was ordered by the Houſe preſently to make, *viz.*

Queſt. 'Whether they ſhould confer with the Lords, touching the caſe of Sir *Francis Goodwin* the Knight for *Buckinghamſhire*?'

And *Reſolved*, That they ſhould not.

It was then conſidered as fit to return ſome anſwer of the meſſage from the Lords; and Mr. Secretary *Herbert*, with ſome other of the Committees, were appointed to deliver to their Lordſhips, from the Houſe,

That they did conceive it did not ſtand with the *Honour* and *Order* of the Houſe, to give account of any their proceedings or doings: but if their Lordſhips have any purpoſe to confer for the reſidue, that then they will be ready at ſuch time and place, and with ſuch number as their Lordſhips ſhall think meet.

Upon the laſt meſſage to the Lords, the meſſengers return, That their Lordſhips would preſently ſend anſwer by meſſengers of their own.

Sir *Edward Coke*, his Majeſty's Attorney-General, Mr. D. *Carew*, Mr. D. *Hone*, and Mr. *Tyndall*, delivered from the Lords, That their Lordſhips taking notice in particular of the Return of the Sheriff of *Bucks*; and acquainting his Majeſty with it, his Highneſs conceived himſelf ingaged and touched in honour that there might be ſome conference of it between the two Houſes: and to that end, ſignified his pleaſure unto them, and by them to this Houſe.

Upon this meſſage, ſo *extraordinary* and *unexpected*, the Houſe entered in ſome conſideration what were fit to be done; and

Reſolved, That his Majeſty might be moved for acceſs the next day. And afterwards they underſtood his pleaſure to be, That they ſhould attend at *Whitehall* at eight a-cloek the next morning. But becauſe the time was then ſomewhat far ſpent, they

Ordered, That the Houſe, with Mr. Speaker, ſhould meet at ſix a-Clock the next morning in the Houſe.

Yet afore their riſing, they thought fit to name a Committee, to ſet down the effect of that which Mr. Speaker was to deliver from the Houſe to the King, *viz.*

Sir *Francis Bacon*,	Mr. Serjeant *Hobbard*,	Sir *Robert Cotton*,
Mr. *Wentworth*,	Sir *Robert Wingfield*,	Sir *Thomas Lake*,
Mr. *Martin*,	Mr. *Hide*,	Sir *Oliver St. John*,
Mr. Serjeant *Sing*,	Mr. *Diet*,	Sir *Edward Stafford*,
Sir *Robert Wroth*,	Mr. *Winch*,	Mr. *Anthrobus*,
Mr. *Francis Moore*,	Sir *Edwyn Sandis*,	Mr. Serjeant *Dodridge*.
Sir *Henry Mountague*,	Sir *Francis Haſtings*,	Sir *Roger Wilbraham*,
Sir *Willam Fleetwood*,	Mr. *Wiſeman*,	Mr. Sollicitor,
Mr. *Fuller*,	Sir *George Moore*,	Sir *Edward Tyrrel*,
Mr. Searjeant *Tanfield*,	Sir *Edward Hobby*,	

To meet at four a-clock this afternoon at the Parliament-Chamber in the *Middle-Temple*.

Die Mercurii, *viz.* 28° *die Martii*.

MR. Speaker, with a great number of the Houſe, aſſembled at ſix a-clock this morning, with a purpoſe to treat and reſolve what ſhould be delivered to his Majeſty, (being appointed to attend him the ſame morning at eight a-clock) touching the reaſons of their proceeding in Sir *Francis Goodwin*'s caſe: but becauſe the Houſe was not then thought full enough for a matter of that conſequence, they proceeded to the reading of Bills.

Upon motion touching Mr. Speaker's attendance on the King, a Committee was named to accompany him, *viz.*

All the Privy-Council, being Members of the Houſe.

Sir *George Carew.*
Vice-Chamberlain to the Queen.
Sir *Francis Bacon.*
Mr. Serjeant *Dodridge.*
Sir *Henry Mountague.*
Mr. Serjeant *Hobbard.*
Mr. Serjeant *Lee.*
Mr. *Fuller.*
Mr. *Hide.*
Mr. *Francis Moore.*
Mr. *Winch.*
Mr. *Tate.*
Mr. *Richard Martin.*
Mr. Serjeant *Shirley.*
Mr. Serjeant *Tanfield.*
Sir *John Heigham.*
Sir *Robert Oxenbridge.*
Sir *William Fleetwood.*
Sir *Edwyn Sandis.*
Sir *Robert Wroth.*
Sir *George Fleetwood.*
Sir *John Scott.*
Sir *Herbert Crofts.*
Sir *James Scudamore.*
Sir *Jerome Horſey.*
Sir *Edward Radcliffe.*
Sir *Thomas Holcroft.*
Sir *Anthony Rowſe.*
Sir *Henry Nevill.*
Sir *Edward Mountague.*
Sir *Thomas Hobby.*
Sir *Michael Sandis.*
Mr. *Thomas Benſon.*
Sir *Francis Fane.*
Sir *Francis Haſtings.*
Sir *George Moore.*
Sir *Edward Hobby.*
Sir *Robert Wingfield.*
Sir *Maurice Berkley.*
Sir *Edward Tyrrell.*
Sir *William Killegrew.*
Sir *Francis Popham.*
Mr. *Francis Clifford.*
Sir *John Savill.*
Sir *Thomas Waller.*
Sir *William Lower.*
Mr. *Nathanael Bacon.*
Sir *Richard Verney.*
Sir *George Fane.*
Mr. *Toby Matthew.*
Sir *Thomas Ridgway.*
Mr. *Edward Seymour.*
Sir *William Bourlacy.*
Sir *Robert Moore.*
Sir *Jonathan Trelawney.*
Sir *Edward Denny.*
Sir *Thomas Walſingham.*
Sir *Francis Barrington.*
Sir *Robert Nappier.*
Sir *Valentine Knightley.*
Sir *George Carew.*
Maſter of the *Chancery.*
Sir *Nicholas Halſwell.*
Sir *John Thynne.*
Sir *Thomas Freake.*
Sir *Jerome Bowes.*
Sir *Edward Herbert.*
Sir *John Leveſon.*
Mr. *Dudley Carleton.*

Mr. Speaker, together with theſe Committees, were this day, at eight a-clock in the morning, appointed to attend his Majeſty, and to relate the reaſons of the proceeding of the Houſe in Sir *Francis Goodwin*'s caſe; where, upon anſwer or reply, ſuch Lawyers as be of the Committee are to give their aſſiſtance.

Die Jovis, viz. 29° *die Martii*, 1604.

MR. Speaker relateth what he had delivered to the King by warrant from the Houſe the day before, touching their proceeding in Sir *Francis Goodwin*'s caſe, and his Majeſty's anſwer; *whereof, becauſe part was afterwards penned by ſelect Committees*, read in the Houſe, and offered in writing to the King, I have but touched the heads, omitting many circumſtances. He ſaid, he firſt delivered, 1. The manner and matter. 2. Then ſuch precedents as had been vouched and ſtood upon. 3. He opened the body of the law for election.

The firſt writ of Summons, dated *ultimo Januarii* before the Parliament: the Writ iſſued duly; the liberty was free, by that writ, to chuſe *in pleno comitatu:* the election was made according to that writ, and the indenture duly returned; *and therefore adjudged by the Houſe*, That this firſt election being good, the ſecond was conſequently void.

For the matter of Utlawry againſt Sir *Francis Goodwin*, there was one proſecuted againſt him at the ſuit of *Johnſon*, 31 *Eliz.* for 60*l.* and was laid and proceeded in the *Huſtings, London.* Another, at the ſuit of one *Hacker*, for 16*l.* 39 *Eliz.* That Sir *Francis* had ſince been choſen, admitted, and ſerved as a Member of this Houſe, in the ſeveral Parliaments holden 39 and 43 *Eliz.*

That the Utlawry remained in the *Huſtings*, ſo as the law could not take notice of it; neither was it pleadable.

1 *Eliz.* One *Smith* was found utlawed, and privileged by the Houſe.

23 *Eliz.* One *Vaughan* utlawed; and, upon the queſtion and diviſion of the Houſe, privileged: being carried with the difference of ſix voices.

35 *Eliz.* Three precedents vouched.

39 *Hen.* 6. *Fitz-Herbert.* The caſe not judged; but opinions delivered.

Mr. *John Killegrew* having fifty-two utlawries returned againſt him, was admitted to ſerve in the Houſe.

Sir *William Harecourt* was found eighteen times utlawed, and yet was admitted to ſerve.

The manner of the Election is limited by the Statute.

The ſuppoſed utlawry, 31 *Eliz.* againſt Sir *Francis*, was no utlawry at all; for whereſoever a man is ſued, the proclamation ought to go into the county where the party dwelleth; or elſe the utlawry is not good.

39 & 43 *Eliz.* The general pardon is good for utlawries, againſt all, ſaving the party at whoſe ſuit.

31 *Eliz.* It was *Franciſcus Goodwin, Gen.*

39 *Eliz. Franciſcus Goodwin Armig. The Sheriff is no judge* of the utlawry, neither could take notice it was the ſame man; and therefore could not properly return him utlawed.

His Majeſty anſwered, He was loth he ſhould be forced to alter his tune; and that he ſhould now change it into matter of grief, by way of conteſtation. He did ſample it to the murmur and contradiction of the people of *Iſrael.*

He did not attribute the cauſe of his grief to any purpoſe in the Houſe to offend him; but only to a miſtaking of the law. For matters of fact, he anſwered them all particularly. That, for his part, he was indifferent which of them were choſen, Sir *John*, or Sir *Francis:* that they could ſuſpect no ſpecial affection in him, becauſe this was a Councillor not brought in by himſelf.

That he had no purpoſe to impeach their privilege; but ſince they derived all matters of privilege *from him, and by his grant*, he expected they ſhould not be turned againſt. That there was no precedent did ſuit this caſe fully: Precedents in the times of *Minors*, of *Tyrants*, of *Women*, of *Simple Kings*, not to be credited; becauſe for ſome private ends. By the law this Houſe ought not to meddle with Returns, being all made into the *Chancery*, and are to be corrected or reformed by that Court only, into which they are returned. 35 *Hen.* VI. It was the Reſolution of all the Judges, that matter of utlawry was a ſufficient cauſe of diſmiſſion of any Member out of the Houſe. *That the Judges have now reſolved*, That Sir *Francis Goodwin* ſtandeth utlawed according to the laws of this Land. In concluſion, it was his Majeſty's ſpecial charge unto us;

That, 1. The courſe already taken ſhould be truly reported. 2. That we ſhould debate the matter, and reſolve among ourſelves. 3. That we ſhould admit of conference with the Judges. 4. That we ſhould make report of all the proceedings, unto the Council.

This relation being made, the Houſe did not enter into any further conſideration of the matter at that time; but

Reſolved, and Ordered, That it ſhould be the firſt matter moved the next morning.

Die Veneris, viz. 30° *die Martii*, 1604.

MOVED and urged by one, touching the difference now on foot between the King and the Houſe, that there is juſt fear of ſome great abuſe in the late election. That in his conſcience the King hath been much miſinformed; and that he had too many miſinformers, which, he prayed God, might be removed or leſſened in their number. That now the caſe of Sir *John Forteſcue* and Sir *Francis Goodwin was become the caſe of the whole Kingdom.* That *old Lawyers forget, and commonly interpret the law according to the Time.*

That by this courſe the free election of the Country is taken away, and none ſhall be choſen but ſuch as ſhall pleaſe the King and Council. Let us therefore, with fortitude, underſtanding and ſincerity, ſeek to maintain our privilege; which cannot be taken or conſtrued any contempt in us, but merely a maintenance of our common right, which our Anceſtors have left us, and is juſt and fit for us to transfer to our poſterity.

Another, for a law to be made, That never any man outlawed, ſhould ſhew his face here again. The difference, he obſerved, was ſome unreſpective carriage towards his Majeſty in this matter; and therefore let our proceeding be dutiful and careful towards him, in adviſing of ſome ſpeedy courſe to give his Majeſty ſatisfaction; that is (as he conceived) according to the King's project, firſt, to adviſe amongſt ourſelves, and then to confer with the Judges, *not as Parliament-men, but as Counſellors*; not as tho' they were to reverſe our errors, but that we might be better informed; not now the caſe of Sir *John* and Sir *Francis*, but a caſe of great difference between the King and us, wherein we are deeply to conſider the conſequence if this pique be bruited in the Country, abroad or beyond the ſeas. It is fit we let the King ſee how much we take to heart this matter, ſithence our affections have ſo much appeared in the paſſing and preſent expediting of the Act of Recognition, *&c.*

Concluſ. That we ſhould tender our humble petition to his Majeſty, for leave to make a law for the baniſhing of all Outlaws hereafter from the Parliament, and pray, that we may hold all our privileges entire.

A third, That we ought not to conteſt with the King; that it is fit to have a conference: that by it we ſhall loſe no privilege, but rather gain; for the matters of the conference will be two, ſatisfaction of the King, and putting in certainty our privilege. All is not yet ſaid that may be ſaid; we are not to diſpute with one that is Governor of thirty legions. *Confitendum eſt ne fruſtra interrogaſſet.* Let us deal plainly and freely with the Lords, and let them know all the reaſons. They are jealous of the *honour of a Privy-Councillor, we of the freedom of Election.* It is fit great men maintain the Prerogative; ſo is it fit that we maintain our Privileges. *This is a Court of Record*, therefore ought we by all means ſeek to preſerve the honour and dignity of it. If a Burgeſs be choſen for two places, the Burgeſs makes his choice for which he will ſerve, and a warrant ſhall be directed from Mr. Speaker, in the name of the Houſe, to the Clerk of the Crown to ſend forth a writ for a new election for the other place left; which is a direct proof that it is a Court of *Power* and *Record.* We have a Clerk and a Regiſter; all matters that paſs here are entered of Record, and preſerved. As they ſtand for the honour of a Councillor, ſo we for our Privileges. It is to be wiſhed, that we had a law to declare our Privileges, that we have a Court of Record and a Regiſter.

Obj. *We* (they ſay) *are but half of the body, and the Lords are the parts neareſt the Head.*

Anſw. Nothing aſcends to the Head but by the Breaſts, *&c.*

Concl. That we may pray it may be explained by a law what our Privileges are; and that no man outlawed may hereafter be admitted.

There muſt be a Judge of the Return before we ſit; and this is now judged according to the poſitive Laws of the Realm by the King, which infringeth not our liberty, ſince we judge after the Court is ſet, according to diſcretion.

No precedent, that any man was put out of the Houſe for utlawry; therefore it had been fit we ſhould have deſired to inform the King that he was miſinformed.

Let us now leave this particular caſe to the King, and conſider and reſolve of the material queſtions that will fall out in the debate of it. 1. Whether this Court hath power to take notice of Returns made before we ſit here? 2. Whether men utlawed may be of the Houſe? 3. Whether a man pardoned, having not ſued forth a writ of *Scire facias*, may be called in queſtion? 4. Whether the Writ were returned the 17th of *February*, or no, upon Oath of the Sheriff?

Some others were ſtrong in opinion, That we ought not to confer nor to commit, ſaying, That Majeſty had conferred with Juſtice; yet Majeſty had left the ſtopping of the wound to us. We ſhould taint ourſelves with three great Blemiſhes, if we ſhould alter our Judgment, levity, cruelty and cowardice. There be three degrees of upright Judgment, motion, examination, judgment: all theſe have paſſed us. No Court can reform their own judgment. Every day a Term here. Every act that paſſeth this Houſe is an Act of Parliament. Shall juſtice float up and down? Shall he be a Member to-day, and ſhall we tear him off to-morrow? If the Member be ſound, it is violence: if the hand tear the reſt, it is cruelty. No part torn, but it may bleed to the ruin of the whole.

Let Sir *Francis Goodwin* ſtand as he is: duty and courage may ſtand together; let not the Houſe be inveigled by ſuggeſtions. This may be called a *Quo Warranto* to ſeize our liberties.

There hath been three main Objections.

1. The King's Exception. *We could ſhew no precedent in this kind.*

Anſw. "The King could ſhow no ſuch writ before. Our hands were "never ſought to be cloſed before, nor we prevented. It opens a gap to "thruſt us all into the petty-bag. A Chancellor may call a Parliament "of what perſons he will by this courſe. Any ſuggeſtion by any perſon, "may be cauſe of ſending a new writ."

2. *Obj.* by the Lord-Chief-Juſtice. *By the Law we had nothing to do to examine Returns.*

Anſw. " Judges cannot take notice of private cuſtoms or pri-" vileges: but we have a privilege which ſtands with the law." The Judges informed the King of the law, but not of a caſe of privilege. It is true, 35 *Hen.* VI. all the Judges reſolved, That no outlawed man ought to be admitted; but that was controlled by Parliament. It is the ſame opinion now; let us controll it as then: we have done no offence to the State; let us therefore be conſtant in our own judgment.

3. *Obj.* Another, *The King's pleaſure, that we ſhould deliver the reaſons of that we have done to be juſt.*

If we clear our contempt, we have diſcharged ourſelves. The *King's Bench* cannot reverſe their judgment the ſame Term; therefore not the Parliament. Let us ſend a meſſage to the Lords, that we are ready ſo to do, as we do not undo this Houſe.

Others, *Non coronabitur qui non legitime certaverit.* Not to be termed a difference between his Majeſty and the Commons. *Rogamus, Auguſte, non pugnamus.* The queſtion is not of matter of privilege, but of judgment. Let us attend them as Lords of the Council, and not as Lords of Parliament.

We do no ways conteſt or contend with his Majeſty. The King is no way bound in honour. If writs go forth unduly, they may be controlled without impeachment to the King's honour. It is the act of his inferiour officers. It is now come to this queſtion, " Whether the " Chancery or Parliament ought to have authority?"

Queſt. *Whether we ought to ſatisfy the King in his commandment?*

The King's meſſage was, that we ſhould conſider within ourſelves, and reſolve of ourſelves; then no need to confer with the Judges: if we cannot, then it is fit to be reſolved by the Judges.

The Judges have judged, and we have judged: What need then of conference? Let there be no ſpark of that grace taken from us, which we have had already from his Majeſty. Let our reaſons be put into articles, and delivered in all humbleneſs unto him. Upon the concluſion of this debate in this manner, the Houſe proceeded to queſtion; and the firſt was,

1. Queſt. *Whether the Houſe was reſolved in the matter?*

And the queſtion was anſwered by general voice, That the whole Houſe was reſolved.

2. Queſt. *Whether the reaſons of their proceeding ſhall be ſet down in writing?*

Reſolved, That they ſhall be ſet down in writing: and ordered further, That a committee ſhould be named for that purpoſe, and appointed firſt to ſet them down in writing, and to bring them to the Houſe, there to be publiſhed, and to receive their allowance.

The Committees were inſtantly named, *viz.*

Sir *Robert Wingfield.*	Mr. *Martin.*
Sir *George Moore.*	Sir *Arthur Atye.*
Sir *Francis Bacon.*	Mr. *Francis Tate.*
Mr. *Yelverton.*	Sir *Roland Litton.*
Mr. *Dyett.*	Sir *Henry Nevill.*
Sir *Francis Haſtings.*	Mr. Attorney of the Wards.
Mr. *Hedley.*	Sir *John Hollis.*
Mr. Recorder of *London.*	Sir *Robert Wroth.*
Sir *Edward Hobby.*	Sir *John Scott.*
Sir *Francis Barrington.*	Mr. *Hitcham.*
Mr. *Wiſeman.*	Sir *Edward Stafford.*
Mr. *Hide.*	Sir *John Mallory.*
Mr. *Fuller.*	Sir *Herbert Crofts.*
Sir *Edward Mountague.*	Sir *Francis Fane.*
Mr. *Ravenſcroft.*	Sir *Richard Molyneux.*
Sir *William Fleetwood.*	Sir *John Hungerford.*
Mr. *Winch.*	Sir *Edward Herbert.*
Sir *Thomas Challoner.*	All the Serjeants at Law.
Mr. Sollicitor.	Mr. *Nathaniel Bacon.*
Sir *Roger Wilbraham.*	Mr. *Hext.*
Sir *John Thynne.*	

To meet this afternoon at two a clock in the Exchequer-Chamber.

The authority given unto them by the Houſe, was this:

The Houſe being reſolved upon the queſtion, That the reaſons of their precedent Reſolution, touching the Return, Admittance and Retaining of Sir *Francis Goodwin* as a Member of this Houſe, ſhould be ſet down in writing; theſe Committees were ſpecially appointed to perform that ſervice, and have Warrant from the Houſe to ſend for any Officer, to view and ſearch any Record, or other thing of that kind, which may help their knowledge or memory in this particular ſervice: And having deliberately by general conſent ſet down all ſuch reaſons, they are to bring them in writing into the Houſe, there to be read and approved, as ſhall be thought fit.

Die Lunæ, viz. 2° *die Aprilis*, 1604.

IT was then moved, That Committees might be named to take the examination of the Sheriff of *Buckinghamſhire*, who was by former order ſent for, and now come. And to that end were named,

Mr. Sollicitor.	Mr. Serjeant *Tanfield.*
Sir *Robert Wroth.*	Mr. Serjeant *Lee.*
Sir *William Fleetwood.*	Mr. *Yelverton.*
Sir *Thomas Challoner.*	Mr. *Francis Moore.*
Sir *Robert Wingfield.*	

Who were appointed to take his examination preſently.

Sir *Charles Cornwallis* moveth in excuſe of Sir *Francis Goodwin*'s abſence from the Houſe, and prayeth, That they would as well in their own judgment pardon it, as witneſs and affirm his care and modeſty upon all occaſions to the King, in that he hath forborn, during all the time of this queſtion, to come into the Houſe.

The examination was preſently taken by theſe Committees, and returned in this form.

Interr. 1. *Why he removed the County from* Ayleſbury *to* Brickhill?

He ſaith, it was by reaſon of the plague being at *Ayleſbury*, the County being the 25th of *January*, at which time three were dead of the plague there. This was the only motive of removing his county.

Interr. *Whether he were preſent at the firſt Election?*

Saith, He was preſent; and was as faithful to wiſh this ſecond place to Sir *Francis Goodwin*, as the firſt to Sir *John Forteſcue:* ſent Sir *Francis Goodwin* word, before the election, he ſhould not need to bring any Freeholders, for the election he thought would be without ſcruple for them both; firſt to Sir *John*, ſecond to Sir *Francis*. About eight of the clock he came to *Brickhill*; was then told by Sir *George Throckmorton*, and others, that the firſt voice would be given for Sir *Francis*; he anſwered, He hoped it would not be ſo, and deſired every Gentleman to deal with his Freeholders. After eight of the clock went to the election a great number, there being at the County . . . . . After the Writ read, he firſt intimated the points of the Proclamation; then jointly propounded Sir *John Forteſcue* and Sir *Francis Goodwin*. The Freeholders cried firſt, A *Goodwin*, a *Goodwin!* Every Juſtice of Peace on the Bench ſaid, A *Forteſcue*, a *Forteſcue!* and came down from the Bench before they named any for a ſecond place, and deſired the Freeholders to name Sir *John Forteſcue* for the firſt. Sir *Francis Goodwin* being in a chamber near, was ſent for by the Sheriff and Juſtices; and he came down and earneſtly perſuaded with the Freeholders, ſaying, Sir *John* was his good Friend, had been his father's, and that they would not do Sir *John* that injury: notwithſtanding the Freeholders would not deſiſt, but all cried, A *Goodwin*, a *Goodwin!* Some crying, A *Forteſcue*, to the number of ſixty, or thereabouts; the other for Sir *Francis Goodwin*, being about two or three hundred: and Sir *Francis Goodwin*, to his thinking, dealt very plainly and earneſtly in this matter for Sir *John Forteſcue*; for that Sir *Francis Goodwin* did ſo earneſtly proteſt it unto him.

Interr. 3. *Who laboured him to make the Return ſo long before the day of the Parliament?*

He being here in *London*, Mr. Attorney-General, the ſecond of *March*, at his chamber in the *Inner-Temple*, delivered him two *Cap. Utlagat.* againſt Sir *Francis Goodwin*; and before he made his return, he went and adviſed with Mr. Attorney about his return, who penned it, and ſo it was done by his direction: and the return being written, upon *Friday* after the King's coming through *London*, near about my Lord Chancellor's gate, in the preſence of Sir *John Forteſcue*, he delivered the Writ to Sir *George Coppin:* and at this time (it being about four of the clock in the afternoon) and before they parted, Sir *John Forteſcue* delivered him the ſecond Writ ſealed; Sir *John Forteſcue*, Sir *George Coppin*, and himſelf, being not above an hour together at that time, and never had but this new Writ of Parliament to him delivered.

Subſcribed, *Francis Cheyne.*

This was returned by the Committee to the hands of the Clerk, but not at all read in the Houſe.

Mr. Speaker remembreth the matter of conference with the Judges, and offered to repeat and put again the queſtions that were formerly made; being before uncertainly and unperfectly left (as he ſaid) in the caſe of *Buckinghamſhire, viz.*

1. *Whether the Houſe were reſolved in the matter?*
2. *Whether they ſhould confer with the Judges?*

And at length induced the Houſe to entertain the latter queſtion; and, being made, was carried by general voice in the negative, no conference.

Upon this paſſage, it was urged for a rule, That a queſtion being once made, and carried in the affirmative or negative, cannot be queſtioned again; but muſt ſtand as a judgment of the houſe.

It was thought fit that Mr. Speaker ſhould attend the Committee for penning the reaſons in Sir *Francis Goodwin*'s caſe, not by commandm nt, but voluntary of himſelf.

Die Martis viz. 3° *die Aprilis*, 1604.

THE reaſons of the proceeding of the Houſe in Sir *Francis Goodwin*'s caſe, penned by the Committee, were, according to former order, brought in by Mr. *Francis Moore*, and read by the Clerk, directed in form of a petition.

To the KING's moſt excellent Majeſty,

The humble Anſwer of the Commons *Houſe of Parliament to his Majeſty's objections in Sir* Francis Goodwin's *caſe.*

MOST Gracious, our dear and dread Sovereign, relation being made to us by our Speaker, of your Majeſty's royal clemency and patience in hearing us, and of your princely prudence in diſcerning; ſhewing affectionate deſire rather to receive ſatisfaction to clear us, than cauſe to pardon us: we do in all humbleneſs render our moſt bounden thanks for the ſame; proteſting, by the bond of our Allegiance, that we never had thought to offend your Majeſty; at whoſe feet we ſhall ever lie proſtrate, with loyal hearts, to ſacrifice ourſelves and all we have for your Majeſty's ſervice: and in this particular, we could find no quiet in our minds, that would ſuffer us to entertain other thoughts, until we had addreſſed our anſwer to your moſt excellent Majeſty; for which nevertheleſs we have preſumed of the longer time, in reſpect we have prepared ſome precedents, requiring ſearch, to yield your Majeſty better ſatisfaction.

There were objected againſt us, by your Majeſty and your reverend Judges, four things, to impeach our proceedings, in receiving *Francis Goodwin*, Knight, into our Houſe.

Objection 1ma, *The firſt, That we aſſume to ourſelves power of examining of the elections and returns of Knights and Burgeſſes, which belonged to your Majeſty's* Chancery, *and not to us: For that all returns of Writs were examinable in the Courts wherein they are returnable; and the Parliament Writs being returnable into the* Chancery, *the returns of them muſt needs be there examined, and not with us.*

Our

Our humble anſwer is, That, until the 7th year of King *Henry* IV. all Parliament-Writs were returnable into the Parliament; as appeareth by many precedents of record ready to be ſhewed, and conſequently the returns there examinable: In which year a Statute was made, That thenceforth every Parliament-Writ, containing the day and place where the Parliament ſhall be holden, ſhould have this clauſe, *viz.* *Et electionem tuam in pleno comitatu factam diſtincte & aperte ſub ſigillo tuo & ſigillis eorum qui electioni illi interfuerint nobis in Cancellariam noſtram ad diem & locum in brevi content' certifices indilate.*

By this, although the form of the Writ be ſomewhat altered, yet the power of the Parliament, to examine and determine of elections remaineth; for ſo the Statute hath been always expounded ever ſithence, by uſe to this day: and for that purpoſe, the Clerk of the Crown hath always uſed to attend all the Parliament-time, upon the Commons Houſe, with the Writs and Returns; and alſo the Commons, in the beginning of every Parliament, have ever uſed to appoint ſpecial Committees, all the Parliament-time, for examining controverſies concerning elections and returns of Knights and Burgeſſes: during which time, the Writs and Indentures remain with the Clerk of the Crown; and after the Parliament ended, and not before, are delivered to the Clerk of the Petty-bag in *Chancery*, to be kept there; which is warranted by reaſon and precedents: Reaſon, for that it is fit that the returns ſhould be in that place examined, where the appearance and ſervice of the writ is appointed. The appearance and ſervice is in Parliament, therefore the return examinable in Parliament.

Precedents: One in the 29th year of the reign of the late Queen *Elizabeth*, where, after one Writ awarded into *Norfolk* for choice of Knights, and election made and returned, a ſecond was before the Parliament-day awarded by the Lord-Chancellor, and thereupon another election and return made; and the Commons being attended with both Writs and Returns by the Clerk of the Crown, examined the cauſe, allowed the firſt, and rejected the ſecond. So *Anno* 23 *Elizabethæ Reginæ*, a Burgeſs was returned dead, and a new choſen, and returned by a new Writ: the party returned dead appeared; the Commons, notwithſtanding the Sheriff's return, admitted the firſt choſen, and rejected the ſecond. Alſo, the ſaid 23d year, a Burgeſs choſen for *Hull* was returned lunatick, and a new choſen upon a ſecond Writ: the firſt claimed his place; the Commons examined the cauſe, and finding the return of lunacy to be true, they refuſed him; but if it had been falſe, they would have received him. *Anno* 43 *Elizabethæ*, the Sheriff of *Rutlandſhire* returned himſelf elected: the Commons finding that he was not eligible by Law, ſent a Warrant to the *Chancery* for a new Writ to chooſe a new. *Anno* 43 *Eliz.* alſo a Burgeſs was choſen for two Boroughs; the Commons, after he had made election which he would ſerve for, ſent Warrant to the *Chancery* for a Writ to chooſe a new for the other Borough: Of which kind of precedents there are many other, wherewith we ſpare to trouble your Majeſty. All which together, *viz.* uſe, reaſon and precedents, do concur to prove the *Chancery* to be a place appointed to receive the returns, as to keep them for the Parliament, but not to judge of them; and the inconvenience might be great, if the *Chancery* might, upon ſuggeſtions or Sheriffs returns, ſend Writs for new elections, and thoſe not ſubject to examination in Parliament: for ſo, when fit men were choſen by the Counties and Boroughs, the Lord-Chancellor, or the Sheriffs, might diſplace them, and ſend out new Writs, until ſome were choſen to their liking; a thing dangerous in precedents for the time to come, howſoever we reſt ſecurely from it at this preſent by the now Lord-Chancellor's integrity.

Objection 2da. *That we dealt in the cauſe with too much precipitation, not ſeemly for a Council of gravity, and without reſpect to your moſt excellent Majeſty, our Sovereign, who had directed the Writ to be made; and being but half a body, and no Court of Record alone, refuſed conference with the Lords, the other half, notwithſtanding they prayed it of us.*

Our humble anſwer is, to the precipitation, That we entered into this cauſe, as in other Parliaments of like caſes hath been accuſtomed, calling to us the Clerk of the Crown, and viewing both the Writs, and both returns; which in caſes of . . . . . and motions, though not of bills requiring three readings, hath been Warrant by continual uſage amongſt us: and thereupon, well finding that the latter Writ was awarded and ſealed before the *Chancery* was repoſſeſſed of the former, which the Clerk of the Crown, and the Sheriff of the County, did both teſtify, and well held to be a clear fault in law, proceeded to ſentence with the leſs reſpect of the latter election For our lack of reſpect to your Majeſty, we confeſs, with grief of our hearts, we are right ſorry it ſhall be ſo conceived; proteſting, that it was no way made known unto us before that time, that your Majeſty had taken to yourſelf any ſpecial notice, or directed any courſe in that cauſe, other than the ordinary awarding Writs by your Highneſs's officers in that behalf: but if we had known as much as ſome will have, by your Majeſty's royal mouth, we would not, without your Majeſty's privity, have proceeded in that manner. And further, it may pleaſe your Majeſty to give us leave to inform you, That in the examination of the cauſe of the Sheriff avouched unto us, That *Goodwin* agreed to yield the firſt place of the two Knights to Sir *John Forteſcue*, and in his own perſon, at the time of election, with extraordinary earneſtneſs, entreated the electors it might ſo be, and cauſed the indentures to be made up to that purpoſe; but the electors utterly refuſed to ſeal them. Concerning our refuſing conference with the Lords, there was none deſired until after our ſentence paſſed; and then we thought, That in a matter private to our Houſe, which, by rules of order, might not be by us revoked, we might, without any imputation, refuſe to confer. Yet underſtanding by their Lordſhips, That your Majeſty had been informed againſt us, we made haſte (as in all duty we were bound) to lay open to your Majeſty, our good and gracious Sovereign, the whole manner of our proceeding; "not doubting, though we were but part of a body, as to make new "laws, yet for any matter of privileges of our Houſe, we are and ever "have been a Court of ourſelves, of ſufficient power to diſcern and de-"termine without their Lordſhips, as their Lordſhips have uſed always "to do for theirs without us."

Objection 3tia. *That we have, by our ſentence of receiving* Goodwin, *admitted, That Outlaws may be makers of laws; which is contrary to all laws.*

Our humble anſwer, That notwithſtanding the precedents which we truly delivered, of admitting and retaining Outlaws in perſonal actions in the Commons Houſe, and none remitted for that cauſe; yet we received ſo great ſatisfaction delivered from your royal Majeſty's own mouth, with ſuch excellent ſtrength and light of reaſon, more than before, in that point, we heard or did conceive, as we forthwith prepared an act to paſs our Houſe, That all Outlaws henceforth ſhall ſtand diſabled to ſerve in Parliament: but as concerning *Goodwin*'s particular, it could not appear unto us, having thoroughly examined all parts of the proceedings againſt him, that he ſtood an Outlaw, by the laws of *England*, at the time of the election made of him by the county; and that for two cauſes: the firſt is, That where the party outlawed ought to be five times proclaimed to appear in the Sheriff's County Court; and then not appearing, ought to be adjudged outlawed by the judgment of the Coroners of the County; there appeareth no record made in the *Huſtings* of *London* that *Goodwin* was five times proclaimed, or that the Coroners gave judgment of outlawry againſt him: but a Clerk, lately come to that office, hath now, many years after time, and ſince this election, made entries, interlined with a new hand, that he was outlawed: to which new entries we could give no credit, for that the parties, at whoſe ſuit *Goodwin* was ſued, have teſtified in their writings of releaſe, That they never proceeded further than to take out the Writ of *Exigent* for an outlawry; and being then paid their money deſiſted there: by which we find, That *Goodwin* was not five times proclaimed, nor adjudged outlawed, being a thing uſual in *London* to ſpare that proclamation and judgment, if the party call not upon it; and no record being made for many years together, that either of them was done.

The ſecond cauſe was, for that the Writ of *Exigent*, by which the Sheriff was commanded to proclaim him five times, was never lawfully returned, nor certified by *Certiorari*; without which, we take it, That *Goodwin* ſtood not diſabled as an Outlaw.

To this, adding the two general pardons by Parliament, which had cleared the outlawry in truth and ſubſtance, (if any were) and that *Goodwin* could not apply the pardons by *Scire fa.* for that no record nor return was extant of the outlawry, whereupon he might ground a *Scire fa.* we were of opinion, and ſo your Majeſty's moſt reverend Judges would have been if they had known thus much, That *Goodwin* ſtood not diſabled by outlawry to be elected or ſerve in Parliament: but when we conſidered further, That the courſe taken againſt *Goodwin* for drawing him into this outlawry of purpoſe to diſable him to ſerve in this place, whereto the County had freely elected him, was unuſual; we could not, with the reputation of our places, ſerving as a Council of gravity, in allowance or continuance of that courſe, cenſure him to be rejected as an Outlaw: the particulars of which were theſe; *viz.*

Two Exigents awarded, ... the other ſeven years paſt to the *Huſtings* in *London*; no entry made of five proclamations; nor of any judgment of the Coroners; nor any return of the Exigents made or endorſed; the party plaintiff ſatisfied; the pretended outlawries being but upon a mean proceſs; and as to your Majeſty's duties and contempts pardoned now ſince *Goodwin* was elected Knight, the Exigent now ſought out ſince the election procured to be returned in the name of the Sheriffs that then were; and are long ſince dead, and new entry made of the five proclamations and Coroners judgment; and now a return made of that old Exigent, which could be of no uſe, but only for a purpoſe to diſable him for that place. Upon all which we could do no leſs in true diſcretion than certify the election made *ſecundum equum & bonum.*

Objection 4ta. *That we proceeded to examine the truth of the fact of outlawry, and gave our ſentence upon that; whereas we ought to have been bound by the Sheriff's return of the outlawry from farther examining, whether the Party were outlawed or not.*

Our humble anſwer is, That the precedents cited before, in our anſwer to the firſt objection, do prove the uſe of the Commons Houſe to examine *veritatem facti* in elections, and returns, and have not been tied peremptorily to allow the return; as if a Knight or Burgeſs be untruly returned dead, or lunatick, yet when he appeareth to the Houſe to be living and ſound, they have, contrary to the return, received him into the Houſe, preferring the truth manifeſt before the return. By which diſcreet proceeding there is avoided that great inconvenience above-mentioned of giving liberty to Sheriffs, by untrue returns, to make and remove whom they liſt to and from the Parliament ſervice, how meet ſoever the parties be in the judgment of the County or Borough that elected them.

Thus, in all humility, we have preſented to your moſt excellent Majeſty the grounds and reaſons of our late action, led with no affections, but guided by truth, warranted in our conſciences, imitating precedents, maintaining our ancient privileges, honouring your excellent Majeſty in all our ſervices; to which in all loyalty and devotion we bind us and ours for ever, praying daily on the knees of our hearts, to the Majeſty of the Almighty, that your Majeſty and your poſterity may in all felicity reign over us and ours to the end of the world.

Theſe reaſons ſo ſet down and publiſhed to the Houſe, Mr. Secretary *Herbert* was ſent with meſſage to the Lords, That the Houſe had reſolved of their anſwer to his Majeſty, (in Sir *Francis Goodwin*'s caſe) and had ſet it down in writing; and that it ſhould be ſent to their Lordſhips before four of the clock in the afternoon; who immediately returned their Lordſhips anſwer, That they would be ready at that time in the Council-Chamber at *Whitehall*, with thirty of the Lords, to receive what then ſhould be delivered. Then were named threeſcore to attend the delivery of the ſaid reaſons at the time and place aforeſaid.

Eodem die poſt meridiem.

THE Houſe entering ſeriouſly into conſultation what courſe was to be held with the Lords; as alſo falling into more length of diſputation, touching the bill of merchants, than were expected, ſent ſome meſſengers to the Lords to excuſe their long tarrying, *viz.*

Sir *Edward Hobby.*
Sir *Ro. Wilbraham.*
Sir *Henry Nevil.*
Sir *Francis Haſtings.*
Mr. *Martyn.*

This afternoon about five a-clock, the Committee appointed did attend to deliver the reasons aforesaid at the Council-Chamber, according to appointment and order of both Houses; and they were delivered by Sir *Francis Bacon*, one of the Committee, with desire, That their Lordships would be mediators in the behalf of the House, for his Majesty's satisfaction.

Die Mercurii, viz. 4° *die Aprilis*, 1604.

SIR *Francis Bacon* having the day before delivered to the Lords in the Council-Chamber of *Whitehall*, (according to the direction of the House) the reasons in writing, penned by the Committee, touching Sir *Francis Goodwin*'s case, maketh report of what passed at the time of the said delivery.

First, That though the Committees imployed were a number specially deputed and selected; yet that the Lords admitted all Burgesses without distinction; that they offered it with testimony of their own speed and care in the business, so as they said no one thing had precedency, but only the bill of recognition; that they had such respect to the weight of it, as they had not committed it to any frailty of memory, or verbal relation, but put it into writing for more permanent memory of their duty and respect to his Majesty's grace and favour: that in conclusion they *prayed their Lordships, sithence they had nearer access, they would co-operate with them for the King's satisfaction*; and so delivered the writing to the hands of the Lord-Chancellor, who receiving it, demanded, whether they should send it to the King, or first peruse it? To which was answered, That since it was the King's pleasure they should concur; they desired their Lordships would first peruse. The Lord *Cecil* demanded, whether they had Warrant to amplify, explain, or debate any doubt or question made upon the reading? To which it was said, They had no Warrant. And so the writing was read, and no more done at that time.

Die Jovis, viz. 5° *die Aprilis*, 1604.

MR. Speaker by a private commandment attended the King this morning at eight a-clock, and there staid till ten.

Mr. Speaker excuseth his absence, by reason he was commanded to attend upon his Majesty. And bringeth message from his Majesty to this effect: That the King had received a parchment from the House. Whether it were an absolute resolution, or reason to give him satisfaction, he knew not: He thought it was rather intended for his satisfaction. His Majesty protested, by that love he bare to the House as his loving and loyal Subjects, and by the faith he did ever owe to God, he had as great a desire to maintain their privileges, as ever any Prince had, or as themselves. He had seen and considered of the manner and the matter; he had heard his Judges and Council; and that he was now distracted in judgment. Therefore, for his further satisfaction, he desired, and commanded, *as an absolute King*, that there might be a conference between the House and the Judges; and that for that purpose there might be a select Committee of grave and learned persons out of the House: That his Council might be present, *not as Umpires to determine, but to report indifferently on both sides.*

Upon this unexpected message there grew some amazement and silence. But at last one stood up and said: the Prince's command is like a thunderbolt; his command upon our Allegiance like the roaring of a Lion. To his command there is no contradiction; but how, or in what manner we should now proceed to perform obedience, that will be the question.

Another answered, let us petition to his Majesty, that he will be pleased to be present, to hear, moderate, and judge the case himself. Whereupon Mr. Speaker proceeded to this question.

Quest. Whether to confer with the Judges in the presence of the King and Council?

Which was resolved in the affirmative.

And a select Committee presently named for the conference, *viz.*

Lawyers.	Gentlemen.
Mr. Serjeant *Tanfield.*	Sir *George Carew*, Vice-Chamberlain to the Queen.
Mr. Serjeant *Hobbard.*	Sir *Francis Hastings.*
Mr. Serjeant *Leigh.*	Sir *Edward Hobby.*
Mr. Serjeant *Shirley.*	Sir *Robert Wroth.*
Mr. Serjeant *Dodridge.*	Sir *Henry Nevill.*
Sir *Thomas Hesketh.*	Sir *John Savile.*
Sir *Francis Bacon.*	Sir *George Moore.*
Mr. Recorder of *London.*	Mr. *Nathaniel Bacon.*
Mr. *Yelverton.*	Sir *Edward Stafford.*
Mr. *Crewe.*	Sir *William Fleetwood.*
Mr. *Lawrence Hide.*	Sir *Thomas Challoner.*
Mr. *Francis Moore.*	Sir *Roger Aston.*
Mr. *Richard Martin.*	Sir *Robert Wingfield.*
Mr. *Winche.*	Sir *Edw. Mountague.*
Mr. *Dyett.*	Sir *Edwyn Sandis.*
Mr. *Fuller.*	Sir *Robert Cotton.*
Sir *Roger Wilbraham.*	
Mr. *Francis Tate.*	
Mr. Doctor *James.*	
Sir *Daniel Dunn.*	
Sir *John Bennet.*	

These Committees were selected and appointed to confer with the Judges of the Law, touching the reasons of proceeding in Sir *Francis Goodwin*'s case, set down in writing, and delivered to his Majesty in the presence of the Lords of his Majesty's Council, according to his Highness's pleasure, signified by Mr. Speaker this day to the House.

It was further resolved and ordered by the House, (upon the motion to that end by Mr. *Laurence Hide*) that the aforesaid Committee should insist upon the fortifications, and explaining of the reasons and answers delivered unto his Majesty; and not proceed to any other argument or answer, what occasion soever moved in the time of that debate.

Die Mercurii, viz. 11° *die Aprilis*, 1604.

Upon Adjournment.

SIR *Francis Bacon* was expected, and called to make a report of the late conference with the Judges in the presence of his Majesty and the Lords of the Council: but he made excuse, saying, he was not warranted to make any report; and *tantum permissum quantum commissum:* nevertheless, upon a question, he was over-ruled to make a report; and a motion thereupon made, That the Committees might first assemble in the Court of Wards, and confer among themselves, and then the report to be made.

Sir *Francis Bacon*, after the meeting of the Committees in the Court of Wards, reporteth what had passed in conference in the presence of his Majesty and his Council.

THE King said, He would be President himself. This attendance renewed the remembrance of the last, when we daparted with such admiration. It was the voice of God in man: the good Spirit of God in the mouth of man. I do not say, the voice of God, and not of man. I am not one of *Herod*'s flatterers. A curse fell upon him that said it: a curse on him that suffered it. We might say as was said to *Solemon*, We are glad, O King! that we give account to you, because you discern what is spoken.

We let pass no moment of time, until we had resolved and set down an answer in writing, which we now had ready.

That sithence we received a message from his Majesty by Mr. Speaker, of two parts: 1. The one Paternal. 2. The other Royal. 1. That we were as dear unto him as the safety of his person, or the preservation of his posterity. 2. Royal, that we should confer with his Judges, and that in the presence of himself and his Council. "That we did more now to King *James* "than ever was done since the Conquest, in giving account of our Judge-"ments." That we had no intent, in all our proceedings, to encounter his Majesty, or to impeach his Honour or Prerogative.

This was spoken by way of preamble by him you employed.

How to report his Majesty's Speeches; he knew the eloquence of a King was inimitable.

The King addressed himself to him as deputed by the House, and said, He would make three parts of what he had to say. The cause of the meeting was to draw to an end the difference in Sir *Francis Goodwin*'s case.

If they required his absence, he was ready; because he feared he might be thought interested, and so breed an inequality on their part.

He said, That he would not hold his Prerogative or Honour, or receive any thing of any or all his subjects. This was his Magnanimity.

That he would confirm and ratify all just Privileges. This his Bounty and Amity. As a King, Royally: As King *James*, sweetly and kindly out of his good-nature.

One point was, Whether we were a Court of Record, and had power to judge of Returns. As our Court had power, so had the Chancery; and that the Court that first had passed their Judgment should not be controlled.

Upon a surmise, and upon the Sheriff's Return, there grew a difference.

That there are two powers. 1. Permanent: The other, Transitory. That *the* Chancery *was a confidenciary Court to the use of the Parliament during the time.*

Whatsoever the Sheriff inserts beyond the authority of his mandate, a nugation. The Parliaments of *England* not to be bound by a Sheriff's Return.

That our Privileges were not in question. That it was private jealousies without any kernel or substance. "He granted it was a Court of Record, "and a Judge of Returns." He moved, That neither Sir *John Fortescue*, nor Sir *Francis Goodwin* might have place; Sir *John* losing place, his Majesty did meet us half-way. That when there did arise a schism in the Church between a Pope and an Antipope, there could be no end of the difference until they were both put down.

Upon this Report, a motion was made, That it might be done by way of warrant; and therein to be inserted, That it was done at the request of the King: and was further said, (as anciently it hath been said) That we lose more at a Parliament than we gain at a Battle. That the authority of the Committee was only to fortify what was agreed on by the House for answer, and that they had no authority to consent.

It was further moved by another, That we should proceed to take away our dissention, and to preserve our liberties; and said, that in this we had exceeded our commission; and that we had drawn upon us a note of inconstancy and levity.

But the acclamation of the House, was, That it was testimony of our duty, and no levity.

So as the question was presently made,

Quest. Whether Sir *John Fortescue* and Sir *Francis Goodwin* shall both be secluded, and a warrant for a new writ directed? And upon the question resolved, That a writ should issue for a new choice, and a warrant directed accordingly.

A motion made, That thanks should be presented by Mr. Speaker to his Majesty, for his presence and direction in this matter; and thereupon Ordered, That his Majesty's pleasure should be known, by Sir *Roger Aston* for their attendance accordingly.

Because it hath been conceived by some, that Sir *Francis Goodwin* being the Member specially interested, it were fit he should give testimony of his liking and obedience in this course: being dealt withal to that end, he writ his letter to Mr. Speaker; which, before this question made, for better satisfaction of the House, was read in these words,

"*SIR,*

"I Am heartily sorry to have been the least occasion either of question be-"tween his Majesty and that honourable House, or of interruption to "those worthy and weighty causes, which by this time, in all likelihood, "had been in very good furtherance: wherefore, understanding very cre-"dibly, that it pleased his Majesty, when the Committees last attended "him, to take course with them for a third writ and election for the Knight-"ship of the County of *Buckingham*: I am so far from giving any impedi-"ment thereunto, that contrariwise, I humbly desire his Majesty's direc-"tion in that behalf to be accomplished and performed. So praying you, "according to such opportunity as will be ministred, to give furtherance "thereunto, I take my leave, and rest

Westm. *this* 11*th of April*, 1604.

Yours, most assured to be commanded,
FRA. GOODWIN."

Directed, *To the Right Worshipful Sir* Edward Phelips, *Knight, Speaker of the Honourable Court of Parliament.*

Die Jovis, viz. 12° *die Aprilis.*

A Motion made, That Mr. Speaker, in behalf of the House, should pray access to his Majesty, and present their humble thanks for his gracious

tious preſence and direction, upon the hearing of Sir *Francis Goodwin*'s cauſe; which was aſſented unto; and Sir *Roger Aſton*, a ſervant of his Majeſty's Bed-chamber, and one of the Members of the Houſe, was preſently appointed to know his Majeſty's pleaſure; which he did accordingly; and returned, That his Majeſty was willing to give them acceſs in the gallery at *Whitehall*, at two a-clock in the afternoon, the ſame day. Thereupon a Committee was named to attend Mr. Speaker to the King, with a general warrant to all others that ſhould be pleaſed to accompany them.

The Committee eſpecially named were,

All the Privy-Coucil of the Houſe.

Sir *George Carew*, Vice Chamberlain to the Queen.
The Lord *Buckhurſt*.
Sir *John Heigham*.
Sir *Robert Oxenbridge*.
Sir *William Fleetwood*.
Sir *Edwyn Sandis*.
Sir *John Hollis*.
Mr. *John Sheffield*.
Sir *Francis Haſtings*.
Sir *George Moore*.
Sir *Robert Wingfield*.
Sir *William Killegrew*.
Sir *Francis Popham*.
Mr. *Francis Clifford*.
Sir *John Savile*.
Sir *Richard Verney*.
Mr. *Toby Matthew*.
Sir *Thomas Ridgway*.
Sir *Jonathan Trelawney*.
Sir *John Scott*.
Mr. *Edward Seymour*.
Sir *Thomas Holcroft*.
Sir *Henry Nevill*.
Sir *Thomas Walſingham*.
Sir *Thomas Benſon*.
Sir *Francis Barrington*.
Sir *Robert Nappier*.
Sir *Valentine Knightley*.
Sir *George Carew*, Maſter of the *Chancery*.
Sir *Jerome Bowes*.
Sir *John Thynne*.
Sir *John Leveſon*.
Sir *William Burlacy*.
Sir *Roger Aſton*.
Sir *Robert Moore*.
Mr. *Dudley Carleton*.
Sir *William Wray*.
Sir *George St. Poll*.

Die Veneris, viz. 13° *die Aprilis*, 1604.

MR. Speaker returneth to the Houſe the Effect of his meſſage of thanks, delivered the laſt day in the name of the Houſe to his Majeſty; as alſo of his Majeſty's anſwer, *viz.*

That he related to this Houſe the humble and dutiful acceptation of what his Majeſty had done, together with the humble thanks of the Houſe for his zealous and paternal delivery of his Grace unto us, by his own mouth: what wonder they conceived in his Judgment, what Joy in his Grace, what comfort they had in his Juſtice, what approbation they made of his Prudence, and what obedience they yielded to his Power and Pleaſure.

That his direction gave all men ſatisfaction. That they were determined to purſue the courſe he had preſcribed. That now they were become ſuitors, he would be pleaſed to receive a repreſentation of the humble thanks and ſervice of the Houſe.

His Majeſty anſwered, That upon this ſecond acceſs, he was forced to reiterate what he had ſaid before. That this queſtion was unhappily caſt upon him, for he carried as great a reſpect to our privileges as ever any Prince did; he was no ground-ſearcher; he was of the mind that our privileges were his ſtrength: that he thought the ground of our proceeding was our not underſtanding that he had intermeddled before we had decided: that he thought alſo we had no wilful purpoſe to derogate any thing from him, for our anſwer was a grave, dutiful, and obedient anſwer.

But as the devil had unhappily caſt this queſtion between them, ſo he ſaw God had turned it to two good ends and purpoſes.

1. One, That he knew, and had approved our loyalty.
2. Another; That he had ſo good an occaſion to make teſtimony of his bounty and grace.

That as we came to give him thanks, ſo did he redouble his thanks to us.

That he had rather be a King of his Subjects, than to be a king of many kingdoms.

The ſecond part of his ſpeech directed to the Lords and Us.

That this Parliament was not like to be long: that we would treat of ſuch matters as moſt concerned the Commonwealth; and the laſt, of any thing that concerned himſelf.

Three main buſineſſes in our hands.

1. The Union.
2. Sundry Publick and Commonwealth-Bills.
3. Matter of Religion, and reformation of Eccleſiaſtical Diſcipline.

For the Union, that it might be now prepared, and proſecuted the next Seſſion.

That Union, which with the loſs of much blood could never be brought to paſs, as now it is. That the better to bring it to paſs, we ſhould be in affections united.

That we ſhould firſt with all care proceed in ſuch laws as concern the general good.

That all Hereſies and Schiſms might be rooted out, and care taken to plant and ſettle God's true Religion and Diſcipline in the Church.

That this wiſh above all things was at his death to leave,

1. One Worſhip to God.
   One Kingdom entirely governed.
   One Uniformity in Laws.

Laſtly, That his occaſions were infinite, and much beyond thoſe of his Predeceſſors; and therefore that in this firſt Parliament we would not take from him that which we had yielded to others.

That in his affections he was noways inferior to others, nor in his deſire to eaſe us.

The Warrant for a new Election of a Knight for *Bucks*, read and allowed in this form:

Whereas the Right Honourable Sir John Forteſcue *Knight, Chancellor of his Majeſty's Dutchy of* Lancaſter, *and Sir* Francis Goodwin *Knight, have been ſeverally elected and returned Knights of the Shire for the County of* Bucks, *to ſerve in this preſent Parliament: upon deliberate conſultation, and for ſome ſpecial cauſes moving the Commons Houſe of Parliament, It is this Day Ordered and Required by the ſaid Houſe, That a Writ be forthwith awarded for a new Election of another Knight for the ſaid Shire: And this ſhall be your Warrant.*

Directed, To my very loving Friend, Sir *George Coppin* Knight, Clerk of the Crown in his Majeſty's High Court of Chancery.

XI. The Proceſs and Trial of ROBERT LOGAN, of *Reſtalrig*, for *High-Treaſon*, in conſpiring with *John* Earl of *Gowrie*, to murder King *James* I. *June* 1609. 7 *Jac* 1.

IN the year 1608, the Earl of *Dunbar*, walking in his own Garden, and converſing with a country Gentleman, who lived near the place, falling accidentally to diſcourſe on the matter of *Gowrie*'s forfeiture; this Gentleman told the Earl, that he being lately in company with one *Sprott*, a Notary, who lived in *Eyemouth*, who was ordinarily employ'd in the Laird of *Reſtalrig*'s ſervice as a Notary and Truſtee, and who was long acquainted with this Gentleman who was ſpeaking to the Earl; told the Earl, that this *Sprott* had told him things concerning that Treaſon which he had never heard before; but that he had never told it, ſo long as thoſe concern'd were alive. The Earl was curious to have the information, which the Gentleman told him, and was in ſhort:

That umquhil *Robert Logan* of *Reſtalrig*, then dead, was a Co-partner and Contriver with the Earl of *Gowrie*, and his brother Mr. *Alexander*, in all that affair; and that *Sprott* had ſeveral letters, yet lying by him, which he had found amongſt *Reſtalrig*'s papers, and ſome papers belonging to one, commonly call'd Laird *Bour*, the greateſt confident of any man that *Reſtalrig* had, and who was alſo intimate with *Sprott* the Notary.

Whereupon the Earl of *Dunbar* acquainted the King's Advocate, and *Sprott* was ſeized and carried into *Edinburgh*; who, before ſeveral Lords of the Council, did, with great remorſe of conſcience, acknowledge,

That he knew perfectly that *Robert Logan*, late of *Reſtalrig*, was privy to, and upon the fore-knowledge of *Gowrie*'s treaſonable conſpiracy: and for the greater aſſurance of his knowledge, deponeth, That he knew, that there were divers letters interchanged betwixt them, anent the treaſonable purpoſes aforeſaid, in the beginning of the month of *July* 1600; which Letters, *James Bour*, called Laird *Bour*, ſervitour to *Reſtalrig* (who was employ'd mediator betwixt them, and privy to all that errand) had in keeping; and ſhewed the ſame to *Sprott*, in the place of *Faſtcaſtle*.

And deponed, That he did abſtract (*i. e.* ſteal) quietly from *James Bour*, the principal letter written by *Reſtalrig* to the Earl of *Gowrie*, which *Bour* had brought back from the Earl of *Gowrie* (as was the cuſtom amongſt them at that time); and that when *James Bour* employed him (*Sprott*) to look over his papers; that he did keep the ſame, and that it was yet in his keeping, and was in his cheſt, among his writings, where he left it when he was taken; (and accordingly, the letter was found there by the Sheriff-depute, who was ordered by Sir *William Hart*, Lord-Juſtice of *Scotland*, to ſeize the ſaid cheſt, and ſearch for this letter, which was found, and delivered to the King's Advocate).

Whereupon, the King's Advocate produced the ſummons of Treaſon, which was raiſed by warrant under the Seals, on the 5th of *February*, 1609; againſt all the defenders and others concerned, to compear before our ſovereign Lord, or his Commiſſioner, and the Eſtates of Parliament, and Juſtice-General, on the 12th day of *April*, 1609, to anſwer, &c. And likewiſe produced the verifications of the executions, which were ſworn to, by the Heralds, Meſſengers and Witneſſes, in plain Parliament: all which are contained at length in the Records of Parliament; as are alſo the letters of relaxation and executions thereupon; relaxing *Robert Logan*, eldeſt ſon to umquhil *Robert Logan* the accuſed, from the horn, and all perils thereby; which relaxations were regiſtrated in publick Records before the day of compearance: and then the Lord Advocate produced for verifying of the dittay and crimes, the principal letters, and did put them in the Clerk-Regiſter's hands (where they lie among the publick Records); as likewiſe the depoſitions of the witneſſes, taken by the Lords of the Articles, in common form.

All which being produced in preſence of his Majeſty's Commiſſioner, and the Eſtates of Parliament, upon the day of 1609, the defenders cited, and not compearing; the Advocate deſired the Eſtates declaration on the relevancy: the true extracts whereof are as follow:

SIR *Thomas Hamilton* of *Binnie*, Knight, Advocate to our Sovereign, Lord, in his Highneſs's name, for proving of the points of the ſaid ſummons, and reaſon and cauſe of Treaſon and Leſe Majeſty contained therein, repeated divers miſſive bills, all written and ſubſcribed by the ſaid umquhil Laird of *Reſtalrig*. All the depoſitions of the witneſſes, examined before the Lords of Articles before; and before the Lords of ſecret Council, *George Sprott*'s depoſitions, and conviction and execution to the death, for the ſame cauſe of Treaſon as *Gowrie*: together with divers writs and other probations, which were preſently produced, before the ſaid Eſtates, by the ſaid Lord-Advocate, in our ſovereign Lord's Name, for proving of the foreſaid ſummons of Treaſon, and the reaſon and cauſe of Leſe Majeſty contained therein: of the which miſſive bills and depoſitions produced by the ſaid Advocate in our ſovereign Lord's name, for proving the ſaid ſummons of Treaſon,

Treaſon, and reaſons therein contained, againſt the ſaid *Robert Logan* and his foreſaids; the tenour follows.

"RIGHT Honourable Sir, my duty, with ſervice remembred: Pleaſe you underſtand, my Lord of *Gowrie*, and ſome others his Lordſhip's friends and well-wiſhers, who tenders his Lordſhip's preferment, are upon the reſolution you know, for the revenge of that cauſe: and his Lordſhip has written to me anent that purpoſe; whereto I will accord in caſe ye will ſtand to, and bear a part; and before ye reſolve, meet me and Mr. *Alexander Ruthven* in the *Cannongate*, on *Thurſday* the next week, and be as wary as you can: indeed Mr. *Alexander Ruthven* ſpoke with me, four or five days ſince; and I have promiſed his Lordſhip an anſwer within ten days at fartheſt. As for the purpoſe, how Mr. *Alexander Ruthven* and I has ſet down the courſe, it will be a very eaſy done turn; and not far by that form, with the like ſtratagem, whereof we had conference in *T. S.* But in caſe you and Mr. *Alexander Ruthven* forgather, becauſe he is ſomewhat uncautious; for God's ſake beware with his rackleſſneſs as to this of *Padua*; for he told me one of the ſtrangeſt tales of a Nobleman of *Padua* that ever I heard in my life, reſembling the like purpoſe; I pray you, Sir, think nothing, altho' this bearer underſtand of it; for he is the ſpecial ſecretary of my life; his name is Laird *Bour*, and was old *Manderſton*'s man for dead and life, and even ſo now for me. And for my own part, he ſhall know of all that I do know in this world, ſo long as ever we live together; for I make him my houſhold-man: he is well worthy of credit; and I recommend him to you. Always to the purpoſe I think beſt, for our plot, that we meet all at my houſe of *Faſtcaſtle*: for I have concluded with Mr. *Alexander*, who I think ſhall be meeteſt to be conveyed quietly in a boat by ſea; at which time, upon ſure advertiſement, I ſhall have the place very quiet and well provided; and as I receive your anſwer, I will poſt this bearer to my Lord: and I pray you, as you love your own life, (becauſe it is not a matter of mouſe) be circumſpect in all things, and take no fear but all ſhall be well. I have no will, that either my brother, or yet Mr. *N. R.* my Lord's old pedagogue, know any thing of the matter till all be done that we would have done; and then I care not who gets wit, that loves us. When ye have read, ſend this my letter back again with the bearer, that I may ſee it burnt myſelf; for ſo is the faſhion in ſuch errands: and if you pleaſe write your anſwer on the back hereof, in caſe ye will take my word for the credit of the bearer, and uſe all expedition; for the turn would not be long delayed. Ye know the King's hunting will be ſhortly; and then ſhall be beſt time, as Mr. *Alexander* has aſſured me, that my Lord has reſolved to enterprize that matter. Looking for your anſwer, commits you to *Chriſt*'s holy protection. From *Faſtcaſtle*, the 18th day of *July*, 1600.

Sic ſubſcribitur,

Yours to utter power ready,

RESTALRIG.

"LAIRD *Bour*, I pray you haſte you weſt to me about the errand I told you; and we ſhall confer at length of all things. I have received a new letter from my Lord of *Gowrie*, concerning the purpoſe that Mr. *Alexander* his Lordſhip's brother ſpoke to me before: and I perceive that I may have advantage of *Dirleton*; in caſe his other matter take effect; as we hope it ſhall. Always, I beſeech you, be at me the morn and even; for I aſſured his Lordſhip's ſervant, that I ſhall ſend you over the water, within three days, with a full reſolution of all my will, anent all purpoſes; and I ſhall indeed recommend you and your truſtineſs to his Lordſhip, as ye ſhall find an honeſt recompence for your pains in the end. I care not for all the land I have in this Kingdom, in caſe I can grip of *Dirleton*; for I eſteem it the pleaſanteſt dwelling in *Scotland*. For God's cauſe keep all things ſecret, that my Lord, my brother, get no knowledge of our purpoſes; for I rather be carded quick. And ſo looking for you, I reſt till meeting."

From the Cannongate,
the 18th day of July.

P. S. I am very ill at eaſe, therefore ſpeed you hither.

Sic ſubſcribitur,

Yours to power ready,

RESTALRIG.

"RIGHT Honourable Sir, all my hearty with humble ſervice remembred. Since I have taken in hand to enterpriſe with my Lord of *Gowrie*, your ſpecial and only beſt beloved; as we have ſet down the plat already, I will requeſt you, that you will be very circumſpect and wiſe, that no man get an advantage of us. I doubt not but you know the peril to be both life, lands and honour, in caſe the matter be not wiſely uſed. And, for my own part, I ſhall have a ſpecial reſpect to my promiſe that I have made to his Lordſhip, and Mr. *Alexander* his Lordſhip's brother, altho' the Scaffold were ſet up. If I cannot come to *Falkland* the firſt night, I ſhall be timely in *St. Johnſton* on the morn. Indeed, I lippened for my Lord himſelf, or elſe Mr. *Alexander* his Lordſhip's brother, at my houſe of *Faſtcaſtle*, as I wrote to them both. Always I repoſe on your advertiſement of the preciſe day, with credit to the bearer; for howbeit he be but ane ſillie glyed old carle, I will anſwer for him, that he ſhall be very true. I pray you, Sir, read, and either burn or ſend again with the bearer; for I dare hazard my life, and all I have elſe in the world, on his meſſage, I have ſuch proof of his conſtant truth. So commits you to *Chriſt*'s holy protection."

From the Cannongate, *the*
27th day of July, 1600.

P. S. I uſe not to write on the back of any of my letters, concerning this errand.

Sic ſubſcribitur,

Yours to all power, with humble ſervice ready,

RESTALRIG.

"MY Lord, my moſt humble duty with ſervice, in moſt hearty manner remembred: at the receipt of your Lordſhip's letter, I am ſo comforted, eſpecially as your Lordſhip's purpoſe communicated to me therein, that I can utter my joy, nor find myſelf able how to encounter your Lordſhip with due thanks. Indeed, my Lord, at my being laſt in the town, Mr. *Alexander*, your Lordſhip's brother, imparted ſomewhat of your Lordſhip's intention, anent that matter, unto me. And, if I had not been buſied about ſome turns of my own, I thought to have come over to *St. Johnſton*, and ſpoken with your Lordſhip. Yet always, my Lord, I beſeech your Lordſhip, both for the ſafety of your honour, credit, and more than that, that your life, my life, and the lives of many others, who may, perhaps, innocently ſmart for that turn afterwards, in caſe it be revealed by any, and likewiſe the utter wraking of our lands and houſes, and extirpating of our name; look that we be all as ſure as your Lordſhip, and I myſelf ſhall be, for my own part. And then, I doubt not, but with God's grace, we ſhall bring our matter to ane fine, which ſhall bring the contentment to us all, that ever wiſhed for the revenge of *Machiavelian* maſſacring of our deareſt friends. I doubt not, but Mr. *Alexander*, your Lordſhip's brother, has informed your Lordſhip what courſe I laid down, to bring all your co-aſſociates to my houſe of *Faſtcaſtle* by ſea; where I ſhould have all materials in readineſs, for their ſafe receiving on land and into my houſe; making, as it were, but a manner of paſſing time in ane boat on the ſea, in this fair ſummer-tide; and no other ſtrangers to haunt my houſe, while we had concluded on the laying our plot; which is already deviſed by Mr. *Alexander* and me. And I would wiſh, that your Lordſhip would either come, or ſend Mr. *Alexander* to me; and thereafter, I would meet your Lordſhip in *Leith*, or quietly at *Reſtalrig*; where we ſhould have prepar'd ane fine hatted kit, with ſugar, and comfits, and wine; and thereafter confer on matters; and the ſooner we brought our purpoſe to paſs, it were the better, before harveſt. Let not Mr. *W. R.* your old pedagogue, ken of your coming: but rather would I, if I durſt be ſo bold to intreat your Lordſhip, once to come and ſee my own houſe, where I have kept my Lord *Bothwell* in his greateſt extremities; ſay the King and his Council what they would: And in caſe GOD grant us happy ſucceſs in this errand, I hope both to have your Lordſhip, and his Lordſhip, with many others of your lovers and his, at a good dinner before I die. Always I hope, that the King's Buck-hunting at *Falkland* this year, ſhall prepare ſome dainty chear for us, againſt that dinner, the next year, *jocoſe hoc* to animate your Lordſhip, at this time: but afterwards we will have better occaſion to make merry. I proteſt, my Lord, before GOD, I wiſh nothing with a better heart, nor to atchieve to that which your Lordſhip would fain attain unto; and my continual prayer ſhall tend to that effect; and with the large ſpending of my lands, goods, yea, the hazarding of my life, ſhall not afray me from that, altho' the Scaffold were already ſet up, before I ſhould falſify my promiſe to your Lordſhip, and perſuade your Lordſhip thereof: I trow, your Lordſhip has ane proof of my conſtancy already or now: but, my Lord, whereas your Lordſhip deſires, in your letter, that I crave my Lord, my brother's mind anent this matter, I utterly diſaſſent from that, that he ever ſhould be ane Counſellor thereto; for in good faith, he will never help his friend, nor hurt his foe. Your Lordſhip may confide more in this old man, the bearer hereof, my man, Laird *Bour*, than in my brother; for I lippen my life, and all that I have elſe, in his hands: and I trow he would not ſpare to ride to Hell's-gate to pleaſure me; and he is not beguiled of my part to him. Always, my Lord, when your Lordſhip has read my letter, deliver it to the bearer again, that I may ſee it burnt with my own eyes: as I have ſent your Lordſhip's letter to your Lordſhip again; for ſo, it is the faſhion I grant: and I pray your Lordſhip to reſt fully perſuaded of me, and all that I have promiſed; for I am reſolved, howbeit it were to die in the morn. I muſt intreat your Lordſhip to expede *Bour*, and give him ſtrait directions upon pain of his life, that he take never a wink of ſleep, until he ſee me again; or elſe he will utterly undo us. I have already ſent another letter to the Gentleman your Lordſhip knows, as the bearer will ſhew your Lordſhip, of his anſwer, and forwardneſs with your Lordſhip; and I ſhall ſhew your Lordſhip farther at meeting, when and where your Lordſhip ſhall think it meeteſt. Till which time, and ever, I commit your Lordſhip to the protection of Almighty God."

From Gunn's Green, *the 29th*
Day of July, 1600.

POSTSCRIPT.

"Prays your Lordſhip hold me excuſed for my unſeemly letter, which is not ſo well written, as miſter were; for I durſt not let any Writers ken of it; but took two ſundry idle days, to do it myſelf. I will never forget the good ſport that Mr. *Alexander*, your Lordſhip's brother, told me of a nobleman of *Padua*. It comes ſo oft to my memory; and indeed, it is Aparaſtur to this purpoſe we have in hand."

Your Lordſhip's own ſworn and bunden man, to obey and ſerve with effold and ever ready ſervice, to his utter power, to his life's end.

Sic ſubſcribitur,

RESTALRIG.

"RIGHT Honourable, my hearty duty remembred, ye know, I told you, at our laſt meeting, in the *Cannongate*, that Mr. *Alexander* my Lord of *Gowrie*'s brother, had ſpoken with me anent the matter of our concluſion; and for my own part, I ſhall not be hindmoſt. And ſinſyne, I got a letter from his Lordſhip's ſelf, for that ſame purpoſe. And upon the receipt thereof, underſtanding his Lordſhip's frankneſs and forwardneſs in it; GOD knows, if my heart was not lifted ten ſtages. I poſted this ſame bearer to his Lordſhip, to whom you may concredit all your heart in that, as well as I: For, and it were my very ſoul, I durſt make him meſſenger thereof, I have ſuch experience of his truth, in many other

" things,

" things. He is a ſilly old glyed Carle, but wonder honeſt; and as he " has reported to me his Lordſhip's own anſwer, I think all matters ſhall " be concluded at my houſe of *Faſtcaſtle*; for I, and Mr. *Alexander Ruth-* " *ven*, concluded, That ye ſhould come with him and his Lordſhip, and " only another man with you, being but only four in Company, intil one " of the great fiſhing-boats be ſea to my houſe, where ye ſhall land als ſafe- " ly, as on *Leith*-ſhore; and the houſe againſt your Lordſhip's coming to " be quiet; and when you are about half a mile from ſhore, as it were paſ- " ſing by the houſe, to gar ſet forth a waff. But for God's ſake, let nei- " ther any knowledge come to my Lord, my brother's ears, nor yet to Mr. " *W. R.* my Lord's old pedagogue; for my brother is kittle to ſhoe be- " hind, and dare not enterprize for fear, and the other will diſſuade us " from our purpoſe with reaſons of Religion, which I can never abide. " I think there is none of a noble heart, or carries a ſtomach worth a pen- " ny, but they would be content and glad, to ſee ane contented revenge " of *Greyſteil*'s death; and the ſooner the better his Lordſhip be quick; " and bid Mr. *Alexander* remember on the ſport he told me of *Padua*: for " I think with myſelf, that the cogitation on that ſhould ſtimulate your " Lordſhip. And, for God's cauſe, uſe all your courſes *cum diſcretione.* " Fail not, Sir, to ſend back again this letter; for Mr. *Alexander* learn'd " me that faſhion, that I may ſee it deſtroyed myſelf. So, till your " coming, ever commits you heartily to *Chriſt*'s holy protection."

From Gun's Green, *the laſt Day of* July, 1600.

The Superſcription is torn away from the laſt letter.

The Depoſitions of the Witneſſes produced, are as follows:

MR. *Alexander Watſon*, Miniſter at *Coldingham*, of the age of fifty years, married, depones, The five miſſive letters ſubſcribed by the Laird *Reſtalrig*, and produced in proceſs by the Lord Advocate, for proving of the reaſons of Treaſon purſued againſt *Robert Logan*, ſon and apparent heir to *Robert Logan* of *Reſtalrig*, being ſhown to this deponent; and he having at length ſighted and conſidered the ſame, depones, That he takes upon his conſcience, that he verily believes, that the ſaid five miſſive letters, and every one of them, are verily and truly written by the ſaid umquhile *Robert Logan* of *Reſtalrig*, with his own hand: and proves this of ſome of his knowledge, that not only he thinks, that the character of every letter reſembles perfectly the ſaid umquhile *Robert*'s hand-writ every way; but alſo agrees with his faſhion of ſpelling, which he has particularly remembred in every one of the ſaid miſſive letters, in thir points following: *Firſt*, That he never uſed to write ane *z* in the beginning of any word, ſuch as *zou*, *zor*'s, *zeld*, *zea*, and ſick-like; but ever writ *y*, inſtead of the ſaid *z*. That he writ all words beginning with *w*, with ſingle *v*; and when that letter *w* fell to be in the midſt or end, he put ane double *w*. That when he writ *quhan*, *quhair*, *qlk*, or any ſuch words, whilk uſes to be written and ſpelled by others, with which he wrote only *qh*, *quhen*, *quhair*, and ſick-like. Whenever a word began with *con*, he never wrote *con* at length, but wrote with an *l7*. Whenever *t* fell to be in the end of a word, he wrote it without a ſtroke thro' *t*, and did the like whenever it fell in any part of ane word. And for farther confirmation of the premiſſes, he produced three letters written every word, and ſubſcribed by the ſaid umquhile *Robert Logan* of *Reſtalrig*, and comparing them to the five other Miſſives produced by the Advocate, ſhow evidently the direct conformity of the ſamen, as well in the character and true reſemblance of the hand-writ, as in the ſpelling and writing of divers writs, ſyllables and letter, according to the particulars above-ſpecified.

Sic ſubſcribitur,

Mr. ALEXANDER WATSON.

MR. *Alexander Smith*, Miniſter of *Chirneſide*, of the age of thirty years, or thereby, married, depones, That he was well acquainted with the umquhile Laird of *Reſtalrig*, by reaſon he was pedagogue to his Bairns, and has ſeen very many of his hand-writs; and having ſeen, read, and at length conſidered the five miſſive letters produced by the Advocate; and inquir'd, if he knew the ſame to be the Laird of *Reſtalrig*'s proper hand-writ? declared, upon his great oath, That he certainly believes the ſaids five letters, and every word thereof, to be the Laird of *Reſtalrig*'s proper hand-writ; becauſe he finds the character thereof to agree every way with the ſhape of his ordinary writing; and remarked very particularly the manner of *Reſtalrig*'s ſpelling of many words, otherwiſe nor other men commonly uſes to write and ſpell, according to the hail particulars remarked of before, by Mr. *Alexander Watſon*, the witneſs immediately preceding; and, in theſe points, and in all others, conform to the ſaid Mr. *Alexander Watſon*'s depoſition in all things; *reddens cauſam ſcientiæ*, becauſe he was perfectly acquainted with the Laird of *Reſtalrig*'s hand-writ in his life-time; and was pedagogue to his Bairns many years, and in his company.

Sic ſubſcribitur,

Mr. ALEXANDER SMITH.

SIR *John Arnott*, Provoſt of *Edinburgh*, of the age of threeſcore ten years, or thereby, married, depones, That he was well acquainted with *Robert Logan* of *Reſtalrig*, and with his hand-writ, becauſe he had received divers of his letters himſelf, and ſeen many other letters written by him. And the five miſſive letters produc'd by the Advocate being ſhown to him; and he having ſeen and conſidered the ſame, remembred that he had ſeen, read, and perfectly conſidered the Laird of *Reſtalrig*'s hand-writ, as the letters written by the deponent at any time, or his own hand-writ. And ſo takes on his conſcience, That the foreſaids five miſſive Bills, produc'd by the Advocate, are the proper hand-writ and ſubſcription of the ſaid umquhile Laird of *Reſtalrig*, be his Judgment. And, for verification thereof, has produc'd four writs, all written be the ſaid umquhile Laird of *Reſtalrig*, and ſent to this deponent, to *Archibald Johnſtoun*, agreeing perfectly in ſpelling and character, with the ſaids miſſives.

Sic ſubſcribitur,

Sir JOHN ARNOTT.

ALexander Cuik, Sheriff-Clerk of *Berwick*, of the age of fifty years, or thereby, married, depones, That he was well acquainted with the umquhile Laird of *Reſtalrig*, and has ſeen many and ſundry of his writs, and receiv'd divers of his letters directed to himſelf; and being deſired to ſee and conſider the five letters produc'd by the Advocate, and to declare whether he knew and eſteem'd to be all written by umquhile the Laird of *Reſtalrig*; depones, upon his Conſcience, That he believes and eſteems the ſaids hail letters to be all written by the Laird of *Reſtalrig*; *reddens cauſam ſcientiæ*, becauſe, not only the character agrees every way with the ſhape of *Reſtalrig*'s hand-writ; but alſo the ſpelling in many particulars, wherein *Reſtalrig* differed from other men's form of writing. And in the particulars thereof, depones conform to the two firſt Witneſſes, the Miniſters of *Coldingham* and *Chirneſide*; *reddens eandem cauſam ſcientiæ.*

Sic ſubſcribitur,

ALEXANDER CUIK.

WIlliam Home in *Aytoun*-Mill, of the age of thirty-three years, or thereby, married, depones, That all the five Miſſives above-written, being ſhown to this deponent, and having at length conſidered every one of them, takes upon his conſcience, That to his knowledge, that the ſaids five miſſive letters are all written and ſubſcribed by the umquhile Laird of *Reſtalrig*; for the ſpecial reaſons contain'd in the depoſitions made by Mr. *Alexander Watſon*, and Mr. *Alexander Smith*, Miniſters; and *Alexander Cuik*, Sheriff-Clerk of *Borwick*; to whom he is conform in all things, *reddens eandem cauſam ſcientiæ.*

Sic ſubſcribitur,

WILLIAM HOME.

JOhn Horne, Notary in *Aymouth*, of the age of forty-two years, or thereby, *ſolutus*, depones, The foreſaids five miſſive Bills, being at length ſighted and conſidered by this deponent, depones and declares, upon conſcience, to his knowledge, all the ſaids five Miſſives are the Laird of *Reſtalrig*'s proper hand-writ and ſubſcription, for the reaſons above-written in the depoſition of *William Home*, *reddens eandem cauſam ſcientiæ.*

Sic ſubſcribitur,

JOHN HORNE.

MR. *William Hogg*, Miniſter at *Aytoun*, of the age of thirty years, or thereby, married, depones, That he knew well the Laird of *Reſtalrig*, and has ſeen of his writs, and produc'd ane letter, written by *Reſtalrig* to the Laird of *Aytoun*, as written with *Reſtalrig*'s own hand-writ. And having conſidered the five writs produced by the Advocate; declares, That he thinks them likely to be his Writs; and that the ſame appears to be very like his writ, by the conformity of letters and ſpelling.

Sic ſubſcribitur,

Mr. WILLIAM HOGG.

The Depoſition and Declaration of George Sprott, *as emitted by him, both before the Jury, judicially; and alſo upon the Scaffold, at the time of his Execution, on the* 12*th of* Auguſt, 1608. *Which Depoſition and Declaration was made before the Council, on the* 10*th of* Auguſt, 1608, *written by the Clerk of Council*, James Primroſe; *and ſubſcribed by* Sprott's *own hand, in the preſence of the Earl of* Dunbar, *the Earl of* Lothian, *the Biſhop of* Roſs, *the Lord* Holy-rood-houſe, *the Lord* Scoon, *the Lord* Blantyre, *Sir* William Hart *Lord-Juſtice*, *Mr.* John Hall, *Mr.* Patrick Galloway, *Mr.* Peter Hewart, *all three Miniſters of the Kirks of* Edinburgh.

GEorge Sprott, Notary in *Aymouth*, being brought to the ſcaffold and place of execution, he, in publick audience of the hail people, at the four nooks of the ſcaffold, ratified his former depoſition, anent his knowledge, and concealing of *Reſtalrig*'s guiltineſs of *Gowrie*'s Treaſon: for the which, he craved God and his Majeſty humble forgiveneſs; being moſt ſorry and grieved that he had offended God, and the King's Majeſty, in concealing ſuch a vile, deteſtable, and unnatural Treaſon, enterprized by the Earl of *Gowrie* and Laird of *Reſtalrig*, againſt his natural King, ſo good and ſo godly a Prince, who has ever been ſo gracious to his Subjects, and to this hail Iſland: proteſting, That if he had a thouſand lives to render, and were able to ſuffer ten thouſand deaths, it is not ſufficient ſatisfaction and recompence for his ſo foul and horrible offence; and that God had preſerved him from many great perils, when his life was in extreme danger, to bring him to this publick declaration of that deteſtable and horrible fact, in teſtifying of the truth; as he ſaid publickly, in preſence of all the people, in theſe words following: *To my own ſhame, the ſhame of the devil, and the glory of God; for ſatisfying the conſciences of all theſe, (if any be) that has, or can make any doubt of the truth of this ſo clear a matter.* And he acknowledges, that his haunting with *Reſtalrig*, who was a man without Religion, and ſubject to many other vices; and his thoughts of himſelf in thir matters, after the firſt ſight of *Reſtalrig*'s letter written to *Gowrie*, and his continual bearing of company with *Reſtalrig* and Laird *Bour*, who was irreligious, and without fear of God, brought him from one ſin to another, and conſequently to this grievous crime, for the which, moſt juſtly, worthily and willingly, he is now to render his life. And he deſired all the people to beware of ill company; and namely, of the company of thoſe who are void of Religion. And he deſired, that this his declaration might be inſerted in his proceſs: as alſo, he deſired the Miniſters of God's word to publiſh this his declaration to their folks, from their pulpits; and took every one of them who were preſent by the hand, with their promiſe to do the ſame: ſaying unto them, That this was the moſt glorious day that ever his eyes did ſee; and with theſe words he proſtrates himſelf, and falls upon his knees, in preſence of the hail people, and made a very pithy prayer [as in Vol. I. p. 306.].

And ſo he continued a good ſpace, in a moſt fervent prayer, to the great admiration and rejoicing of all the people; and in a better form and manner nor any of the beholders and hearers can be able to ſet down in writ, the ſame not being written in the preſent time, becauſe there was no place of writing upon the ſcaffold, in reſpect of the preaſe and multitude of

People. And going up the ladder, he desired liberty to sing the sixth *Psalm*, and requested the people to acompany him in singing thereof; which being granted, and he being at the ladder-head, the same was tane up and sung by himself, with a very loud and mighty voice, and was assisted with above the number of five hundred persons, who with tears accompanied him in singing of that song. After the ending thereof, he repeated and ratified his former deposition. And, with that, recommending his soul to God, he was thrown over, and so ended his mortal life. In witness whereof, we Under-subscribers, who, for the most part, were all of us upon the scaffold with him, and remained with him unto the time of his death; and others of us in so convenient places near to the scaffold, that we did hear all that was spoken by him, have subscribed thir presents with our hands. *Sic subscribitur*, *Glasgow*, B. *Galloway*, *M.* B. *Brechin*, *Balfour of Burley*, *Holy-rood-house*, *John Preston*, *Thomas Regra*, *Peter Sharp*, Mr. *Patrick Galloway*, *John Hall*, *Walter Balcanquhal*, Mr. *Hewat*, Mr. *George Blyth*, *Charles Lumsden*, *Richard Tobie* Baillie of *Edinburgh*, *William Speir* Baillie, *James Ainsly* Baillie of *Edinburgh*, &c.

What is contained in this Speech being consonant to his deposition made before the Privy-Council, as also before the Inquest; here is added the deposition, as emitted by him.

This *Sprott*, after divers examinations, being moved with remorse of conscience, for the long concealing of the foreknowledge of this treasonable conspiracy; confesseth, declareth, and deponeth, with the peril of his own life,

"THAT he knew perfectly, that *Robert Logan**, late of *Restalrig*, "was privy, and upon the foreknowledge of *Gowrie*'s treasonable "conspiracy. And for the greater assurance of his knowledge, deponeth, "that he knew that there were divers letters interchanged betwixt them, "anent the treasonable purpose aforesaid, in the beginning of the month "of *July*, 1600. Which letters, *James Bour*, called Laird *Bour*, servitor "to *Restalrig* (who was employed mediator betwixt them, and privy to "all that errand) had in keping, and shewed the same to *Sprott* in the "place of *Fastcastle*."

And producing the Earl of *Gowrie*'s letter to *Restalrig*;

"Which letter, written every word with *Restalrig*'s own hand, was "subscribed by him after his accustomed manner, RESTALRIG; and was "sent to the Earl of *Gowrie* by the said *James Bour*. After whose return, "within five days, with a new letter from *Gowrie*, he staid all night with "*Restalrig* in *Gun*'s *Green* [a house of *Restalrig*'s]: and *Restalrig* rode to "*Lothian*, the morn thereafter, where he staid five or six days. Then "after his returning pass'd to *Fastcastle*, where he remained a certain "short space.

"And further deponeth, that he saw and heard *Restalrig* read the last "letter, which *Bour* brought back to him from *Gowrie*, and their confe"rence thereanent. And heard *Bour* say, Sir, if you think to make any "commodity by this dealing, lay your hand to your heart. And *Restal*"*rig* answered, that he would do as he thought best. And farther said to "*Bour*, howbeit he should sell all his own land that he had in the world, "he would pass through with the Earl of *Gowrie*; for that matter would "give him greater contentment, nor if he had the whole Kingdom: and "rather or he should falsify his promise, and recall his vow that he had "vowed to the Earl of *Gowrie*, he should spend all that he had in the world, "and hazard his life with his Lordship. To whom *Bour* answered, You "may do as you please, Sir; but it is not my counsel that ye should be "so sudden in that other matter. But for the condition of *Dirltoun*, I "would like very well of it. To whom *Restalrig* answered, Content your"self, I am at my wit's end.

"And farther *Sprott* deponeth, That he entered himself thereafter in con"ference with *Bour*, and demanded what was done bewixt the Laird and "the Earl of *Gowrie*? And *Bour* answered, That he believed that the Laird "should get *Dirltoun* without either gold or silver, but feared that it "should be as dear unto him. And *Sprott* enquiring how that could be; "*Bour* said, they had another Pye in hand nor the selling of any land; but "prayed *Sprott*, for God's sake, that he would let be, and not trouble him"self with the Laird's business; for he feared, within few days, the Laird "would either be landless or lifeless."

And the said *George Sprott* being demanded, If this his Deposition was true, as he would answer upon the salvation and condemnation of his soul: and if he would go to death with it, seeing he knoweth the time and hour of his death to approach very near? deponeth for answer, "That "he hath not a desire to live, and that he knows the time to be short, "having care of no earthly thing, but only for clearing of his conscience "in the truth of all these things, to his own shame, before the world, and "to the honour of God, and safety of his own soul: That all the former "points and circumstances contained in this his Deposition, with the "Deposition made by him the 5th day of *July* last, and the whole re"manent Depositions made by him sen that day, are true; which he will "take on his conscience, and as he hopeth to be saved of God, and "that he would seal the same with his blood."

And farther, being demanded, where this above-written letter, written by *Restalrig* to the Earl of *Gowrie*, which was returned again by *James Bour*, is now? deponeth, "That he abstracted it quietly from *Bour*, "in looking over and reading *Bour*'s letters, which he had in keeping of "*Restalrig*'s; and that he left the above-written letter in his chest among "his writings, when he was taken and brought away, and that it is closed "and folded within a piece of paper."

This foresaid Deposition was made by him the 10th *August*, 1608, written by *James Primrose*, Clerk of his Majesty's Privy-Council; and subscribed with the said *George Sprott*'s own hand; in the presence of the Earl of *Dunbar*, the Earl of *Lothian*, the Bishop of *Ross*, the Lord *Scoon*, the Lord *Holy-rood-house*, the Lord *Blantyre*, Sir *William Hart*, his Majesty's Justice, Mr. *John Hall*, Mr. *Patrick Galloway*, Mr. *Peter Hewart*, Ministers of the Kirks of *Edinburgh*.

Subscribed with all their hands.

And also the eleventh day of the foresaid month and year, the said *George Sprott* being examined in the presence of a number of the Council and Ministers aforesaid; and it being declared to him, That the time of his death now very near approached, and that therefore they desired him to clear his conscience with an upright declaration of the truth; and that he would not abuse the holy name of God, to make him, as it were, a witness to untruths: And specially being desired, that he would not take upon him the innocent blood of any person dead or quick, by making or forging lies and untruths against them:

"Deponeth, That he acknowledgeth his grievous offences to God, (who "hath made him a reasonable creature) in abusing his holy name with "many untruths, sen the beginning of this process: but now being resol"ved to die, and attending the hour and time when it shall please God to "call him, he deponeth with many attestations, and as he wisheth to be "participant of the kingdom of Heaven, where he may be countable "and answerable upon the salvation and condemnation of his soul, for "all his doings and speeches in this earth, that all that he hath deponed "sen the fifth day of *July* last, in all his several depositions, were true "in every point and circumstance of the same; and that there is no "untruth in any point thereof."

And having desired Mr. *Patrick Galloway* to make a prayer, whereby he might be comforted now in his trouble; which was done:

"The said Deponer, with many tears after the prayer, affirmed this "his Deposition to be true; and for the confirmation thereof, declared, "that he would seal the same with his blood."

I had almost forgotten that, which in this action of his death was strange, and in a manner marvellous. For being urged by the Ministers and other of good Rank upon the scaffold, that now at his end he should declare nothing but the truth (touching the matter for which he suffered) on the peril of his own salvation and condemnation of his soul; he for the greater assurance of that his constant and true Deposition, promised (by the assistance of God) to give them an open and evident token before the yielding of his spirit. Which he accomplished thereafter: for before his last breath, when he had hung a pretty space; he lift up his hands a good height, and clapped them together aloud three several times, to the great wonder and admiration of all the beholders. And very soon thereafter he yielded his spirit.

As in the account of *Gowrie*'s and his brother's process, I did not insert the Libel and Summons, nor Executions, *verbatim*, as being very tedious and uselcss to Readers; on the same motives I do so here, but I insert the Doom and Sentence *verbatim:* the Libel, Summons and Autographons of these and others being at full in the public Records, and patent to all enquirers.

June 1609.

TO whilk Summons, with the Executions and Indorsations thereof respective foresaids, being this instant day read in presence of his Majesty's Commissioner and Estates of Parliament, first in Latin, *and thereafter in* Scots; *The said* Robert Logan *being oft times called of new, at the Tolbooth window of the said Court of* Edinburgh, *to have compeared and answered to the said Summons of Treason, and Reasons and Causes therein contained: And he not compearing to have defended in the said matter: and to have answered to the said Summons, The said Sir* Thomas Hamilton *of* Bynnie *Knight, Advocate to our Sovereign Lord, desired the said Estates Declaration, if the Reasons of the said Summons were relevant: the whilk Estates found the said Summons and Reasons and Causes therein contained relevant. Therefore the said Advocate, of new for proving of the foresaid Summons of Treason raised against the said* Robert Logan, *bearing and containing as is above-written; repeated all the foresaid missive Bills, and the saids Depositions of the said Witnesses examined before the saids Lords of Articles and Lords of Secret Council respective; and also* George Sprott's *Deposition, Conviction and Confession, in Judgment, and at his Execution to the death, for the said cause of Treason; with the hail other Writs and Probations produced and repeated by him of before; for proving of the foresaid Summons of Treason, and Reasons therein contained; and desired the saids Estates of Parliament yet, as of before, to advise the Probations foresaids, led and deduced in the said matter; and to pronounce their Sentence of Parliament thereuntil, according to the said Probations and their Consciences: And thereafter, the hail Depositions of the Witnesses, missive Bills, and hail Writs, and Probations, being read, seen, and considered by the foresaids hail Estates of Parliament; and they therewith being ripely advised, the said Lord Commissioner and Estates of Parliament finds, decerns, and declares, That the foresaid umquhil* Robert Logan *of* Restalrig, *committed and did in his life-time, open and manifest Treason, in all the Points, Articles, and Manner, contained in the said Summons: and therefore it was given for Doom by the mouth of* David Lindsay, *Dempster of Parliament, in manner and form as follows:*

THIS Court of Parliament shows for Law, That the said umquhil Robert Logan *of* Restalrig, *in his life-time committed the foresaid crime of Treason and Lese Majesty; and that he was Art and Part guilty, and partaker thereof, against our Sovereign Lord and Authority Royal; and that the foresaids cruel, wicked and treasonable crimes were interprised, by his causing, persuasion, counsel and help. Likeas, the said umquhil* Robert Logan *of* Restalrig, *treasonably counselled the foresaid crime of Lese Majesty to his death, and in his death, in all manner, at length contained in the said Summons: and therefore, depones*

* Great part of this evidence is in the Trial of *George Sprott*, vol. I. p. 302, *&c.* tho' not so full. For the Earl of *Cromerty*, in his account of the Conspiracies of the Earl of *Gowrie*, (from whence this is taken) says p. 126. Mr. *Crawford* did bring a pamphlet printed at *London*, *anno* 1609, published by Dr. *George Abbot*, then Archbishop of *Canterbury*, who being providentially in *Scotland* in the year 1608, the Doctor's curiosity brought him in amongst the multitude of hearers of that Trial (of *G. Sprott*) whereby he was so convinced of the truth of *Gowrie*'s Treasons, and of the malice of the King's Calumniators, as moved the good Doctor to intreat for an extract and account of the whole process, attested by Sir *William Hart*, Lord Justice of *Scotland*, at that time (which the Doctor brought with him to *England*, and caused it to be printed, with a long preface, from which the Trial of *G. Sprott*, vol. I. is taken.) But that paper, printed at *London*, being drawn out as a memorial for Dr. *Abbot*'s own use, and not as a full Abstract of what is recorded, which I now publish from the original Depositions, Letters, and other Writs, lying in Record.

and declares the Name, Memory and Dignity of the ſaid umquhil Robert Logan *of* Reſtalrig, *to be extinct and aboliſhed, and his Arms cancelled, riven and delete furth of the books of Arms, and Nobility; ſo that his Poſterity ſhall be excluded, and be unhabile to poſſeſs or enjoy any Offices, Honours, Dignities, Lands, Tenements, Rooms, Rents, Poſſeſſions or Goods, moveable or unmoveable, Rights and others whatſomever, within the Kingdom, in all time coming; and that all the ſaids Goods, Lands, Rooms, Tenements and other Goods, moveable and unmoveable, Rights and others whatſomever pertaining to the ſaid umquhil* Robert Logan *of* Reſtalrig; *or which might otherways have pertained to him, at any time, ſince his conſpiring of the ſaid treaſonable Crimes, to be eſcheat and forefaulted to our Sovereign Lord; to appertain and remain perpetually with his Majeſty in property. And this I give for Doom.*

Note, Here, as in *Gowrie*'s Proceſs, that the citing of dead Perſons is among the legal Forms, preſcribed both by our Laws, and Laws of ſeveral other Nations.

XII. The Trial of the Lord BALMERINOTH, at *St. Andrews*, the 10th of *March*, 1609. for *High-Treaſon*, 7 *Jac.* I *.

[The Lord *Balmerino* was a profeſſed Proteſtant: But, upon what Motive is not known, he often preſſed the King to write a Letter of Compliment to the Pope, which, it ſeems, his Majeſty had as often refuſed to do. Hereupon, as the thing is related, *Balmerino* writ the Letter, and bringing the King ſeveral Diſpatches at a time when his Majeſty was in haſte to be gone a-hunting, thruſt it in among the reſt; and the King, through inadvertency, in that hurry, ſigned it. The Letter thus ſigned, was ſent away, and no more heard of it till ſome years after, Cardinal *Bellarmine* mentioning of it to the King's diſadvantage, his Majeſty was obliged to take notice of, and to queſtion the Secretary about it.]

THE Lords being ſet, the Lord *Balmerinoth* was ſent for: and being come, the Lord-Advocate told him, There was a Warrant come from his Majeſty for his Trial, and therefore deſired to know, whom he had entertained to ſpeak for him.

He anſwered, He had great neceſſity to ſpeak, the Cauſe being ſuch as concern'd his Life and Eſtate; but he had greater neceſſity to hold his peace, by reaſon of his Offence, which was ſuch as it admitted no excuſe; and my grief for it ſo great, as it will not ſuffer me to extenuate my Crime: and therefore I will neither make any friend intereſted in that, whereunto myſelf fell without the advice of any; nor will I deſire a Lawyer to make that ſeem leſs, which I would have all the world know to be ſuch as it is.

Herein are two points in which I would have all men ſatisfied concerning his Majeſty: Firſt, for his Majeſty's innocency in the writing of the letter; for I proteſt I could never draw him to hear with patience my motion. But he did utterly and abſolutely refuſe to take that courſe againſt conſcience, which would neither ſatisfy me, who in a politick natural courſe had conceited it might be behoveful for his Majeſty; and ſo applied myſelf to that crooked device, which hath worthily brought me to this eſtate wherein I now ſtand.

The ſecond thing concerning his Majeſty, is this: That whereas ſome in malice to his Majeſty, or my Friends in commiſeration of my eſtate, may think and report it too rigorous and cruel a courſe, which is held againſt me in a matter of this moment, the ſuggeſting of a letter of recommendation, to proceed againſt my life and eſtate; I would have ſuch know, that his Majeſty's clemency is many ways teſtified unto the world, in caſes that have ſeemed more nearly to concern him; and therefore men ſhould not judge of his Majeſty's diſpoſition to mercy by this action; but rather caſt their eyes upon my unhappineſs, who have offended in ſuch a point as his Majeſty can extend no favour to me without the damage of his own honour, which being dearer to him than his life, it muſt needs be more tendered than twenty thouſand ſuch lives as mine. And therefore I deſire not to be ſpared at ſo dear a rate as the impeachment of his Majeſty's honour.

There are likewiſe two things concerning myſelf, which I deſire all men to underſtand. Firſt, That I had no aim at the alteration of Religion, or to bring in a Toleration, or what you will term it, by the writing of that letter: but merely a politick courſe, as I have ſaid, which, as a natural man, I conceited might further his Majeſty's Right. And this I proteſt to be true, as I ſhall anſwer God in the Day of Judgment, when the ſecrets of all hearts ſhall be diſcloſed.

Next, I would have no man think that it was gain or any private advantage that drew me to that; for I proteſt I never received or expected the leaſt reward from any Prince in the world, ſave from the King my Maſter. And this, as I ſhall anſwer the great God in heaven.

This ſaid, the Jury was called, and in their hearing was read the Indictment, which aggravated his crime by his Majeſty's favours to him, which had deſerved more regard; by his Majeſty's refuſal; by the dangers which did follow, or might have done; imputing all the Treaſons which have been a-foot ſince, to be fruits of that letter; and laſtly, charging him with having intelligence with foreign eſtates, and enemies of the Goſpel, for the ſubverſion of the ſtate of Religion.

To all theſe he reply'd not one word.

Then was read his confeſſion taken in *Frankland*, the effect of that which he made in *London*. Then was read the ſpeech he uttered before the Council at *Whitehall*, containing his ſorrow, his ſins, the favours he had received, his unworthineſs of them, his deſire to give his Majeſty ſatisfaction for his offence to the laſt drop of his blood. Laſt, was read a Letter from his Majeſty to the Lord-Advocate, ſhewing his Majeſty's refuſal to liſten to the Lord-Preſident's motion, and ſetting down ſome circumſtances which paſſed betwixt his Majeſty and the Lord-Preſident at the time of the refuſal; againſt all which the Preſident ſaid nothing.

So the Jury going together, after a time returned, and found him guilty of all the parts of the Indictment.

Then the Lords conferring upon the Bench; my Lord Juſtice ſignified, That they were not to proceed further till they knew more of the King's pleaſure. And ſo adviſing the Lord-Preſident to fit himſelf for God; and giving the Jury thanks for their pains and care they had of his Majeſty's Honour; the Court roſe.

["He was by order from Court detained a Priſoner for ſome time; "and afterwards made a ſort of Priſoner at large: till at laſt, in conſi- "deration of his ſubmiſſive behaviour, and the ſufferings he had under- "gone; the King was pleaſed to pardon him, and to reſtore his blood "and eſtate."†]

* Copied from a MS. in the *Bodleian* Library, *Rotulæ in Archivo*, A. 3033. 44, 10. And though ſhort, is a more perfect Copy than that in the *Cotton* Library, *Julius*, F. 6. N. 34.

† His Son was tried for a Libel in the following Reign. *See* vol. I. p. 407.

XIII. The Arraignment and Confeſſion of the Lord SANQUIRE, (who being a Baron of *Scotland*, was arraigned by the Name of *Robert Creighton*, Eſq;) at the King's-Bench Bar, in *Weſtminſter-hall*, on *Saturday* the 27th day of *June*, 1612. 10 *Jacobi Regis*, for procuring the Murder of *John Turner*, a Maſter of Defence, whom he cauſed to be ſhot with a Piſtol by one *Carliel*, a *Scottiſhman*, for thruſting out one of his Eyes in playing at Rapier and Dagger *.

ALL things according to the uſual form being prepared, and the Priſoner brought to the Bar, his Indictment was read.

Copia Indictamenti Roberti Creighton, *Armig.*

Middl. JUR' preſentant pro Dom' Rege ſuper ſacr'm ſuum qd' cum Rob' Carliel nuper de Lond' Yeoman, et Jacob' Irweng nuper de Lond' præd' Yeoman, Deum præ oculis ſuis non habentes, ſed inſtigatione diabolica ſeduct', undecimo die Maii anno regni Domini noſtri Jacobi, Dei grat' Angl', Franc', et Hiberniæ Regis, fidei defenſor', &c. decimo, et Scotiæ xlv. apud London, videl't, in parochia Sancti Dunſtani in occident', in warda de Farringdon extra London præd', &c. vi et armis, &c. felonice ac ex maliciis ſuis præcogitat', in & ſuper quendam Johan' Turner adtunc et ibidem in pace Dei et dicti Domini Regis exiſten', inſultum et affraiam fecer', et præd' Robertus Carliel quoddam tormentum, Anglice vocat' *a Piſtol*, valor' quinque ſolidorum adtunc et ibid' onerat' cum pulvere bombardico, et glandine plumbea, Anglice, *charged with Gun-powder and one leaden Bullet*, quod quidem torment' idem Robertus Carliel in manu ſua dextra adtunc et ibid' habuit et tenuit in et ſuper præfat' Johan' Turner adtunc et ibid' felonice, voluntarie, et ex malicia ſua præcogitat', ſagittavit, et exoneravit, Anglice, *did ſhoot off and diſcharge*, et præd' Ro. Carliel cum glandine plumbea præd', torment' præd', adtunc et ibid' emiſſ. præfatum Johan' Turner in et ſuper ſiniſtram partem pector' ipſius Johan' Turner prope ſiniſtram mamillam ipſius Joh' Turner adtunc et ibid' felonice percuſſit, dans eidem Jo. Turner adtunc et ib' cum glandine plumbea præd' e torment' præd' adtunc et ib'm emiſſ. in et ſuper præd' ſiniſtram partem pector' ipſius Jo. Turner unam plagam mortal' latitud' dimid' unius pollic' et profunditat' quinq; pollic' de qua quid' plaga mortali præd' J. Turner apud Lond' præd', (in paroch' et ward' præd', inſtant' obiit: Et præd' Jac. Irwenge, felonice, et ex malicia

* From an authentic MS. lent the Editor.

malicia ſua præcogitat', adtunc & ib'm fuit præſens, auxilians, aſſiſtans, abettans, conſortans, & manutenens, præfat' Robert' Carliel ad felon' & murdr' præd' in form' præd' felonice faciend' & perpetrand': Et ſic prædict' Robert' Carliel & Jacobus Irweng præfat' Johan' Turner apud Lond' præd', in paroch' & ward' præd', modo & forma præd', felon', voluntar', ac ex maliciis ſuis præcogit' interfecerunt & murdaverunt, contra pacem dicti Dom' Reg' nunc, coron' & dignitat' ſuas: Quidam Robert' Creighton nuper de paroch' Sanctæ Margaret' in Weſtm' in com' Middl' armig', Deum præ oculis ſuis non habens, ſed inſtigatione diabolica ſeduct' ante felon' & murdr' præd', per præfat' Rob. Carliel & Jacob. Irweng modo & forma præd' fact' & perpetrat', ſcil't, decimo die Maii, an' regni dicti Domini noſtri Jacobi, Dei grat' Angl', Franc', & Hibern' Regis decimo, & Scotiæ xlv. præd', Robert' Carliel apud prædict' paroch' Sanctæ Margaret' in Weſtm' præd', in com' Middl' præd', ad felon' & murdr' præd' modo & forma præd' faciend' & perpetrand', malicioſ. felonic', voluntar', & ex malicia ſua præcogitata, incitavit, movit, abbettavit, conſuluit, & procuravit, contr' pacem dicti Domini Regis nunc, coron' & dignitat' ſuas, &c.

He then was demanded by the Clerk of the Crown, whether he was guilty of procuring the Murder of *John Turner*, or not guilty? He made anſwer to this effect:

My LORDS,

THAT which at my Arraignment the other day I pleaded to the contrary, was not that I could be ſo unworthy to deny any ſyllable of that I had formerly profeſſed before ſo honourable Perſonages, nor out of any deſire that the leaſt thing might be concealed, which might ſerve for evidence to convince me of this foul fact, whereof I now ſtand accus'd and indicted, and whereof I formerly have, and now do moſt willingly and penitiently confeſs myſelf to be guilty; my purpoſe then was only to gain time for the diſpoſing of ſome temporal affairs, and for the better preparing of my Soul for her departure from this Body; for that I ſhould long live, I neither expect, nor much deſire. And now, my Lords, if that may ſtand with the courſe of the laws of the land (whereof I am altogether ignorant) I will eaſe this Jury, the King's Counſel, and your Lordſhips, and will confeſs myſelf guilty of this fact in the ſame manner as it is laid in the Indictment.

Or if that may not be permitted by law, yet ſhall I give ſuch evidence againſt myſelf, as I ſhall not leave it needful in any point to be aggravated; only in ſome circumſtances I will endeavour, if not to extenuate the fact, yet at leaſt to move your Lordſhips and this worthy Audience to pity my caſe; wherein as I know I can ſay nothing of ſubſtance that can help in a legal courſe of proceeding, ſo I much fear that thoſe circumſtances I would deliver, I ſhall not be able at full to expreſs my own thoughts, both by reaſon of my own imperfections, and alſo for that I lack the perfect uſe of the phraſe of this Country. But for that point, in ſuch paſſages as I ſhall not be underſtood in, I will humbly intreat your Lordſhips in your wiſdom, and this Audience in their Charity to conceive, that my meaning is, to make a full and true relation of all the paſſages of this buſineſs.

The firſt motive of this fatal accident was (as it is well known), that *Turner* playing with me at foils, now about ſeven years paſt at my Lord *Norris*'s houſe in *Oxfordſhire*, put out one of my eyes, and that (as my Soul and Conſcience was over-perſuaded) willingly and of ſet purpoſe. At the taking up of the foils, I proteſted unto him, I play'd but as a Scholar, and not as one that would contend with a Maſter in his own profeſſion, and thereupon requeſted him, That he would play as with a Scholar; the order whereof, tho' it be unknown to your Lordſhips, yet to divers honourable Perſonages that are preſent it is known to be, *to ſpare the Face*. After this loſs of mine eye, and with it the great hazard of the loſs of life, I muſt confeſs I ever kept a grudge of my Soul againſt him, but had no purpoſe to take ſo high a revenge; yet in the courſe of my revenge, I conſidered not my wrongs upon terms of Chriſtianity, for then I ſhould have ſought for other ſatisfaction; but being trained up in the Courts of Princes and in Arms, I ſtood upon the terms of Honour, and thence befel this Act of Diſhonour; whereby I have offended,

1. God.
2. My Prince.
3. My Native Country; and
4. This Country.
5. The Party murder'd.
6. His Wife; and
7. Poſterity.
8. *Carliel*, now executed; and laſtly,
9. My own Soul.

And am now to die for mine offence.

1. Firſt towards God; I hope that my earneſt prayer and ſupplications unto him, have (now at laſt) obtain'd his grace and pardon for this my horrible ſin, for at my return from this place, the people (of whom I expected ſcorn and diſgrace) did by their pity and clemency move that in me, which the pride of mine own heart would not till then ſuffer me to ſee; then I became to have a ſenſe and feeling of the foulneſs of my offence, which formerly I could not perſuade myſelf was any more than a juſt revenge for ſo foul a wrong; and ſince that time ſuch inward comfort and conſolation have I felt in my ſoul, that I doubt not but that my hearty contrition and true repentance is accepted before God, and that he of his mercy hath pardon'd mine offence.

2. For my offence unto the King's Majeſty; if I had more than my life to make ſatisfaction unto him, I would think myſelf happy: and this favour I requeſt of your Lordſhips, that the King may be truly informed of the ſincerity of my confeſſion, and of my hearty repentance, and if it pleaſe him not of his favour and clemency to pardon me this offence, yet I humbly deſire, That I may die in his grace and favour.

3. For mine own Country, let me intreat you that this my ſingular offence may not be laid as an aſperſion or blemiſh unto my Country; but that myſelf alone may bear the ſhame of it, and my Body the puniſhment.

4. Of this Country, becauſe I do deſerve no favour, I deſire that of Chriſtianity, you would be pleas'd to pity me as a repentant and ſorrowful man.

5. For the party murder'd, my blood muſt ſatisfy the law, to which I ſhall add ſuch true repentance and hearty ſorrowfulneſs, as I hope, by Chriſt's mercy, will make ſatisfaction for my offence.

6, 7. For his Wife and Poſterity, ſome relief I have given already, and more, God willing, I will add unto it.

8. For *Carliel*, his too much affection to me made him too forward an executioner of my will and wicked purpoſe; but I hope by his repentance, he is pardoned his offences to God: in him I muſt confeſs my ſin is doubled, and I pray God to pardon it me; for the manner of the murder, I neither commanded, nor gave allowance to piſtol him. But I confeſs, that at the requeſt of *Carliel* and *Graye*, I gave either of them a piſtol to bring themſelves off, after they ſhould kill him. For him who is now ſuſpected, I proteſt before God and all this company, I never knew him, nor ſpake with him, nor dealt either directly or indirectly with him in all my life.

9. Laſtly, For myſelf, I commit my Body to the King, and my Soul to God.

But, my Lords, beſides mine own offence, which in its own nature needs no aggravation, divers ſcandalous reports are given out, which blemiſh my reputation, which is more dear to me than my life.

Firſt, That I made ſhew of reconciliation with *Turner*, the which I proteſt is utterly untrue; for what I have formerly ſaid, I do again aſſure your good Lordſhips, That ever after my hurt received, I kept a grudge in my Soul againſt him, and never made the leaſt pretence of reconciliation with him; yet this, my Lords, I will ſay, that if he would have confeſſed and ſworn he did it not of purpoſe, and withal would have forſworn arms, I wou'd have pardoned him: for, my Lords, I conſidered that it muſt be done either of ſet purpoſe or ignorantly; if the firſt, I had no occaſion to pardon him; if the laſt, that is no excuſe in a maſter: and therefore for revenge of ſuch a wrong, I thought him unworthy to bear arms.

The ſecond obloquy is, That to defer the revenge ſo long, argues an inveterate malice, and an ill diſpoſition. For the deferring of my revenge, I anſwer, that at the receiving the hurt, I was ſo aſtoniſh'd that I thought I had been ſlain; and by the opinion of my Phyſicians from *Oxford* and other places, my life was then in much danger for many days after; yet after ſome months recovering my ſtrength, and getting ſome eaſe in mine eye, I went immediately over into *France*, and there continu'd two years, hoping of the recovery of mine eye again. At the King of *Denmark*'s coming hither, I came out of *France*, and then hearing at *Greenwich*, that *Turner* play'd there before the two Kings; I muſt confeſs, that after thoſe prizes done, I ſought for him up and down: and if I had met him in any place of the Court, I was then reſolved to have run him through; though I muſt confeſs the place had made my offence far greater. But miſſing him there that day, the next day I went after him to *London*, and there ſought after him for two days, but could not meet with him; the firſt news then I heard of him was, that he was gone into the Country unto the Lord *Norris*'s, and ſo for that time I was prevented of my purpoſe. Before his return I went into *Scotland*; and after my return again, I laid about for him, ever intending all this while, to have acted it myſelf. But ſeeing the difficulty of it, both for that I was well known about the *White-friers*, where he dwelt and kept ſchool, and yet did not myſelf know *Turner*, but carried others with me for my direction, I afterward agreed with two of my Countrymen, who undertook the acting of this tragedy; but nothing enſued upon it, and therefore I deſire I may conceal their names. After this, my occaſions call'd me over into *France* and other parts, ſo that my reſidence in this Country was very little, till now at laſt I dealt with this unfortunate *Carliel*, who took unto him one *Graye* for his partner, and brought him unto me; and thoſe two I directed to take a lodging in the *Fryers*, the better to diſcover how myſelf might come to revenge myſelf on the perſon of *Turner*. But after ſome delay they told me, I could with no conveniency come myſelf to do it; but they ſaid, they would undertake it: to which I aſſented, but preſcribed neither time nor manner how they could effect it. After this, *Graye* fell quite off, and went to the Ships for *Denmark*, which *Carliel* came and told me, and withal that *Turner* was then gone out of town; but ſince *Graye* had deceiv'd him, he would have nobody but himſelf, and would aſſuredly kill him at his return, tho' it were with the loſs of his own life. But I being long delay'd by two others whom formerly I ſpake of, and now alſo by theſe two, and ſeeing *Graye* gone, I thought that *Carliel* had ſpoken this but to give me content, and the more to inſinuate himſelf into my favour, ſo that I left him without any further direction, or much regard to his ſpeech; and never heard more of him till I heard that *Turner* was ſlain; the time whereof, and the manner, I proteſt before God and his Angels, I was altogether ignorant of; for had I expected it to have been done, I would not have ſtay'd myſelf here at the laſt caſt, for before that time I could with eaſe have gone over into *France*, for I had a licence to travel, and for tranſporting ſome horſes.

Another aſperſion is laid on me, that this was God's juſt judgment, for that I was an ill-natured fellow, ever revengeful and delighted in blood. To the firſt, I confeſs I was never willing to put up a wrong, where upon terms of honour I might right myſelf, nor never willing to pardon where I had a power to revenge. To the ſecond I ſay, that I was never guilty of blood till now, yet I have had occaſion to draw my ſword both in the field, and upon ſudden violences, and have both given and receiv'd hurts, and yet was never guilty of blood unto death till now; only I muſt confeſs that upon commiſſion from the King to ſuppreſs wrongs done me in my own Country, I put divers of the *Johnſons* to death; but for that, I hope, I ſhall need neither to aſk God nor man forgiveneſs.

Laſtly, The objection that ſince my Impriſonment I have attempted, by the means of my Countrymen, to break priſon and eſcape, a courſe which I proteſt upon my ſalvation was never moved unto me by any, nor did I ever lodge ſuch a thought in my breaſt; and for the further confirmation of that, I refer myſelf unto the Marſhal, and his Officers, who in the Priſon have ſeen and beſt know my deportment during my impriſonment.

Thus, my Lords, have I troubled you with a tedious diſcourſe, whereof I know no circumſtance can in any point of law do me any good, nor would I be thought all this while to plead for my life; my deſires only are, that my life might ſatisfy for mine offence, and that my reputation might not be left defamed.

Laſtly, my Lords, and the reſt of the honourable and worſhipful preſence, I deſire in Charity, that you will conſider theſe few circumſtances to move you to pity.

Firſt, The indignity I received from ſo mean a man.

Secondly,

Secondly, That it was done willingly, for I have been informed he bragged of it after it was done.

Thirdly, The perpetual loſs of mine eye.

Fourthly, The want of law to give ſatisfaction for ſuch a loſs.

Fifthly, The continual blemiſh I received thereby.

Laſtly, Unto this, I add my voluntary and free confeſſion. Let me now add my laſt requeſt to your Lordſhips, that the King may be truly inform'd of theſe things. Contrition, Confeſſion, and Satisfaction are the means to obtain pardon from God for our ſins; and theſe many times do move the mercy of Princes, which if his Highneſs ſhall extend to me, I ſhall deſire my life may be ſpent to do him ſervice; or if not, I ſhall moſt willingly ſubmit myſelf to his Majeſty's good pleaſure, and yield to die.

The Lord *Sanquire* having ended his ſpeech, Sir *Francis Bacon* ſpake as followeth:

In the caſe of life and death the Jury's part is in effect diſcharged; for after a frank and formal confeſſion their labour is at an end: ſo that what hath been ſaid by Mr. Attorney-General, and ſhall be by myſelf, is rather convenient than neceſſary.

My Lord *Sanquire*, your fault is great; it cannot be extenuated, and it needs not be aggravated; and (if it needed) you have made ſo full an anatomy of it, out of your own feeling, as it cannot be match'd by myſelf, or any man elſe out of a conceit.

This Chriſtian and penitent courſe of yours, draws me thus far, that I agree, that even in extreme evils there are degrees: ſo this inſtance of your offence is not of the higheſt ſtrain; for if you had ſought to take away a man's life for his Vineyard as *Ahab* did, or for Envy as *Cain* did, or to poſſeſs his Bed as *David* did, ſurely this offence had been more odious. Your temptation was revenge, which the more natural it is to man, the more have laws, both divine and human, ſought to repreſs it: (*mihi vindicta.*) But in one thing you and I ſhall never agree, that generous ſpirits (you ſay) are hard to forgive; no, contrariwiſe, generous and magnanimous ſpirits are readieſt to forgive; and it is a weakneſs and impotency of mind to be unable to forgive.

But to the purpoſe; howſoever murder may ariſe upon ſeveral motives leſs or more odious, yet the law both of God and Man involves them in one degree; and therefore you may read that in *Joab*'s caſe, which was a murder upon revenge, and match'd with your caſe; he for a dear brother, and you for a dear part of your own blood; yet there was a ſevere charge given, *it ſhall not paſs unpuniſhed.*

And certainly the circumſtance of time is heavy unto you; it is now five years ſince this unfortunate man, *Turner*, be it upon accident or deſpight, gave the provocation, which was the ſeed of your malice. All paſſions are aſſuaged with time; love, hatred, grief, *&c.* all fire burns out with time, if no fewel be put to it: for you to have been in the gall of bitterneſs ſo long, and to have been in a reſtleſs caſe of his blood, is a ſtrange example. And I muſt tell you plainly, that I conceive you have ſuck'd thoſe affections of dwelling in malice rather out of *Italy*, and outlandiſh manners, where you have converſed, than out of any part of this Iſland of *England* and *Scotland*.

But now farther, my Lord, I would have you look a little upon this offence in the glaſs of God's judgment, that God may have the glory. You have friends and entertainment in foreign parts: it had been an eaſy thing for you to have ſet *Carliel*, or ſome other blood-hound on work, when your perſon had been beyond the ſeas; and ſo this news might have come to you in a pacquet, and you might have ſo looked on how the ſtorm would paſs: but God bereav'd you of this providence, and bound you here under the hand of a King, that is, though abundant in clemency, yet no leſs zealous of juſtice.

Again, when you came in at *Lambeth*, you might have perſiſted in the denial of the procurement of the fact, *Carliel* (a reſolute man) might have cleared you: for they that are reſolute in miſchief, are commonly obſtinate in concealing their procurers; and ſo nothing ſhould be againſt you but preſumption. But then God, to take away all obſtruction of juſtice, gave you the Grace (which ought indeed to be more comfort unto you than any evaſion, or device, whereby you might have eſcaped) to make a clear confeſſion.

Other impediments there were not a few, which might have been an interruption to this day's juſtice, had not God in his providence removed them.

But now, that I have given God the honour, let me alſo give it where it's next due, which is to the King our Sovereign.

This murder was no ſooner committed, and brought to his Majeſty's ears, but his indignation (wherewith at firſt he was moved,) caſt himſelf preſently into a great deal of care and providence to have juſtice done.

Firſt, came forth his proclamation, ſomewhat of a rare form, and deviſed and in effect directed by his Majeſty himſelf, and with that he did proſecute the offenders (as it were) with the breath and blaſts of his mouth. Then did his Majeſty ſtretch forth his long arms, (for Kings you know have long arms) one of them to the ſea, where he took *Gray* ſhipped for *Sweden*, who gave the firſt light of teſtimony; the other arm to *Scotland*, and took hold of *Carliel*, ere he was warm in his houſe, and brought him the length of this kingdom under ſuch ſafe watch and cuſtody, as he cou'd have no means to eſcape, nor learn no leſſons to ſtand mute; in which caſe perhaps this day's juſtice might have received a ſtop. So that I may conclude that his Majeſty hath ſhew'd himſelf God's true Lieutenant, and that he is no reſpecter of perſons, but *Engliſh*, *Scots*, Noblemen, Fencer, (which is but an ignoble trade) are all to him alike in reſpect of juſtice.

Nay, I may ſay farther, that his Majeſty hath had in this matter a kind of prophetical ſpirit; for at what time *Carliel* and *Gray*, and you, my Lord, yourſelf were fled no man knew whither, to the four winds; the King ever ſpake in a confident and undertaking manner, that whereſoever the offenders were in *Europe*, he would produce them forth to juſtice; of which words God hath made him maſter.

Laſtly, To return to you, my Lord, though your offence hath been great, your confeſſion hath been free, and your behaviour and ſpeech full of diſcretion; and this ſheweth, that though you could not reſiſt the temptation, yet you bear a generous and Chriſtian mind, anſwerable to your noble Family of which you are deſcended. This I commend in you, and take it to be an aſſured teſtimony of God's mercy and favour; in reſpect whereof all worldly things are but traſh: and ſo it is fit for you, as your ſtate now ſtands, to account them.

Then being demanded, whether he would ſpeak any more for himſelf, he ſaid, no; only deſired that the King might be made acquainted with what he had already ſaid.

Whereupon Judgment being required for the King;

Mr. Juſtice *Yelverton* gave Sentence of death againſt him as followeth:

My Lord Sanquire,

You are a Nobleman of *Scotland*, and (as I have heard yourſelf ſay) a Baron of above three hundred years antiquity; which I believe to be true. But now you have moſt wonderfully diſhonoured the Nobility of your ancient Houſe by this unhappy action; an action of murder ſo baſe and ſo barbarous, as the like I never heard of, nor ſcant the like a man ſhall never read of.

The manner of it is ſuch, as is exceeding ſtrange: done upon the ſudden! done in an inſtant! done with a piſtol! done with your own piſtol! under the colour of kindneſs: As *Cain* talk'd with his brother *Abel*, he roſe up and ſlew him.

Your executioners of the murder left the poor miſerable man that was murdered no time to defend himſelf; no time to pray for himſelf; ſcant any time to breathe out theſe laſt words, *Lord have mercy upon me!*

The ground of this malice that you bore him, grew not out of any offence that he ever willingly gave you, but out of the pride and haughtineſs of your own ſelf; for that in the falſe conceit of your own ſkill, you would needs importune him to that action, the ſequel whereof did moſt unhappily breed your blemiſh, the loſs of your eye.

And you have proſecuted this malice very long; for you ſollicited others, four or five years at the leaſt, to have committed this foul and heinous murder. And this your fault is far greater than if you had committed the fact yourſelf; for then it had been but your own ſingle murder *only*; but now have you made them who were the executioners of your malice, murderers alſo with you: ſo you have made their bodies ſubject to the juſtice of man, and their ſouls ſubject to the juſtice of God, which, without his great mercy, they muſt endure.

All theſe circumſtances do exceedingly aggravate your offence.

This offence of yours is called one of the crying ſins; for God ſaid unto *Cain*, *The voice of thy brother's blood* (a ſtrange phraſe, a voice of blood!) *crieth unto me from the ground.*

And for the puniſhment of it, it is ſaid elſewhere in the ſacred Word of God, *That he that ſheddeth man's blood, by man ſhall his blood be ſhed.* Again, *But this puniſhment of blood is not indeed to ſhed blood; for it is better that one ſhould die by the law, than many without it.*

You are, my Lord, to take a ſerious conſideration of the ſhort eſtate of your life wherein preſently you ſtand; for by the juſtice of the Law, you muſt ſuffer the pains of death, and be aſſuredly perſuaded, the time is not far off: for tho' the King be exceeding merciful, yet is he alſo exceeding juſt. And he hath had ſuch an extraordinary care of juſtice in this caſe, that tho' it were plotted by you, my Lord, that the murderer ſhould eſcape, and fly into his own country of *Scotland*, far remote from the juſtice of the Law of *England*; yet his Majeſty's care hath ſo purſued him, that there he was quickly apprehended, and that country could be no protection for him. Nay, his Majeſty moſt religiouſly, and moſt like a juſt Prince, proteſted, that if he were in any part of Chriſtendom to be found, he would ſurely have him; ſo zealous is he of juſtice in this ſo heinous an offence of murder. And in a matter that concerns juſtice, he reſpects not his own native nation of *Scotland*, more than he doth his own hereditary Realm of *England*.

Therefore, my Lord, prepare yourſelf to die; and tho' the manner of your death be by the Law of *England* unfitting (as you perhaps may think) for a man of your Honour and Blood, yet ſurely it is fit enough for a man of your merit and offence. And the Law of *England* makes no difference of ſubjects in matters of Felony for the manner of their deaths, when there is no difference of ſubjects in the manner of their offences; and not where, but how a man dieth, maketh to the purpoſe: for the way to Heaven is of like difference from all places. And, indeed, there is no death miſerable, which the death of the ſoul doth not follow.

Death is the way of all the world, the paſſage of all the earth, and the end of all men; and not men alone, but all worldly things are mortal, the ſoul of man only excepted.

Therefore, my Lord, provide carefully that your ſoul may have a good and godly departure from the body, which will ſurely be by your unfeigned confeſſion and earneſt repentance of all your ſins, and eſpecially of this moſt bloody, this moſt heinous and crying ſin, by your humble calling and crying upon God for his mercy and forgiveneſs, and by confident and ſtedfaſt faith in *Chriſt Jeſus*, to receive and accept it.

For repentance is an act of all acts, and faith in the mercies of God is the *Star* that goeth before the face of repentance, and very exceeding available by theſe three ſyllables, *peccavi.*

And ſo with this ſhort Exhortation I will end; and wiſh, whatſoever your life hath been heretofore, yet that your death may be happy now.

And ſo I will proceed to Judgment.

You have been indicted as acceſſary to wilful murder, as acceſſary in procuring the murder; and upon this Indictment you have been arraigned, and upon your arraignment you pleaded not guilty; but ſince, upon better adviſement and judgment, you have confeſſed the fact: The Court therefore doth award, That you ſhall be had from hence to your former place of Impriſonment, and from thence to the place of execution, and there be hanged till you be dead. And God have mercy upon your ſoul.

And then the Judge ſpeaking to the Sheriff, ſaid, Mr. Sheriff, ſee execution be done *.

* The King had offered 1000*l.* for apprehending of him: the Archbiſhop of *Canterbury* and ſeveral great men interceded for him in vain; nothing could avail with the King to pardon him, who thought the making him an example was neceſſary to curb the inſolence of the *Scots*, who had already committed ſundry outrages in *England*. It is thought the chief thing that contributed to this murder, was, the Lord *Sanquire*'s being at the Court of *Henry* King of *France*, who aſked him, *How he loſt his eye?* He told him, *It was done with a ſword.* The King replies, *Doth the man live?* This queſtion made ſuch an impreſſion upon the young Lord, that at his return to *England* he cauſed *Turner* to be murdered in *White-Friars*. See *The Complete Hiſtory of* England, vol. II. p. 688. and *Rapin*, vol. IX. p. 336. 8*vo*.

On *Monday* following, being St. *Peter*'s Day, the 29th of *June*, 1612, the Lord *Sanquire* was brought from the Priſon ſomewhat early in the Morning, into the *Great Palace-Yard*, before *Weſtminſter-Hall* great Gate, there to ſuffer Death on a Gibbet erected for that Purpoſe; where being aſcended the Ladder, he ſpake to the People a good while, excuſing himſelf for the Fact no otherwiſe than formerly he had done at the *King's-Bench* Bar: Aſking God and the World Forgiveneſs for the ſame, proteſting his Deteſtation thereof, now that he truly underſtood the Foulneſs of it; affirming, that till he firſt was brought to his Trial, the Devil had ſo far blinded his Underſtanding, that he could not apprehend that he had done amiſs, or otherwiſe than was fitting for a Man of his Rank and Quality, having been trained up in the Wars, and lived the Life of a Soldier, which Sort of Men, he ſaid, ſtood more on Points of Honour than Religion. He humbly thanked God that had opened his Eyes, and given him the Grace to ſee his Offence, and truly to apprehend the Foulneſs of it. At length, he profeſſed himſelf to die a *Roman* Catholick, and deſired all *Roman* Catholicks there preſent to pray for him. He ſaid, that for worldly reſpects, he had long neglected the public Profeſſion of his Faith in that kind, and he thought God was angry with him for it; and he knew not but God might inflict this juſt Puniſhment upon him for that Neglect; and therefore he adviſed all Men that ſtood ſo affected in Heart, not to procraſtinate nor delay; for Delays, he ſaid, are dangerous. The Religion, he ſaid, was a good Religion, a ſaving Religion, and if he had been conſtant in that Religion, he was verily perſuaded he had never fallen into that Miſery.

So falling to his Prayers for a while in private, and after in publick praying for the King and Queen, their Royal Iſſue, and the State both of *England* and *Scotland*, with the Lords of the Council and Church, he ſubmitted himſelf to the Will of the Executioner; who caſting him off the Ladder, ſuffered him there to hang a long Time, that People in this great Man might take Notice of the King's greater Juſtice.

Note, That this Lord was tried by the Country, but challenged his Trial by Peers, which was denied him, becauſe though he were a Lord in *Scotland*, yet he was no Lord of the Parliament here in *England*, nor had any *Engliſh* Barony.

Note alſo, That *Carliel*, and another with him, but whether it were *Gray* or no, I cannot certainly affirm; but ſure I am, it was one that was with *Carliel* when he did the Fact (and I take it to be my Lord's Page), were hanging on two Gibbets ſet up in *Fleet-Street*, over againſt the great Gate of the *White-Friars*, very early in the Morning, before the Lord *Sanquire* had his Trial *.

Note alſo, That one of thoſe Gibbets was higher than the other by the Length of a Man, or thereabouts; and I demanding the Reaſon thereof, was anſwered by a Stander-by, that the Manner of *Scotland* is, that when a Gentleman is hanged with a Man of meaner Quality than himſelf, the Gentleman hath the Honour of the higher Gibbet, and thinks himſelf much wronged if he be not ſo diſpoſed of. Whether this Anſwer was ſerious, or by way of Scorn, let him that deſireth to be reſolved by Enquiry reſolve himſelf.

Sir *Edward Coke*, in his ninth Report, *p.* 117, *& ſeq.* gives the following Account of

The Lord *Sanchar*'s Caſe.

Robert Creighton, Lord *Sanchar* †, a Baron of *Scotland*, of his Malice prepenſe at *Weſtminſter*, in the County of *Middleſex*, incited and procured *Robert Carliel* to kill *John Turner*, who accordingly aſſociating himſelf with one *James Irweng*, the 11th of *May* now laſt paſt, killed the ſaid *John Turner* within the City of *London*. And the King in his Zeal to Juſtice in this Caſe, immediately ſent for the two Chief-Juſtices and Chief-Baron, and commanded there ſhould be ſpeedy proceeding againſt the Lord *Sanchar*, according to Law. To which the Juſtices anſwered, That the Lord *Sanchar* was but an Acceſſory in this Caſe, and therefore he (*a*) could not by Law be convicted before the principal is attainted; but if the principal could be apprehended, then both might be attainted with more Expedition than could be, if the principal ſhould be attainted by Utlagary. Then it was aſked, how the Lord *Sanchar*, being an ancient Baron of *Scotland*, ſhould be tried: And it was anſwered by them, That none within this Realm of *England* is accounted (*b*) a Peer of the Realm, but he who is a Lord of the Parliament of *England*; for every Subject either is a Lord of the Parliament, or one of the Commons, and the Lord *Sanchar* was not a Lord of the Parliament within this Kingdom, and therefore ſhould be tried by the Commons of the Realm, *viz.* Knights, Eſquires, or others of the Commons; and therewith agree our Books, as well ancient as others, (*c*) 11 *E.* III. *Brief* 473. 8 *R.* II. (*d*) *Proceſ. pl. ult.* (*e*) 20 *E.* IV. 6. *a. b.* 20 *El.* (*f*) 360. Then the King asked, in what Court, after the principal is attainted, the Lord *Sanchar* ſhould be tried? And the Juſtices anſwered, that foraſmuch as the Procurement was in *Middleſex*, it was moſt convenient to try him in the King's-Bench. And thereupon the King reſolved, that he ſhould not be committed to the Tower, but to the Priſon of the King's-Bench, where he might be, if Occaſion required, ſooner and eaſier examined, than if he ſhould be committed to the Tower: And the King commanded the ſaid Juſtices, that all things ſhould be prepared for the legal Proceeding; and that he would endeavour to cauſe not only the principal, but others alſo who might diſcover the Truth of the Fact, to be apprehended. And thereupon the ſaid Chief-Juſtices conferred with the other Juſtices of the King's-Bench, before whom the Lord *Sanchar* ſhould be tried. And before them divers Queſtions were moved concerning the legal proceeding in this caſe. 1. Upon the Statute of (*g*) 2 *E.* VI. *c.* 24. by which it is enacted, as to this Point in this Manner: 'And farther be it enacted by 'the Authority aforeſaid, That where any Murder or Felony hereafter 'ſhall be committed or done in one County, and another Perſon or more 'ſhall be Acceſſory or Acceſſories by any manner of wiſe to any ſuch 'Murder or Felony in another County, that then an Indictment found or 'taken againſt ſuch Acceſſory, or Acceſſories, upon the Circumſtance of 'ſuch Matter before the Juſtices of the Peace, or other Juſtices or Commiſſioners, to enquire of Felonies, where ſuch Offence of Acceſſory or 'Acceſſories in any manner of wiſe ſhall be committed or done, ſhall be 'as good and effectual in Law, as if the principal Offence had been committed or done within the ſame County where ſuch Indictment ſhall be 'found: And that the Juſtices of Gaol-delivery, or Oyer and Terminer, 'or two of them, of or in ſuch County where the Offence of any ſuch 'Acceſſory ſhall be hereafter committed and done, upon ſuit to them 'made, ſhall write to the *Cuſtos Rotulorum*, or Keepers of the Records, 'where ſuch Principal ſhall be hereafter attainted or convicted, to certify them whether ſuch principal be attainted, convicted, or otherwiſe 'diſcharged of ſuch principal Felony; who upon ſuch writing to them, or 'any of them directed, ſhall make ſufficient Certificate in writing, under 'their Seal or Seals, to the ſaid Juſtices, whether ſuch Principal be attainted, 'convicted, or otherwiſe diſcharged, or not. And after they that ſo 'ſhall have the Cuſtody of ſuch Records, do certify that ſuch Principal is 'attainted, convicted, or otherwiſe diſcharged of ſuch Offence by the 'Law; that then the Juſtices of Gaol-delivery, or of Oyer and Terminer, or other there authoriſed, ſhall proceed upon every ſuch Acceſſory, 'in the County or Counties where ſuch Acceſſory or Acceſſories became 'Acceſſory, in ſuch manner and form as if both the ſaid principal Of-'fence and Acceſſory had been committed and done in the ſaid County 'where the Offence of the Acceſſory was or ſhall be committed or done. 'And that every ſuch Acceſſory, and other Offenders above expreſſed, 'ſhall anſwer upon their Arraignments, and receive ſuch Trial, Judg-'ment, Order, and Execution, and ſuffer ſuch Forfeitures, Pains and 'Penalties, as is uſed in other Caſes of Felony: Any Law or Cuſtom 'to the contrary heretofore uſed in any wiſe notwithſtanding.' And upon this Statute, divers (*h*) Queſtions were moved; 1. If the Indictment in the County of *Middleſex* of the Acceſſory ſhould recite, that the principal was indicted before Commiſſioners of Oyer and Terminer in the City of *London*, (as in Truth he was) or if the Indictment ſhould recite *in facto*, that the principal committed the Murder in *London*, &c.? And it was reſolved, that the Indictment in *Middleſex* ſhould recite, *de facto*, that the Principal committed the Murder in *London*. For the recital, that the Principal is indicted of Murder in *London*, is no direct Affirmation that the Principal committed the Murder; for the Indictment is but an Accuſation, and in lieu of the King's Declaration, which may be true or falſe; and this agrees with former Precedents. And accordingly the Indictment was drawn; upon which the Acceſſory was convicted, as appears before by the Indictment itſelf.

2. The ſecond Queſtion moved upon the Statute, was, If the (*i*) Juſtices of the King's-Bench are within theſe Words, Juſtices of Gaol-delivery, or Oyer and Terminer? And it was objected, That the King's-Bench is the higheſt Court of ordinary Juſtice in criminal Cauſes within the Realm, and paramount the Authority of Juſtices of Gaol-delivery, and Commiſſioners of Oyer and Terminer; and as it is held in 27 *Aſſ.* 1. is (*k*) more than the Eyre; for they ſhall examine the Errors of the Juſtices in Eyre, Gaol-delivery, and Oyer and Terminer; and therefore inaſmuch as the Juſtices of the King's-Bench are paramount and ſuperiors over all the others, they cannot be included within their Inferiors, *viz.* Juſtices of Gaol-delivery, or of Oyer and Terminer. Alſo, the Juſtices of the King's-Bench have a diſtinct and ſupreme Court; and the Juſtices of Gaol-delivery, and Oyer and Terminer, other diſtinct and ſubordinate Courts. And therefore it was adjudged, *Hill.* 30 *El. Reg.* in the King's-Bench, that where *R. (l) Smith* was indicted of Forgery of a falſe Deed at the Seſſions of (*m*) Peace in the County of *Oxford*; and the Statute of 5 *El. c.* 14. which inflicts the Puniſhment, and upon which Act the Indictment was grounded, provides, that the Indictment ſhall be taken before Juſtices of Aſſize, and Juſtices of Oyer and Terminer: And although the Juſtices of Peace by their Commiſſion have Power to hear and determine Felonies, Treſpaſs, *&c.* and have an expreſs Clauſe *ad audiendum & terminand'*, ſo that they are, as it was urged, Juſtices of Oyer and Terminer; yet it was reſolved *per tot' cur'*, that becauſe there was a Commiſſion of Oyer and Terminer known diſtinctly by that Name, and the Commiſſion of the Peace known diſtinctly by another Name, that the ſaid Indictment was not well taken, and therefore was quaſhed. But it was reſolved, that the (*n*) Juſtices of the King's-Bench are the ſovereign Juſtices of Goal-delivery, and of Oyer and Terminer; and therefore they are included within the ſaid Words: And therefore it is held in 7 *E.* IV. 18. *a.* & 4 *H.* VII. 18. that if an Indictment of forcible Entry be removed into the King's-Bench, the Juſtices of the King's (*o*) Bench ſhall award Reſtitution; and yet the Statute of 8 *H.* VI. *c.* 9. ſpeaks only of Juſtices of the Peace; but the Reaſon is, becauſe they have the ſovereign and ſupreme Authority in ſuch Caſes. And according to this Reſolution, the Juſtices of the King's-Bench wrote according to the ſaid Act to the Juſtices of Goal-delivery in *London*, before whom the Principal was, *&c.* who certified the Record, *&c.* as appears before at large.

3. It was moved, if the Lord *Sanchar* could not in Term-time be indicted, arraigned, and convicted, at *Newgate* before Commiſſioners of (*p*) Oyer and Terminer for the County of *Middleſex*, and it was reſolved he could not; for the King's-Bench, as has been ſaid, is (*q*) more than Eyre, and therefore in (*r*) Term-time no Commiſſioner of Oyer and Terminer, or Gaol-delivery, by the Common Law, can ſit in the ſame County where the King's-Bench ſits; for (*s*) *in præſentia majoris ceſſat poteſt' minoris*, and therewith agrees 27 *Aſſ. p.* 1. But *Carliel* and *Irweng* were indicted and attainted in *London*, where the Murder was committed, before Juſtices of Oyer and Terminer in the (*t*) Term-time, becauſe in another County than where the King's-Bench ſits.

4. It was moved, if the Lord *Sanchar* being indicted in the King's-Bench, if there muſt be (*u*) fifteen Days for the return of the *ve. fa.* for if fifteen Days are requiſite, he cannot be arraigned this Term. And it was reſolved not, becauſe the Offence was committed in *Middleſex*, where the Court ſits; but if the Indictment had been taken in any other County,

* See the Record of the Conviction of *Carliel* and *Irweng*, in *Coke*'s ninth Report, p. 114.

† *Wilſon*'s Hiſt. p. 59, 60. (*a*) 4 Co. 43. b. (*b*) Co. Lit. 16. b. 7 Co. 15. a. Calvin's Caſe, 2 Inſt. 3 Inſt. 30. (*c*) 7 Co. 15. b. 16. a. Calvin's Caſe. (*d*) Fitz. Proceſs 224. 7 Co. 15. b. Calvin's Caſe. (*e*) 7 Co. 15. b. Calvin's Caſe. Br. Noſme de Dignity 49. (*f*) 7 Co. 15. b. 23. a. Calvin's Caſe. Dy. 360. pl. 6. Co. Lit. 261. b. (*g*) 2 & 3 E. VI. c. 24. 3 Inſt. 113. (*h*) 3 Inſt. 48, 49. (*i*) 3 Inſt. 103. 3 Mar. Br. Oyer and Termin. 8. 4. Inſt. 73. Cowley 66. Poſtea 118. b. (*k*) Stanf. Cor. 35. a. 4 Inſt. 73. Fitz. Aſſiſe 246. Br. Eſcape 21. Br. Juriſdict. 66. Poſtea 118. b. Br. Judges, Juſtices, &c. 16. (*l*) Cro. El. 78. 697. 3 Inſt. 103. Cawl. 258, 259. (*m*) Cr. El. 601. 697. Cawl. 258, 259. Savil 134. H. P. C. 165. (*n*) H. P. C. 165. Cawley 66. 3 Inſt. 103. Antea 118. a. 3 Mar. Br. Oyer & Terminer 8. 4 Inſt. 73. (*o*) Kelw. 159. a. b. Dy. 187. pl. 6. 11 Co. 59. a. b. 65. a. 1 Roll. Rep. 92. B. forcible Entre 27. Dall. 25. pl. 8. Dall. in Kelw. 204. pl. 2 Dall. in Naſh. pl. 2. Fitz Entre 44. Br. Reſtitut. 11 Dalt. Juſt. c. 314. Jenk. Cent. 197. 221. (*p*) H. P. C. 156. 3 Inſt. 27. 4 Inſt. 73. (*q*) Stanf. Cor. 35. a. 4 Inſt. 73. Fitz. Aſſiſe 246. Br. Eſcape 21. Br. Juriſdiction 66. 27. Aſſ. pl. 1. Br. Judges, Juſtices, &c. 16. Antea 118. a. (*r*) 10 Co. 73. b. 3 Inſt. 27. (*s*) 10 Co. 73. b. 2 Inſt. 26. 166. (*t*) Poſt. 121. a. (*u*) 2 Inſt. 550. 563. H. P. C. 157. Co. Lit. 134. b.

and

and removed thither, there ought to be fifteen days, &c. and therewith agree the precedents, and the continual uſage of the ſame Court.

5. It was reſolved, that foraſmuch as there was not any direct proof, that *James Irweng* was commanded or procured by the Lord *Sanchar* to commit the murder, but that he aſſociated himſelf to *Robert Carliel* who was procured by him, that the (*v*) beſt way is to indict the Lord *Sanchar*, as acceſſory to *Robert Carliel* only: for Indictments which concern the life of men ought to be framed as near the truth as may be, & *eo potius*, becauſe they are to be found by the oath of the Grand Inqueſt, which finding is called (*x*) *veredictum*, *quaſi dictum veritatis*; and yet it was reſolved, that if one is indicted as acceſſory to (*y*) two, and he is found acceſſory to one, the verdict is good. *Vide* the Statute of *W.* I. *c.* (*z*) 14. by which it is enacted, *That none be outlawed upon appeal of commandment, force, aid, or receit, until he that is appealed of the deed be attainted, ſo that one like law be uſed therein through the Realm:* which is but an affirmance of the common Law: for there cannot be an acceſſory unleſs there be a principal, no more than there can be a ſhadow unleſs there be a body. But this word *appeal* has two ſignifications in law; one general, and that is taken for an accuſation, generally, and *accuſatio eſt duplex*, either by Inquiſition, *i.e.* by Indictment, and that is at the ſuit and in the name of the King; or by the party, and in his name, as in appeal by Writ or Bill: or by Appeal, *i.e.* accuſation of an approver; and therewith agree all our books, and *Stamf. l.* 2. *de Plac' cor' c.* 52. *f.* 142. *b.* where he ſaith, after the confeſſion of the Crime, the Felon may appeal, *ſ.* accuſe others coadjutors with him to do the Felony; and in this particular ſenſe for accuſation of the party it is oftner taken. And as there are two manner of Accuſations ſo there are two manner of attainders of Felony, *ſ.* by judgment given, *ſ.* one at the King's ſuit, and the other at the ſuit of the party; and both theſe attainders are in two manners, one after appearance, and the other upon default after appearance, two ways, *ſ.* either by verdict or confeſſion; and at the ſuit of the party, a third way. *ſ.* by battle, upon default by proceſs of outlawry, where judgment is given by the (*a*) Coroners, or by thoſe whom an act of Parliament and cuſtom have enabled. And in the Statute of *W.* (*b*) I. theſe words, *upon appeal of commandment*, &c. are to be intended of an accuſation generally, *ſ.* by indictment, as by Writ or Bill, &c. and theſe words, *until he that is appealed of the deed be attainted*, are meant of all manner of attainders, either at the King's ſuit, or at the ſuit of the party, and either upon appearance or upon default. And afterwards in the ſame Act, proviſion is made for the appeal of the party, which implies that the word *appeal* ſhall be taken in the general ſenſe.

6. It was reſolved, that if the principal is (*c*) erroneouſly attainted, either for error in the proceſs, or becauſe the principal being out of the Realm, &c. is outlawed, or that he was in priſon at the time of the outlawry, &c. yet the acceſſory ſhall be attainted, for the attainder againſt the principal ſtands till it is reverſed; and therewith agrees (*d*) 2 *R.* III. 12. the reſolution of all the Juſtices in the King's-Bench: And in 18 *E.* IV. 9. *b.* the (*e*) principal was erroneouſly outlawed for Felony, and the acceſſory taken, indicted, arraigned, convicted, attainted, and hanged; and afterwards the principal reverſed the outlawry, and was indicted and arraigned of the ſaid Felony, and found not guilty, by which he was acquitted; and all this appears in the ſaid book. Then it will be demanded, that foraſmuch as there cannot be an acceſſory, unleſs there is a principal, and in this caſe there is no principal, how the heir of the acceſſory ſhall be reſtored to the land which his father had forfeited by the ſaid unjuſt attainder? To that it is to be anſwered, that the heir may enter, or have his action; for now upon the matter by act in law, the attainder againſt his father is without any writ of error utterly annulled, for by the reverſal of the attainder againſt the principal, the attainder againſt the acceſſory, which depends upon the attainder of the principal, *ipſo facto* is utterly defeated and annulled; and this notably appears in an ancient book, in the time of *E.* I. tit. *Mort-dauncеſt.* 46. where the caſe is, *A* was indicted of Felony, and *B.* of the receipt of *A.* *A.* eloined himſelf (and is outlawed): *B.* was taken, and put himſelf upon inqueſt, and found guilty, for which *B.* was attainted, and hanged, and the Lord entered, as into his eſcheat; and afterwards *A.* came, and reverſed the outlawry, and pleaded to the felony, and was found not guilty, by which he was acquitted; whereupon the heir of *B.* brought a (*f*) *Mort-dauncеſter* againſt the Lord by eſcheat, who came and ſhewed all this matter, and there was a demur upon it; and it was awarded, that the heir of *B.* ſhould recover ſeiſin of the land; for if *B.* was now alive, he ſhould go quit by the acquittal of *A.* becauſe he could not be receiver of a felon, when *A.* is no felon; and all this appears in the ſaid book. *Vide* 4 *E.* III. 36. *b. in Dower* 43 *E.* III. 3. *a. in Aſſiſe & Reideſ.* 8 *H.* IV. 4. 11 *H.* IV. 4. 4 *E.* IV. 20. 6 *E.* IV. 9. 13 *E.* IV. 4. 9 *H.* VI. 38. *b.* 8 *H.* VII. 10. & *vide* the caſe of ſentence (*g*) of deprivation of one, and preſentment, inſtitution, and induction of another; and after by relation of a general pardon, *ipſo facto*, all are reſtored without appeal, or new preſentation, admiſſion, or inſtitution, *qd' vide* (*h*) *Dy. Nota* reader, to ouſt all queſt. to what gaol offenders ſhall be committed, it is enacted by the ſtatute of (*i*) 5 *H.* IV. *c.* 10. that none ſhall be impriſoned by any Juſtice of the Peace, but only in the common goal, ſaving to lords and others, who have gaols, their franchiſes in that caſe. By which it appears, how Juſtices of Peace offend, who commit felons, &c. to either of the Counters in *London*, and other priſons, which are not common goals.

But foraſmuch as ſeveral perſons have earneſtly deſired to know the circumſtances, as well of the proceeding, as of the fact itſelf, I will comply with their requeſt.

Robert Creighton, Baron of *Sanchar*, a *Scotchman*, about five years ago play'd at Foils with *John Turner* a Fencing-maſter, and it happened that *Turner* in playing ſtruck out the Baron's eye with his Foil; upon which the Baron, finding himſelf impatient under ſo great an affront, and not able to bear the loſs of his eye without having his revenge, reſolved to procure ſomebody to kill *Turner*; and among his other ſervants, he prevailed upon *Gilbert Gray* and *Robert Carliel*, *Scotchmen*, two of his followers, to ſhoot *Turner* upon the firſt opportunity that ſhould offer. Theſe two then undertook to accompliſh this deſign, and induſtriouſly endeavoured to execute it; but the ninth day of *May* laſt, *Gray* repenting of a purpoſe and act ſo barbarous, vile and bloody, being touched with the Motion of the Holy Ghoſt, reſolved to proceed no farther; which the Baron of *Sanchar* being informed of, and that *Gray* ſlackened in his promiſe, *Robert Carliel*, as is aforeſaid, undertook to execute what he had promiſed: who, the eleventh of *May* following, aſſociating himſelf with *James Irweng* a *Scotchman*, of the frontiers, about ſeven o'clock in the evening came to a houſe in the *Friars*, which *Turner* uſed to frequent as he came from his ſchool, which was near that place; and finding *Turner* there, they ſaluted one another; and *Turner* with one of his friends ſat at the door, aſking them to drink; but *Carliel* and *Irweng* turning about to cock the piſtol, came back immediately, and *Carliel* drawing it from under his coat, diſcharged it upon *Turner*, and gave him a mortal wound near the left pap; ſo that *Turner*, after having ſaid theſe words, *Lord have mercy upon me! I am killed*; immediately fell down. Whereupon *Carliel* and *Irweng* fled, *Carliel* to the town, and *Irweng* towards the River; but miſtaking his way, and entering into a court where they ſold wood, which was no thorough-fare, he was taken. *Carliel* likewiſe fled, and ſo did alſo the Baron of *Sanchar*. The ordinary Officers of Juſtice did their utmoſt, but could not take them: for in fact, as appeared afterwards, *Carliel* fled into *Scotland*, and *Gray* towards the Sea, thinking to go to *Sweden*, and *Sanchar* hid himſelf in *England*.

The impediments of Juſtice, difficulties of law, and impoſſibilities of legal Proceeding to take *Carliel*, the principal, which were in this caſe, are remarkable, and worthy of conſideration. The cure and remedy of the whole ought to be only and wholly attributed to the great care of his moſt excellent Majeſty, and to his perpetual love and zeal for Juſtice, as will clearly appear by what follows.

The impediments of Juſtice were two:

1. The truth of this fact, touching the Baron of *Sanchar*, could not appear, becauſe it conſiſted only in the words of his mouth by incitation and procurement; but by *Gray* and *Carliel*, who were fled, or by himſelf; and he was likewiſe gone.

2. It was not as yet known whither they were fled, and it could not be found out by all the ſearch and diligence which was uſed by the Officers and Magiſtrates of Juſtice.

The difficulties of Law are manifeſt by the foregoing reſolutions.

Impoſſibilities of legal proceeding.

1. It was impoſſible by legal proceſs to apprehend the body of *Carliel*, being in *Scotland*.

It was impoſſible alſo to proceed againſt the Baron of *Sanchar*, who was but an acceſſory, before the principal was attainted; a thing which would have required a very long proceeding, if he had not been taken.

Now therefore let us behold here the love and zeal which his Majeſty always had for Juſtice, who being informed by ſome of his principal Judges, with whom he had conſulted touching the nature of this preſent caſe, and finding if this fact ſhould be left to the ordinary proceeding of the Law, *Carliel* the aſſaſſin could not be taken, and that no ordinary power had been able to find *Gray* the witneſs, nor *Sanchar* the author; lo! the King by proclamation gives authority to any perſon whatſoever to apprehend theſe three, with a promiſe of great reward.

Upon this, the Baron of *Sanchar*, well knowing that the principal aſſaſſin and the witneſs were fled, ſurrendered himſelf, and denied that he incited or procured the fact: wherefore his Majeſty ſent poſt to the ſea-ports (the gates of the Kingdom), as alſo into *Scotland*, and other places of his Dominions, where his admirable prudence had hopes of finding them; and the Lord ſo crowned his Royal thoughts, and gave ſuch a bleſſing to his zeal for juſtice, that ſome of his Couriers took *Gray* at the port of *Harwich*, ready to imbark for *Sweden*; and *Carliel* in *Scotland*, thinking to croſs the ſea for his greater ſafety. *Gray* then, being by his Majeſty's command examined, confeſs'd the whole truth of the fact againſt the Baron of *Sanchar*; who likewiſe by his Majeſty's direction being confronted with *Gray*, and particularly examined touching certain Articles, ſpecial and pertinent ſayings by his Majeſty himſelf, confeſs'd by writing under his own hand, that he had incited and procured this aſſaſſination; and being preſs'd thereupon by the queſtions, he diſcovered a long and inveterate malice which he had had, with all the occaſions and material circumſtances of this murder.

His Majeſty having regard to that which the Holy Ghoſt admoniſhes us of, (*quia nan profertur cito contra malos ſententia, abſque timore ullo filii hominum perpetrant mala* (*k*) gave orders two days after, that *Carliel* the principal ſhould be brought to *London*; that he and *James Irweng*, in full term, (a thing not uſual) might be carried before the Juſtices at *Newgate*, and attainted and convicted. And a few days after the Baron of *Sanchar* was likewiſe attainted and convicted at the King's Bench in full term; and in a ſhort time after, to accompliſh his Majeſty's zeal for juſtice, the Baron *Sanchar* was (*l*) hanged publickly in Term-time at the Palace of *Weſtminſter*, according to the judgment and ſentence he had before received.

I have reported this caſe with all the circumſtances, becauſe this example has not its parallel: for altho' it is true, that the late Queen *Mary* is very famous on account of the examplary juſtice which ſhe cauſed to be executed upon Baron *Sturton*, for the barbarous murder of *Harquil*; yet this preſent example of the Baron of *Sanchar* very much ſurpaſſes that of the Baron of *Sturton*, and that for many conſiderations. 1. Becauſe the Baron of *Sturton* was taken by the ordinary courſe of the Law, even within the Kingdom; but the principal in this caſe could not be taken by any common power, but by the means of his Majeſty's royal and abſolute power only. 2. The Baron of *Sturton*'s offence was very apparent, and without any difficulty of Law: on the contrary, this of *Sanchar* was thereof (as appears) very full; but by his Majeſty's command, all theſe difficulties, with the conference and grave conſideration of his principal Judges, after ſearch of caſes precedent, were reſolved and cleared up, and notwithſtanding the impediments, difficulties and impoſſibilities in legal proceeding, greater expedition was uſed in this caſe than in that. In ſhort, the accompliſhment of the whole, the clearing up the truth of the fact in the caſe of the Baron of *Sanchar*, muſt be attributed to the great wiſdom, power and vigilance of his Majeſty, as appears by that which has been thereof ſaid before.

(*v*) 2 Inſt. 183. (*x*) Co. Lit. 226. a. (*y*) 2 Inſt. 183. H. P. C. 265. (*z*) 2 Inſt. 182, 138. 3 Inſt. 183. (*a*) 4 Co. 32. b. Co. Lit. 288. b. Cr. El. 50. (*b*) W. I. c. 14. 2 Inſt. 182, 183, 184. (*c*) Ant. 68. a. b. 2 R. III. 21. b. (*d*) Ant. 68. b. 2 R. II. 21. b. (*e*) Br. Cor. 165. (*f*) H. P. C. 270. 1 Rol. 777. (*g*) 6 Co. 13. b. 14. a. 3 Inſt. 238. Hob. 82. 293. Cr. El. 41. 789. Moor 132. Owen 87. Latch. 22. 141. 1 Sid. 164, 168. Palm. 412. (*h*) Dy. 235. pl. 19. 6 Co. 13. b. (*i*) 2 Brownl. 41. 2 Inſt. 43. Cor. El. 830. (*k*) Eccleſiaſt. 8. 11. Antea 118. b. (*l*) 3 Inſt. 13.

The

The Baron of *Sanchar* was a man of a very ancient and noble family in *Scotland*; he was a man of great courage and wit, endowed with many excellent gifts, as well natural as acquired. The eloquence of his diſcourſe, with the civility and diſcretion of his behaviour, when he came before and went from the Judges, compelled the people (who honoured him on account of his moral virtues, and thoſe for his ſake) to bewail his fall with great grief (altho' the occaſion of it was this baſe and barbarous aſſaſſination, premeditated for five years together with a malice bloody and inveterate): this extraordinary affection of the people was, as he himſelf confeſſed, a very great conſolation to him in his laſt troubles and afflictions. But at laſt their compaſſion abated, becauſe they perceived he died a true Catholick.

XIV. Proceedings againſt JOHN OGILVIE, for *High-Treaſon*, on *Tueſday* the laſt Day of *February*, 1615, at *Glaſcow*, in *Scotland*.

JOHN *Ogilvie*, alias *Watſon*, came into *Scotland*, in 1613; and making his reſidence for the moſt part of that winter in the north parts of *Scotland*; took his journey to *England* a little before *Eaſter*. Where, giving out to ſome of his Countrymen, that he had a ſupplication for ſome wrongs to preſent to his Majeſty, he attended the Court ſome two months; and falling in acquaintance with a Gentleman of the Weſt-country, after his pretended buſineſs was done, or the occaſion diſappointed, he returned into *Scotland* with the ſaid Gentleman in the beginning of *June* thereafter. Upon this familiarity, and other intelligences given him, he came to *Glaſcow* in *Auguſt* following; and finding a kinder receipt by certain perſons in that city, (who have ſince been juſtly condemned) he made ſome haunt and reſort thither at ſundry times, till at laſt he was detected, and by the direction of the Archbiſhop of *Glaſcow*, who at that time kept his reſidence within the city, apprehended and committed to priſon on the 4th of *October*.

In his examination, which was the next morning, before the Archbiſhop of *Glaſcow*, the Biſhop of *Argyle*, the Lords *Fleming*, *Boyde*, and *Kilſyth*, the Provoſt of the City of *Glaſcow*, Sir *Walter Stewart*, and Sir *George Elphingſton*, Knights, he confeſſed his true name to be *John Ogilvie*, that he was born in the North of *Scotland*, and had been forth of the Country twenty-one years; that he lived at *Gratz*, in a college of the Jeſuits, "*and was received in their order: that he returned into* Scotland *by the* "*command of his Superior, and was to ſtay there until he was recalled,* "*if no other impediment ſhould offer.*" Being required to give his oath, that he ſhould declare nothing but truth in ſuch things as he ſhould be demanded; he anſwered, "That he would take his oath, but with ſome "exceptions, namely, if he were demanded any thing that touched his "eſtate and life, or that might endanger theſe or any of them, he would "not anſwer; likewiſe if the ſame tended to the prejudice of others." And when it was reply'd, that his exceptions being admitted, his oath was as good as no oath, ſeeing any queſtions that could be propoſed would concern ſome of theſe; he was induced at laſt to give a ſimple oath, which he did upon his knees; and riſing up from the ground, ſaid, "I "will neither lye nor equivocate, but what I ſay ſhall be truth; and what "I am aſked, if I find it impertinent for me to anſwer, I will ſay no-"thing, or declare plainly I will not tell."

Then being enquired of his coming into *Scotland*, the time and buſineſs he came to do, anſwered, his buſineſs was to ſave ſouls. Touching the time when he came into *Scotland*, anſwered in the *June* before: where he was apprehended to equivocate, notwithſtanding of his proteſtation; for he meaned of his laſt coming, and was aſked concerning the firſt. But the time at that examination was not underſtood. Being enquired of the places where he had been received, denied to tell; and if he had ſaid Maſs in any place, he anſwered, "he would not ſay any thing that might work "prejudice to himſelf or others:" and becauſe he had profeſſed, that he would not lye, the reply he commonly made to ſuch queſtion was, "I "will not tell you."

The Lords finding him thus obſtinate, returned him to a chamber in the Caſtle, which was prepared for him.

The 12th of *December*, he was preſented at *Edinburgh*, before the Lords Commiſſioners, appointed by his Majeſty's miſſive for his examination and Trial: namely, The Lord of *Binning* Secretary, the Lord of *Kilſyth*, Sir *Gideon Murray* the Theſaurer-Deputy, and Sir *William Oliphant* his Majeſty's Attorney-General: to whom he anſwered in all that was proponed, as of before at *Glaſcow*. There the letters intercepted with him were preſented, which he acknowledged to be his: yet being demanded touching certain particulars contained in them, he denied to give their Lordſhips any ſatisfaction. So as their Lordſhips perceiving nothing but a pertinacious refuſing in him to anſwer to points moſt reaſonable, and withal apprehending his ſtay at Court in the laſt ſummer, to have been for ſome worſe ſervice than he could ſpeed in, determined, according to the power given them, to extort by torments another confeſſion; which being intimated to him, and he replying that he was ready to ſuffer what they pleaſed, it was thought fit to prove him with the eaſieſt form of Trial that could be uſed.

It pleaſed his Majeſty in this time, while he was remaining at *Glaſcow*, to ſend a commiſſion to the Archbiſhop of *Glaſcow*, the Lord Biſhop of *Argyle*, the Lord *Fleming*, Sir *George Elphingſton*, and *James Hamilton* Provoſt of the city of *Glaſcow*, for trying the ſaid *Ogilvie*.

His opinion touching his Highneſs's royal power, and the Pope's claimed juriſdiction, maintained by *Bellarmine*, *Suarez* and others of that ſort: The queſtions were theſe.

1. "Whether the Pope be judge, and have power *in ſpiritualibus* over "his Majeſty, and whether that power will reach over his Majeſty, even "*in temporalibus*, if it be *in ordine ad ſpiritualia*, as *Bellarmine* affirmeth?

2. "Whether the Pope have power to excommunicate Kings, (eſpe-"cially ſuch as are not of his Church) as his Majeſty?

3. "Whether the Pope have power to depoſe Kings, by him excom-"municated; and in particular, whether he have power to depoſe the "King his Majeſty?

4. "Whether it be no Murder to ſlay his Majeſty, being ſo excommu-"nicated and depoſed by the Pope?

5. "Whether the Pope have power to abſoil Subjects from the oath of "their born and natural allegiance to his Majeſty?

Upon the 18th day of *January*, the foreſaid queſtions being read diſtinctly unto him, and he required to declare his opinion thereanent, anſwered as followeth:

"To the firſt, that he thought the Pope of Rome Judge to his Ma-"jeſty, and to have power over him *in ſpiritualibus*, if the King be a "Chriſtian: and where it is aſked, if that power will reach over his Ma-"jeſty *in temporalibus*, he ſays, he is not obliged to declare his opinion "therein, except to him that is Judge in controverſies of Religion, which "he acknowledges to be the Pope, or ſome one having authority from "him.

"To the ſecond he anſwered, That the Pope hath power to excom-"municate his Majeſty: and where it is ſaid, that the King is not of the "Pope's Church; he ſaith, that all who are baptized are under the "Pope's power.

"To the third, where it is aſked, if the Pope have power to depoſe his "Majeſty, being excommunicated; anſwered, that he will not declare his "mind, except to him that is Judge in controverſies of Religion.

"To the fourth, whether it be lawful to ſlay his Majeſty, being ex-"communicated and depoſed by the Pope: anſwered *ut ſupra*.

"To the fifth, whether the Pope hath power to abſoil Subjects from "their born and natural allegiance to his Majeſty? anſwered, *ut ſupra*."

In all theſe articles he was particularly reaſoned with, by the Archbiſhop of *Glaſcow*, Mr. *Robert Boyde* Principal of the College, (a man of rare erudition) and Mr. *Robert Scot*, one of the Miniſters of the City; where it was alſo ſignified unto him, that it concerned him in no leſs than his life, what anſwer he ſhould make; if he ſhould ſtand obſtinate in theſe he had given, he might know what favour was to be expected for his other crimes. Not the leſs ratifying all that formerly was ſaid, he added this further, "that he condemned the oaths of ſupremacy and allegiance "proponed to be ſworn in *England*," and would needs have the writer to inſert thoſe words, to all which he put his hand, ſubſcribing thus,

Johannes Ogilveus, ſocietatis Jesu.

Theſe anſwers being ſent to his Majeſty, under the teſtification of the foreſaid Commiſſioners, his Highneſs gave orders to the Lords of the Privy-Council for his Trial, which was appointed to be at *Glaſcow*, the laſt of *February*. Immediately after, the Archbiſhop of *Glaſcow* directed the Provoſt and Bailiffs of the city unto him, to ſignify, that *Tueſday* following was appointed for Arraignment, and that "he would not be ac-"cuſed for Maſs-ſaying, or any thing elſe that concerned his profeſſion, "but for the anſwers that he had made to the demands propoſed to him "by his Majeſty's Commiſſioners." They declared alſo, that if he ſhould upon better reſolution recal thoſe anſwers, and apply himſelf to give his Majeſty ſatisfaction in other points, which of duty he was obliged unto, the ſaid Archbiſhop would uſe his credit with his Highneſs, and the Lords of the Privy-Council for his ſafety. His anſwer was, "that "he thanked his Lordſhip, for the good will and kindneſs offered, but he "was ſo little minded to recal any thing he had ſaid, as when he came "to the place, he would make a commentary upon his anſwers."

The Arraignment of John Ogilvie, Jeſuit, on *Tueſday* the laſt of *February*, in the Town-houſe of *Glaſcow*, before *James Hamilton* Provoſt of *Glaſcow*, *James Bell*, *Colin Campbell*, and *James Bradwood*, Bailiffs of the City, Juſtices appointed by ſpecial Commiſſion for that Buſineſs, by the Lords of the Privy-Council. The foreſaid Judges being aſſiſted by the honourable Lords there preſent:

John, Archbiſhop of *Glaſcow*.
James, Marquis of *Hamilton*.
Robert, Earl of *Lothian*.
William, Lord *Sanquhar*.
John, Lord *Fleming*.
Robert, Lord *Boyde*.
And Sir *Walter Stewart*, Baily-deputy of the Regality of *Glaſcow*.

ON *Tueſday* the laſt of *February*, a little after eleven of the clock in the forenoon, the Court being ſet, Mr. *William Hay* of *Baro* commiſſary of *Glaſcow*, deputed by ſpecial commiſſion from Sir *William Oliphant* of *Newton*, his Majeſty's Attorney General, produced the Indictment following: together with the citation uſed againſt thoſe who were to paſs upon the Jury, and the roll of their particular names, ſubſcribed with his hand, according to the cuſtom obſerved in thoſe caſes.

The Indictment of John Ogilvie *Jesuit, after the form of the Law of* Scotland.

John Ogilvie, by your subscription, a priest of the late execrable order of Jesuits, you are indicted and accused, That for as much as God, the Author of all righteous government, having established Kings and Magistrates his Lieutenants upon earth, for repressing of violence, oppression and vice, and the promoting of piety and justice, hath in his particular grace and favour, blessed this Country with a more ancient, just, and permanent Descent of lawful Kings than any other nation of the world, and extended our felicity beyond the happiness of our ancestors, by the justice, wisdom and clemency of his Majesty's prosperous reign; and hath not only rewarded his Majesty's zeal and righteousness with wealth and peace, but also honoured and strengthened him with the accession of the most mighty and flourishing Kingdoms of *England*, *France*, and *Ireland*. Which visible favours proceeding directly from God's most bountiful hand, moved the whole Estates of this kingdom assembled in the Parliament holden at *Perth*, the 9th of *July*, 1606, to acknowledge his Majesty's sovereign authority, princely power, royal prerogative, and privilege of his Crown over all estates, persons and causes whatsoever, within the kingdom: and all in one voice faithfully to promise, maintain, defend, obey and advance the life, safety, honour, dignity, sovereign authority and prerogative royal of his sacred Majesty, and privileges of his Crown: and to withstand all persons, powers, and estates, who should presume, press, or intend any ways to impugn, hurt, or impair the same: As also his Majesty, with advice of the whole estates of this kingdom, in the Parliament holden at *Edinburgh*, the 22d day of *May*, *Anno* 1584, ratified, approved, and perpetually confirmed, his Majesty's royal power and authority over all estates, as well spiritual as temporal, within this Realm; and statuted and ordained, that his Highness, his heirs and successors, by themselves and their Counsellors, were, and in all times coming should be, Judges competent to all persons his Highness's subjects, of whatsoever estate, degree, function, or condition, that ever they be of, spiritual or temporal, in all matters wherein they or any of them should be apprehended, summoned, or charged to answer unto such things as should be inquired of them by our said sovereign Lord and his Council; and that none of them who should be apprehended, called, or summoned, to the effect aforesaid, should presume or take in hand to decline the judgment of his Highness, his heirs and successors, or their Council in the premisses, under the pain of Treason. And likewise, by the 48th Act of King *James* I. his Parliament, and divers other Parliaments thereafter, it is ordained that all the King's lieges live and be governed under the King's laws and statutes, and under no laws of other Countries and Realms, under the pain of Treason, and other, particularly expressed in the Acts before-mentioned, and other laws of this kingdom. Notwithstanding whereof, it is of truth and verity, that you having renounced your natural allegiance and duty to your native and righteous King, and cast off all reverence, respect, and obedience to his sovereign authority and laws, and dedicated your mind and actions to the unlawful obedience of foreign powers, adversaries to his Majesty; and resolving, so far as in you lieth, to seduce his Majesty's subjects from the faith and allegiance due to his Majesty, repaired to this Country in the month of *June* last past, or thereabout. And by your conferences, inticements, auricular confessions, Mass-saying, and other subtle and crafty means, endeavoured yourself not only to corrupt many of his Majesty's lieges in religion; but also to pervert them from their dutiful obedience due to his Majesty, till you were discovered and apprehended by the Archbishop of *Glascow*, who, with divers his Majesty's Counsellors and others his good subjects, used all Christian and charitable means to bring you to the sense of your heinous offences, and desire of amendment thereof: but they losing all their well-intended labours, were (in respect of your perverse obstinacy) commanded by his Majesty to enter to your examination, and the Trial of your heinous crimes and transgressions. And especially the said Archbishop of *Glascow*, and many others of good rank and quality adjoined to him, by his Majesty, for your examination, having upon the 18th day of *January* last, called you before them, to examine you upon some particular interrogatories, prescribed by his Majesty to be demanded of you; as directly concerning his Majesty's most sacred person, life, crown, and estate: And chiefly you being demanded by them, whether the Pope hath power to depose Kings, being excommunicated? and in particular, if he have power to depose the King's Majesty, our Sovereign, being excommunicated by him? You answered treasonably, that you would not declare your mind, except to him that is Judge in the controversies of Religion, whom (by your answer made to the latter part of the first interrogatory, demanded of you that day) you declared to be the Pope, or any having authority from him; albeit by the Acts of parliament and laws of this realm, made in the years of God 1560 and 1567, it is statuted and ordained, that the Bishop of *Rome* (called the Pope) shall have no Jurisdiction nor authority within this realm, in any time coming: and thereby not only declining treasonably his Majesty's Jurisdiction, allowing of the Pope's jurisdiction, which is discharged by Acts of Parliament, as said is; but hath committed most damnable and High-Treason, in not acknowledging that the Pope hath no power to depose his Majesty, who holding his Crown and Authority absolutely, sovereignly, and immediately of God, may not be deposed by any earthly person, power, or authority. And thereafter you being demanded, if it be lawful to slay his Majesty, being excommunicated and deposed by the Pope? You answered *ut supra*: which was, that you would not declare your mind till you were before the Pope, or others having authority from him; thereby not only declining treasonably his Majesty's Jurisdiction and Authority Royal, but by your not answering clearly, that it is altogether unlawful, damnable, and diabolical, once to think that it is lawful to slay his most sacred Majesty, you have committed most heinous, pernicious, and unpardonable Treason. And lastly, being demanded, if the Pope had power to assoil his Majesty's born subjects from their natural allegiance? You answered, *ut supra*: and thereby both declined treasonably his Highness's Jurisdiction and Authority-Royal, in refusing to answer before his Majesty's Councillors and Commissioners aforesaid, in one matter merely concerning his royal power over his people, and their subjection to his Majesty; and also committed wilful and detestable Treason, in not acknowledging professedly and presently, that none on earth had power to assoil his Majesty's subjects from their natural subjection and allegiance to him. But that it may be known that your Treason proceeded of fore-thought of felony, and obstinate resolution, you freely and unrequiredly did add to your foresaid answers this damnable conclusion, that you condemned the oaths of supremacy and allegiance given to his Majesty by his subjects in his Dominions: whereby it is apparent, that your errand to this Country, hath been to infect his Highness's subjects with the poison of your pestilent and treasonable opinion foresaid, to the subversion of Religion, overthrow of his Majesty's authority and crown, and destruction of his most sacred person. And albeit the course of all his Majesty's life and reign hath manifested, how unwilling he hath ever been to use the severity of his laws against those who have said and heard Mass, and otherwise contravened the Acts of Parliament made against idolatrous Papistry, and practisers thereof within this kingdom, desiring rather to reclaim them by instruction, from their errors, to the knowledge and profession of the truth: and when he found them obdurate, and of desperate resolution, relieving the Country of the dangerous progress of their courses, by their imprisonment and banishment, whereof you had such experience in the persons of your own accomplices, condemned for their manifest crimes, as might very probably have made you to have expected the like, if any memory of your native duty and born allegiance had possessed your mind: but you being altogether destitute thereof, by the three last articles of your depositions above written, you have so plainly discovered, that you professedly approve the means, and wish the effect of the overthrow of his Majesty's estate, the destruction of his Highness's person, and seduction of his native subjects from their subjection and dutiful obedience: that thereby, and by every one of your foresaid answers, you have committed most heinous, detestable, and unpardonable Treason, and deservedly incurred the most rigorous pains thereof to be executed upon your body, lands, and goods, with all extremity, to the terror of others.

The Indictment being read, Mr. William Hay, *Substitute for his Majesty's Attorney, opened the same, to the effect following:*

ALBEIT the Indictment of itself be clear enough, and representeth sufficiently to my Lords Justices, their honourable Lordships here assisting, and to yourself *John Ogilvie*, who stands there accused, the weight and gravity of the crime by you committed, yet I shall resume it to you in few words, that your answers may be the more distinct, and without mistaking.

You are not accused of saying Mass, nor of seducing his Majesty's subjects to a contrary religion, nor of any point touching you in conscience properly; but for declining his Majesty's authority, against the laws and statutes of the land, and for maintaining treasonable opinions: such as we of this realm have not heard by any avowed. The statutes mentioned in your Indictment, make it Treason not to answer the King's Majesty, or his Council in any matter which shall be demanded: you being examined by my Lord Archbishop of *Glascow*, and other honourable persons adjoined to him by his Majesty's special commission, refused to answer to divers interrogatories proponed to you by their Lordships, and at the same time professedly avouched the Pope of *Rome* his jurisdiction, which by the laws of the Country is many years since plainly discharged: therefore have you incurred the penalty contained in the statutes, and the same ought and should be executed upon you.

It is further laid unto your charge, that you being demanded in the particulars, namely, *Whether the Pope hath power to depose the King's Majesty, our Sovereign?* Secondly, *Whether it be lawful to slay his Majesty, being deposed by the Pope?* Thirdly, *Whether the Pope hath power to assoil his Majesty's subjects, from their natural allegiance, or not?* You denied to give any answer, touching any of these points, except ye were enquired thereof by the Pope, or others having authority from him: and so not acknowledging, that his Majesty's Crown and Authority is held immediately and sovereignly of God, the Author of all government; that it is detestable once to think, that his sacred Majesty may be lawfully killed, and that no man has power to assoil his Majesty's subjects from their natural allegiance to his Highness: you have in these points, and every one of them, committed most heinous Treason; for the which what you say in your own defence I see not. And yet further that it may be seen, how desperate your resolution is in all these points, although you were not required concerning the oaths of supremacy and allegiance given to his Majesty, by his subjects, ye freely, and out of your own motives, condemned these oaths as impious and unlawful; thereby hath it appeared what a wicked and treasonable mind you foster against his Majesty, our Sovereign. If you should deny it, here are your answers subscribed with your own hand, which ye cannot but acknowledge; them I desire to be read, as likewise the several Statutes of Parliament, which you are alledged to have transgressed, and thereafter, since his Majesty is pleased, that the ordinary course of Trial be kept unto you; you shall have liberty to say for yourself, either against the relevancy of the Indictment, or verification produced, what you think best.

Then were read the Statutes of Parliament mentioned in the Indictment, and the said John Ogilvie's *Answers to the demands proponed unto him, which he acknowledged for his own, and the subscription thereto subjoined; after which, having license of the Court to say what he could for himself, he spake to this effect:*

FIRST under protestation, that I do no way acknowledge this judgment, nor receive you, that have that commission there produced, for my Judges, I deny any point laid against me to be Treason: for if it were Treason, it would be Treason in all places, and in all kingdoms; but that, *saith he*, is known not to be so. As for your Acts of Parliament, they are made by a number of partial men, the best of the land not agreeing with them, and of matters not subject to their *Forum*, or Judicatory, for which I will not give a rotten fig.

Where I am thought an enemy to the King's Majesty's authority, I know no other authority he hath, but that which he received from his predecessors, who acknowledged the Pope of *Rome*'s jurisdiction. If the King, *saith he*, will be to me as his predecessors were to mine, I will obey and acknowledge him

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him for my King; but if he do otherwiſe, and play the runnagate from God, as he and you all do, I will not acknowledge him more than this old hat.

Here the Archbiſhop of *Glaſcow* interrupted his ſpeech, deſiring him to deliver his mind in a greater calm, and with more reverend ſpeeches of his Majeſty (for he uttered thoſe things in a vehement paſſion, and as one tranſported with fury). He remembered him, that he was accuſed upon his life, before Judges that were authorized by his Majeſty's commiſſion: to decline the judgment, or rail againſt his Majeſty's authority, was bootleſs, and in a man of his profeſſion, being an Eccleſiaſtick, very ſcandalous. He ſhould rather take another courſe, to amend what he had offended in, and recall his former anſwers; if they had not proceeded from a deliberate purpoſe, or if he were reſolute to maintain them, to do it with reaſon, and in a moderate ſort; that this were his beſt, either for juſtifying himſelf, and the opinions he held, or for moving the Judges, and their Lordſhips that were aſſiſting, to commiſerate his caſe. He adverti ſed him withal to be more temperate in his ſpeeches concerning his Majeſty, otherwiſe he would not be licenſed thus to offend.

To this *Ogilvie* made ſome little anſwer, That he would take the advertiſement, and ſpeak more coolly; howbeit, he would never acknowledge the judgment, nor think they had power to ſit on his life; but ſaid, And for the reverence I do you, to ſtand bare-headed before you, I let you know it is, *Ad redemptionem vexationis, & non ad agnitionem judicii.*

The Advocate here inſiſted, that ſeeing all his anſwers tended to decline the judgment, and that he brought no reaſon why the Indictment ſhould not go to a Trial, that the Jury ſhould be choſen and ſworn at the bar, according to the cuſtom.

The Names of the Jury.

Sir *George Elphingſton*, of *Blythſwood*.
Sir *Thomas Boyd*, of *Boneſhaw*.
Sir *James Edmeſton*, of *Duntraith*, elder.
James Murhead, of *Lachop*.
James Roberton, of *Ernock*.
Hugh Crawfurd, of *Jordan-Hill*.
John Carſchore, of that Ilk.
Hugh Kennedy, Provoſt of *Aire*.
William Makarrel, of *Hill-houſe*.
James Blaire, Bailie of *Aire*.
James Dunlop, of *Powmilne*.
John Steward, Burgeſs of *Aire*.
John Dumbar, Burgeſs there.
James Johnſton, Burgeſs there.
John Cunningham, of *Rawes*.

It was allowed the priſoner to challenge any of the fore-named perſons, and to oppoſe unto their admiſſion: who ſaid,

He had but one exception for them all: they were either enemies to his cauſe, or friends: if enemies, they could not be admitted upon his Trial; and if they were his friends, they ſhould ſtand priſoners at the Bar with him.

The Jury were inſtantly ſworn and admitted.

Then was the Indictment read again in the hearing of the Jury, and the evidences ſhewed them for verification thereof, which of before were produced. And the priſoner being of new remembered to ſay what he would for himſelf, for the better information of the Jury, ſpake theſe things following:

I wiſh theſe Gentlemen to conſider well what they do. I cannot be tried nor judged by them; and whatever I ſuffer here, it is by way of injury, and not of judgment. *Injuria eſt, non judicium.* I am accuſed of Treaſon, but have done none offence, neither will I beg mercy.

Archbiſhop. This is ſtrange, you have done none offence, and yet you are come in his Majeſty's Kingdom, and have laboured to pervert his Highneſs's Subjects; both of theſe are againſt the Law: In this have ye not offended?

Ogilvie. I came by commandment, and if I were even now forth of the Kingdom, I ſhould return: neither do I repent any thing, but that I have not been ſo buſy as I ſhould, in that which ye call perverting. I hope to come to *Glaſcow* again, and to do more good in it. If all the hairs of mine head were Prieſts, they ſhould all come into the Kingdom.

Archbiſhop. And do you not eſteem it a fault to go againſt the King's commandment, eſpecially in this point of diſcharging you his Kingdom? If a King have any power within his Kingdom, it ſeems he may rid himſelf and his country of thoſe with whom he is offended; and it ſavours of great Rebellion to ſay otherwiſe.

Ogilvie. I am a ſubject as free as the King is a King; he cannot diſcharge me if I be not an offender, which I am not.

And being aſked for what offences he might be diſcharged by the King? anſwered, in the caſes of theft and murder.

Archbiſhop. You come not to anſwer any thing to the points of your Indictment. Why did you decline his Majeſty's authority, and refuſed to ſhew your opinion anent the Pope, his power in depoſing Kings, and looſing ſubjects from their oath of allegiance? And when it was aſked you, if it were lawful to ſlay the King, being depoſed, and excommunicated by the Pope, which any loyal-hearted ſubject will abhor to think of, why did you not ſimply condemn it as unlawful? For in that you do not condemn it, you ſhew yourſelf of the opinion of the reſt of your ſect, who in their books maintain, that it is both lawful and commendable to ſlay Kings, if the Pope's Commiſſion go forth once for it.

Ogilvie. For the declining of the King's authority, I will do it ſtill in matters of Religion; for with ſuch matters he hath nothing to do: neither have I done any other thing, but that which the Miniſters did at *Dundee*; they would not acknowledge his Majeſty's authority in ſpiritual matters more than I: and the beſt Miniſters of the land are ſtill of that mind, and if they be wiſe, will continue ſo.

The Archbiſhop reply'd, That he was miſtaken, both in the place and matter; for it was not at *Dundee*, but *Aberdeen*, where eight Miniſters meeting in a general aſſembly, contended not againſt the King's authority, but that the aſſembly called to that place and time could not be diſcharged by his Majeſty's Commiſſioner: neither ſhould the fact of a few, take it at the worſt, be eſteemed the deed of the whole. Theſe have been puniſhed for their offences, and ſome of them have confeſſed their error, and been graciouſly pardoned by his Majeſty. All good Miniſters profeſs otherwiſe, and our Religion teaches us to acknowledge his Majeſty our only ſupreme Judge in all cauſes. The King is Keeper of both Tables, and his place bears him not only to the ruling of his ſubjects in juſtice, and preſerving equity amongſt them, but even to maintain Religion and God's pure Worſhip, of which he ſhould have principal care. Your Lord the Pope hath not only denied this authority to Kings, which God giveth them, but uſurpeth to himſelf a power of depoſing and killing when he is diſpleaſed; and it were the leſs to be regarded, if this his uſurpation had gone no further than your pens: but you have entered, by this pretended right, the throats of the greateſt Kings, as your practice upon the two laſt *Henrys* of *France* bears witneſs. You are not able to lay ſuch imputation upon us, nor our profeſſion, which teaches, that next unto God Almighty, all men are bound to fear, ſerve, and honour their Kings. But what anſwer you touching theſe demands? Hath the Pope power to depoſe the King? or is it not murder to kill him, being depoſed by the Pope?

Ogilvie. I refuſed before to anſwer ſuch queſtions, becauſe in anſwering, I ſhould acknowledge you Judges in Controverſies of Religion, which I do not. I will not caſt holy things to dogs.

Archbiſhop. Is it a point of faith, that the Pope may depoſe his Majeſty? or do you think it a controverſy in Religion, Whether his Majeſty (whom God ſave) may be lawfully killed, or not?

Ogilvie. It is a queſtion amongſt the Doctors of the Church, and many hold the affirmative not improbably. A Council hath not yet determined the point: and if it ſhall be concluded by the Church, that the Pope hath ſuch power, I will give my life in defence of it; and if I had a thouſand lives, I would beſtow them that way, if they will make an article of faith of it.

Being urged by the Court to declare his own opinion, eſpecially in that point, whether it were murder to kill his Majeſty, being depoſed by the Pope?

Ogilvie. I would not ſay it were unlawful, tho' I ſhould ſave my life by it. That if the King offended againſt the Catholick Church, the Pope might puniſh him as well as a ſhepherd, or the pooreſt fellow in the country. That in abrogating the Pope's authority, the Eſtates of Parliament had gone beyond their limits, and that the King, in uſurping the Pope's right, had loſt his own. *Nam qui rapit jus alienum, perdit jus ad ſuum.*

Being aſked touching the oath of allegiance, Why he did condemn it? and the ſame being read unto him; He ſaid, It was a damnable oath againſt God and his truth, and that it was treaſon to ſwear it, becauſe it brought the King's Perſon and State in danger. Since this Kingdom, ſaid he, was Chriſtian, the Pope's ſupreme power was always acknowledged: this being caſt off (as we ſee in the Act of your Parliament) againſt all reaſon and conſcience, and ſubjects forced to ſwear to a matter ſo unlawful, what marvel that attempts and dangerous courſes be taken againſt him. *Juſtiſſima lex eſt, ut quæ agit aliquis, talia patiatur.* But would the King leave off his uſurping upon the Pope, he might live without fear, as well as the King of *Spain*, or any other Chriſtian Prince. Neither Biſhop, nor Miniſter, nor all the Biſhops and Miniſters in his Majeſty's Kingdoms had done, nor could do the like.

The Archbiſhop of *Glaſcow* did cloſe all to the Jury, to this effect.

Gentlemen, and others, who are named upon this aſſize, tho' I minded to have ſaid nothing, but ſitten here a witneſs of the proceeding, I have been forced by his proud and impudent ſpeeches, ſomewhat to reply, and muſt, with your patience, ſay a little more. It is this ſame day, two-and-twenty weeks paſt, that this priſoner fell into mine hands; ſince that time he hath had leiſure to think enough what courſe was fitteſt for himſelf to take, for ſatisfying his Majeſty whom he had offended; neither hath he lacked counſel and advice, the beſt that we could give him: beſides, he hath found on our part nothing but courteous dealing, and better entertainment, than, I muſt now ſay it, he hath deſerved. Mine own hopes were, that he would have followed another courſe than I ſee he hath taken, and not ſtand to the anſwers which he made to thoſe demands which were moved unto him by his Majeſty's Commiſſioners, and you have ſeen: but if his anſwers at the firſt were treaſonable, they are now ſo little bettered, as in all your hearings, he hath uttered ſpeeches moſt deteſtable, made a commentary worſe than the text was, and ſhewed himſelf to carry the mind of an arrant and deſperate traitor. You perceive he obſcures not his affection towards the King's Majeſty, our Sovereign, in all his ſpeeches preferring the Pope to his Majeſty: and which is more intolerable, affirmeth the King's Majeſty to have loſt the right of his Kingdom by uſurping upon the Pope. He will not ſay, it is unlawful to kill his Majeſty; he ſaith, it is treaſon for ſubjects to ſwear the oath of allegiance; and meaneth ſo much in his laſt words, as the King's Majeſty's life and eſtate cannot be aſſured, except he renders himſelf the Pope's vaſſal.

Thus hath he left you little to do, except that his Majeſty's pleaſure is, the ordinary form be kept with him, you ſhould never need once to remove: all his ſpeeches have been ſo ſtuffed with Treaſon, that I am ſure the patience of the Noblemen, and others here preſent, hath been much provoked.

In all that he hath ſaid, I can mark but two things alledged by him for the Pope's authority over Kings; the words of our Saviour to St. *Peter*, *Paſce oves meas*, Feed my ſheep: and the Subjection of Kings, eſpecially of our Kings, ſince the Kingdom became Chriſtian, to the Pope. For the words of our Saviour, how little they ſerve his purpoſe, I have no need to tell you. To feed the ſheep of Chriſt, is not, I hope, to depoſe Kings from their eſtates, nor to enflame the hearts of ſubjects againſt Princes, much leſs to kill and diſpatch them: we are better taught than to be deceived with ſuch gloſſes. Saint *Peter* made never that ſenſe of thoſe words, and teacheth us a far other doctrine, in his firſt epiſtle, fifth chapter, and ſecond and third verſes.

I will not ſpend time with ſuch purpoſe; only this I muſt ſay, that whatſoever was St. *Peter*'s prerogative, the Pope of *Rome* hath nothing to do with it: for he cannot be St. *Peter*'s ſucceſſor that hath forſaken his doctrine, and gone againſt his practice directly, both in that and other points of Chriſtian Faith. And for the antiquity of his uſurped power, I may juſtly ſay, that Mr *Ogilvie* is not well ſeen in antiquity, or then ſpeaketh againſt his knowledge, when he ſaith, that this power of the Pope was ever acknowledged by Chriſtian Kings: the Biſhops of *Rome* for many years made no ſuch claim, neither did Emperors or Kings ever dream

of

of ſuch ſubjection: long it was ere the Pope of *Rome* came to the height of commanding Kings, and not till he had oppreſſed the Church, under the pretext of St. *Peter*'s keys, bearing down all the Biſhops within Chriſtendom; which having done, then he made his invaſion upon Princes, and that by degrees. The Hiſtories of all ages make this plain, and the reſiſting he found by Kings in their Kingdoms, teſtified that they never acknowledged his ſuperiority. Of our own, howbeit as we lie far from his ſeat, ſo had we leſs buſineſs and fewer occaſions of contradiction; yet I can make it ſeen in divers particulars, when any queſtion fell out anent the proviſion of Biſhops and Archbiſhops to their places, the Bulls of *Rome* were ſo little reſpected, as the King's predeceſſors have always preferred and borne out their own choice; and the interdictions made upon the Realm, by theſe occaſions, not without ſome imputation of weakneſs to the See Apoſtolick, have been recalled. The ſuperſtitions of *Rome* were amongſt us laſt embraced, and with the firſt, by the mercies of God, ſhaken off. Whatſoever you brag of your antiquity, it is falſe both in this and in all the points of your profeſſion elſe, which I could clear, if this time or place were fitting. But to you of this Jury, I have this only more to ſay, you are to enquire upon the verity of the Indictment, whether ſuch and ſuch things as are alledged to be committed by him, have been ſo or not: you have his ſubſcription, which he acknowledgeth; you hear himſelf, and how he hath moſt treaſonably diſavowed his Majeſty's authority: it concerns you only to pronounce as you ſhall find verified by the ſpeeches that you have heard, and the teſtimonies produced. For the reſt, the Juſtices know ſufficiently what to do, and will ſerve God and his Majeſty, according to the commiſſion given them.

Maſter *William Hay*, Advocate for his Majeſty, aſked Inſtruments upon the priſoner's treaſonable ſpeeches, uttered in the hearing of the Jury, and his ratification of the former anſwers made to his Majeſty's Commiſſioners: likewiſe, for the further clearing of the Indictment, repeated the Acts of Parliament mentioned in the ſaid Indictment, with the Act of Privy-Council, made anent his Majeſty's ſupremacy and the oath of allegiance. And deſired the Jury deeply to weigh and conſider the perverſe and deviliſh diſpoſition of the party accuſed; to the effect they might without ſcruple proceed in his conviction. And according to his place, proteſted for wilful error, if they ſhould acquit him of any point contained in the ſaid Indictment.

The perſons named upon the Jury, removed to the higher Houſe, which was prepared for them; and having elected Sir *George Elphingſton*, Chancellor, all in one voice found the priſoner guilty of the whole treaſonable crimes contained in the Indictment.

Which being reported by the ſaid Sir *George Elphingſton*, and confirmed by the whole Jury, then returned into the Court, judgment was given by direction of the Juſtices,

That the ſaid *John Ogilvie*, for the treaſons by him committed, ſhould be hanged and quartered.

The Archbiſhop of *Glaſcow* demanded, if *Ogilvie* would ſay any thing elſe?

Ogilvie anſwered, No, my Lord. But I give your Lordſhip thanks for your kindneſs, and will deſire your hand.

The Archbiſhop ſaid, If you ſhall acknowledge your fault done to his Majeſty, and crave God and his Highneſs's pardon, I will give you both hand and heart; for I wiſh you to die a good Chriſtian.

Then *Ogilvie* aſked, If he ſhould be licenſed to ſpeak unto the people?

The Archbiſhop anſwered, If you will declare, that you ſuffer according to the Law, juſtly for your offence, and crave his Majeſty's pardon for your treaſonable ſpeeches, you ſhall be licenſed to ſay what you pleaſe; otherwiſe you ought not to be permitted.

Then ſaid he, God have mercy upon me! And cried aloud, If there be here any hidden Catholicks, let them pray for me; but the prayers of Hereticks I will not have.

And ſo the Court aroſe.

A true Relation of ſuch things as paſſed at the Execution of John Ogilvie, *upon the laſt day of* February, *Anno* 1615, *being* Tueſday *in the afternoon.*

AFTER judgment was given, by the ſpace of ſome three hours, he remained in the place where he was convicted, having leiſure granted him to prepare himſelf for death. He continued a while upon his knees at prayer, with a cold devotion; and when the hour of execution approached, his hands being tied by the Executioner, his ſpirits were perceived much to fail him. In going towards the ſcaffold, the throng of peopie was great, and he ſeemed much amazed; and when he was up, Mr. *Robert Scott*, and Mr. *William Struthers*, Miniſters, very gravely and chriſtianly exhorted him to an humble acknowledgment of his offence, and if any thing troubled his mind, to diſburthen his conſcience. In matters of Religion, they ſaid, they would not then enter, but prayed him to reſolve and ſettle his mind, and ſeek mercy and grace from God, through Jeſus Chriſt, in whom only ſalvation is to be found.

Ogilvie anſwered, That he was prepared and reſolved. Once he ſaid, that he died for religion; but uttered this ſo weakly, as ſcarce he was heard by them that ſtood by upon the ſcaffold. Then addreſſing himſelf to execution, he kneeled at the ladder-foot, and prayed; Mr. *Robert Scott* in that while declaring to the people that his ſuffering was not for any matter of Religion, but for heinous treaſon againſt his Majeſty, which he prayed God to forgive him. *Ogilvie* hearing this, ſaid, He doth me wrong. One called *John Abircrumie*, a man of little wit, replied, No matter, *John*, the more wrongs the better. This man was ſeen to attend him carefully, and was ever heard aſking of *Ogilvie* ſome token before his death; for which, and other buſineſs he made with him, he was put off the ſcaffold.

Ogilvie ending his prayer, aroſe to go up the ladder, but ſtrength and courage, to the admiration of thoſe who had ſeen him before, did quite forſake him: he trembled and ſhaked, ſaying, *he would fall*, and could hardly be helped up on the top of the ladder. He kiſſed the Hangman, and ſaid, *Maria, mater gratiæ, ora pro me; omnes Angeli, orate pro me; omnes Sancti Sanctæque, orate pro me:* but with ſo low a voice, that they which ſtood at the ladder-foot had ſome difficulty to hear him.

The Executioner willed him to commend his ſoul to God, pronouncing theſe words unto him, Say *John, Lord, have mercy on me, Lord, receive my ſoul:* which he did with ſuch feebleneſs of voice, that ſcarcely he could be heard. Then was he turned off, (his left foot for a ſpace taking hold of the ladder, as a man unwilling to die) and hung till he was dead. His quartering, according to the judgment given, was, for ſome reſpects, not uſed; and his body buried in a place that is kept for malefactors.

We have underſtood, by ſome perſons who viſited him at times during his impriſonment, that amongſt other his ſpeeches with them, he ſaid this, That if he had eſcaped his apprehenſion at this time, and lived till *Whitſunday* next, he ſhould have done that which all the Biſhops and Miniſters both in *England* and *Scotland*, ſhould never have helped. And if he might have lived at liberty unto that time, he would willingly have been drawn in pieces with horſes, and have given his body to have been tormented.

XV. Proceedings againſt Mr. Wraynham, in the *Star-Chamber*, for Slandering the Lord-Chancellor *Bacon* of Injuſtice, *Paſch.* 16 *Jac.* I. 1618.

BEFORE

The Duke of *Lenox*.
The Earl of *Suffolk*, Lord-Treaſurer.
The Earl of *Worceſter*, Lord-Privy-Seal.
The Earl of *Pembroke*, Lord-Chamberlain.
The Earl of *Arundel*.
Viſcount *Wallingford*.
Sir *Fulke Greville*, Chancellor of the *Exchequer*.
Dr. *Abbot*, Lord Archbiſhop of *Canterbury*.
Dr. *King*, Biſhop of *London*.
Dr. *Andrews*, Biſhop of *Ely*.
Sir *Edward Montague*, Lord-Chief-Juſtice of the *King's-Bench*.
Sir *Henry Hobart*, Lord-Chief-Juſtice of the *Common-Pleas*.
Sir *Laurence Tanfield*, Lord-Chief-Baron of the *Exchequer*.
Sir *Edward Coke*.
Sir *Thomas Lake*, Principal Secretary.
Sir *Henry Cary*, Comptroller.

Sir Henry Yelverton, *Attorney-General.*

May it pleaſe your Lordſhips,

IT is the Honour of this Court, that it repreſents the higheſt earthly Majeſty, and his preſence; and it is his Majeſty's Honour, that as himſelf is clothed with Juſtice, ſo you, as the greateſt and higheſt next his Majeſty, ſhould put on the ſame garment.

Clemency and Juſtice are the two Lights of every Kingdom, without which your perſons and eſtates would be expoſed to violence, and without which great Monarchies would be but great Thefts; and as Juſtice is not to be recompenſed in price, ſo ought not the ſcandal hereof to go unpuniſhed; eſpecially, when it toucheth ſo great a perſon, as, in the ſacred ſeat of Juſtice, is next to the King; the Chief Judge in this Court, and the ſole Judge in Chancery, who is much defamed by the Gentleman at the Bar, in the moſt precious point of all his virtues, his Juſtice: be it ſpoken without offence, baſely and blameleſsly is my Lord-Chancellor traduced, as if he deſerved that all the thunderbolts of Heaven ſhould fall upon him.

At my Lord's firſt coming into this place, he found a Cauſe in Chancery, between this Gentleman at the Bar, and one Mr. *Fiſher*, not controverted in the title, but concerning the value of the leaſe, which *Fiſher* held of *Wraynham*; in which, the Lord-Chancellor peruſed the proceedings of the cauſe, called the parties to give a ſummary end to ſo tedious a cauſe; and becauſe the ſucceſs anſwered not the deſire of this Gentleman, therefore he kicks againſt authority, who before was not more grieved at the expence, than now impatient at the ſentence; which was not want of juſtice in my Lord, but of equity in the cauſe.

I confeſs I was of Counſel with Mr. *Wraynham*, and preſſed his cauſe as far as equity would ſuffer; but I know that Judges look with other eyes than Counſellors do; they go not by tale, but by weight. And therefore, their Judgment muſt anſwer the Counſel, and quiet the mind of the party; and tho' in gaming loſers may ſpeak, yet in judgment they muſt be ſilent; becauſe it is preſumed that nothing is taken from them but what is none of theirs. But this Gentleman being of an unquiet Spirit, after a ſecret murmuring, breaks out into a complaint to his Majeſty; and not ſtaying his return out of *Scotland*, but fancying himſelf, as if he ſaw ſome

Cloud

Cloud ariſing over my Lord, wearying and tiring his Majeſty with infinite ſupplications in this caſe. And now, my Lords, as if all his former cauſe had been loſt, he preſents it no more in parts, or looſe papers, but compiling his undigeſted thoughts into a libel, though the volume was but in quarto, faſtens it on the King on *Good-Friday* laſt.

And his moſt princely Majeſty, finding it ſtuffed up with moſt bitter reviling ſpeeches againſt ſo great and worthy a Judge, hath of himſelf commanded me this Day to ſet forth and manifeſt his fault unto your Lordſhips, that ſo he might receive deſerved puniſhment.

In this *Velvet* pamphlet (for this Book is bound in *Velvet)* is ſet forth his cauſe, the work of this day; wherein Mr. *Wraynham* ſaith, he had two decrees in the firſt Lord-Chancellor's time, both under the Great Seal, and yet both are altered ſince the laſt Lord-Chancellor's death, and cancelled by this Lord-Chancellor in a prepoſterous manner; and Firſt, *without cauſe*; Secondly, *without matter*; Thirdly, *without any legal proceeding*; Fourthly, *without precedent*; Fifthly, *upon the Party's bare ſuggeſtions*; and Sixthly, *without calling Mr.* Wraynham *to anſwer*. And of this, my Lords, ſpitefully he imagines a threefold end: Firſt, *to reward* Fiſher's *fraud and perjuries*; Secondly, *to palliate his unjuſt Proceedings, and to rack things out of joint*; and Thirdly, *to confound* Wraynham's *eſtate:* and that my Lord was therein led by the rule of his own fancy. Yet he ſtayed not here; but, as if he would ſet ſpurs againſt my Lord, he aggravates my Lord's Injuſtice to be worſe than Murder; ſaying, That in his ſentence, he hath devoured him and his whole family. And ſecondly, as if one ſin ſhould follow upon another, he doubles it upon my Lord, and, in a manner, plainly gives my Lord the lye. And hearing that my Lord had ſatisfied his Majeſty in this caſe; he ſaith in his book, that he that did it unjuſtly, muſt, to maintain it, ſpeak untruly, adding falſhood to my Lord's Injuſtice; ſaying in his Book, it is given out my Lord hath begged *Wraynham*'s pardon: which, tho' it be the ſhew of a gentle heart, yet argues a guilty conſcience, and is but my Lord's cunning to avoid the hearing of the cauſe. And as if my Lord ſhould know his own diſeaſe to be foul, and were unwilling to have it ſearched or diſcovered; he charged my Lord with ſhifts, and tells him that he hath palliated oppreſſion with greatneſs, wit and eloquence; and that the height of authority makes men preſume. And to make this yet more ſharp, he urgeth, that my Lord, to maintain this, uſeth ſecret means, whereby the unſoundneſs of his actions may not be ſeen, and ſo to avoid cenſure; and, as if my Lord ſhould have ſkill in Magick, he ſaith, that my Lord hath raiſed a report from hell of the late Maſter of the Rolls, which was confuted before his face, and damned before his death; not content to ſcandalize the living, but ſo far, my Lords, doth his malice overſpread his wiſdom, that he doth not ceaſe, with his nails, to ſcrape the dead out of their graves again. When it is well known unto your Lordſhips, that the Maſter of the Rolls was a man of great underſtanding, great pains, great experience, great dexterity, and of great integrity; yet, becauſe this cauſe fell by caſualty into his hands, by reverence from the laſt Lord-Chancellor, and he followed not this man's humour in his report; therefore he brands him with theſe aſperſions, and adds this to the reſt, That he grounded this report upon Witneſſes, that ſwore impoſſibilities, groſs abſurdities, and apparent untruths. How can you but think, my Lords, but that this Gentleman's head is full of poiſon, ſeeing it fell out ſo faſt then into his pen, trampling upon the dead? And this is an addition unto his puniſhment, the injury of him that is dead, becauſe the State yet lives, wherein his juſtice is ſcandalized.

And now, my Lords, that you may the more deteſt his ſlanders, whereby he goeth about to ſlander my Lord-Chancellor's Juſtice; give me leave to open the plain and even way, wherein this great Judge walks in this particular caſe. The queſtions in Chancery at firſt were two, between *Wraynham* and *Fiſher*, upon croſs ſuits, either againſt the other: *Wraynham* complains of truſt broken, whereby he was defrauded; *Fiſher* upon a debt of a private reckoning detained by *Wraynham*. Upon proof of both theſe, it was by aſſent ordered, That *Fiſher* ſhould aſſign the Leaſe made unto him upon truſt, and *Wraynham* ſhould pay the Money, ſo well proved to be due to *Fiſher:* ſo by aſſent was the Decree had, which is the firſt Decree.

But Mr. *Wraynham*, wiſely ſuſpecting that Mr. *Fiſher* had incumbred his Leaſe, and if it ſhould be aſſigned to him according to the Decree, it would be merely illuſory; he exhibits a new bill to diſcover what charge, and in what ſort, *Fiſher* had charged the land with incumbrances. And Mr. *Wraynham* finding the incumbrances greater, upon the reference of the Lord-Chancellor to the Maſter of the Rolls, a bargain was mediated between them, that *Fiſher* ſhould hold the Leaſe in queſtion, and *Wraynham* ſhould have after the rate of twelve years purchaſe; and to this both aſſented: ſo that your Lordſhips ſee that the firſt Decree was not cancell'd by my Lord Chancellor, but diſcharged by himſelf; for by the Decree he might have had the Leaſe; but he contented himſelf with twelve years purchaſe.

After this, the queſtion grew upon the value, which being referred to the laſt Maſter of the Rolls, how the value was at firſt, before the improvement, when it was in Leaſe to one *Harply*, and there, upon proof and oath of divers Witneſſes, the Maſter of the Rolls returned and certified the conſtant produce of the Leaſe to be worth 200*l.* by the year; whereupon *Wraynham* was to have it at twelve years purchaſe, amounting to 2400*l.* Mr. *Wraynham* ſeeing the land was much improved by a defence made againſt the ſea and other means, whereby the nature of the land was altered, and the profit much raiſed, moves the Lord-Chancellor not to recede from the bargain, but ſaith, that the Value returned was not the true value, for the land was worth 400*l.* by the year, and yet excepts by retainer in his hands, 2000 Marks which he owed to *Fiſher*, one thouſand and ſixty-ſix Pounds odd Money; whereby now Mr. *Wraynham* had received his 2400*l.* in his Purſe. And when he ſaw himſelf thus fleeced, having received 2400*l.* for that which coſt but 200*l.* now he ſtirs up new ſuits, and moves the Lord-Chancellor by a commiſſion to refer the value to two Knights that had been Farmers to the land, that they might certify the true value: the one, Sir *L' Eſtrange Mordaunt*, who certifies the value 318*l.* yearly; and the other, Sir *Henry Spillman*, certified the value to be 364*l.* yearly; and my Lord-Chancellor ſtrikes between them, and makes it 340*l.* So here is a difference of values, the firſt of 200*l.* upon oath yearly, and this at 340*l.* yearly, without oath. The firſt value is at the time of *Harply*'s Leaſe, the ſecond is at the time of the commiſſion granted; and after improvement of which, your Lordſhips well know in your wiſdom, the difference between land barren, and improved in value. The laſt Lord-Chancellor, according to the amounting value of 340*l.* a year, annexed the increaſe to *Wraynham*'s bargain, and that he ſhould have it, as if the lands were worth 340*l. per ann.* So that now, the 2400*l.* in his purſe, had been worth 1680*l.* annexed above 4000*l.* Mr. *Fiſher* finding this annexed to the bargain, and that he ſhou'd be preſs'd to pay the ſurpluſage, and that he had choice either to pay the Money, or to part with the Leaſe; *Fiſher* moved the Court, that he might give up the Leaſe, and deſires his firſt 2000 Marks with damages, which *Wraynham* aſſented to, ſo that he might have defalcation of that which *Fiſher* had received of the profits of the land. Upon this, upon conſent of parties, it was again decreed (and this is the ſecond Decree, which *Wraynham* ſo much triumphs upon, not being an abſolute and poſitive Decree, but qualified with this): Firſt, that *Wraynham* ſhould pay the 2400*l.* with damages to *Fiſher:* and, ſecondly, that *Wraynham* ſhou'd have defalcation of ſuch profits as Mr. *Fiſher* had received out of the land.

Mr. *Wraynham* ſtrives with this ſecond Decree, being willing to have the value of the land, not according as *Fiſher* had received, but what he might have recovered.

Now my Lord-Chancellor finding the caſe thus ſtanding, thought it no injuſtice againſt *Wraynham*'s own offer, not that *Fiſher* ſhou'd loſe his damages, having forborn 2400*l.* ten years, nor that *Wraynham* ſhou'd be allowed more defalcation than *Fiſher* cou'd receive, becauſe he was ty'd to a dry rent; and finding that *Wraynham* was neither willing nor able to return the 2400*l.* with damages unto *Fiſher*, my Lord-Chancellor thought fit to eſtabliſh the bargain, according to the firſt certificate of the Maſter of the Rolls upon oaths; becauſe the laſt certificate without oath, was not ſo equal in the balance of Juſtice, as that with oath, certified by the Maſter of the Rolls, upon the examination of divers Witneſſes.

Now, my good Lords, if this caſe ſtands thus, what Injuſtice is there committed? What unſoundneſs is there in this action? or, what cauſe is there for my Lord-Chancellor to hide himſelf, that this Gentleman ſhou'd in this caſe declaim againſt him this day? If it were, my Lords, to make my Lord-Chancellor, for fear, to take off his hand; he will let the World know he is more conſtant and couragious in the points of juſtice, than that which he did ſo juſtly, ſo ſlightly to revoke. And if it were to this end, to make my Lord-Chancellor to diſpute with Mr. *Wraynham*; I am to let you know from his Majeſty, he will not let him forego, nor forget his place, ſo much as to enter into debate with Mr. *Wraynham*, knowing that it were not fit for him to ſtand to wreſtle or wrangle with Mr. *Wraynham*, but rather to deſpiſe ſo mean an adverſary.

My Lords, you know, that wiſe and juſt men may walk the ſame way, though not the ſame paſſage; there are divers courſes and divers ways to the ſame end, Juſtice: for Juſtice ſake, they are both to be honour'd, neither to be blamed. For, my Lords, if Judges ſhould be traduc'd as unjuſt, becauſe they differ in opinion, they ſhou'd have thankleſs offices. Juſtice is the Harmony of Heaven, but *Lingua detractionis eſt lancea triplex.* Though this Gentleman hath ſweat hard to ſcoff and dare ſo high a Judge, yet the razor of his tongue cannot charge him that any thing came between God and his own conſcience, but the merits of the cauſe; though it be certainly true, whilſt a man carries this fleſh about him, his judgments and faculties will be imperfect. Yet, my Lords, I know that my Lord is the branch of ſuch a tree, who, though he bloſſom'd laſt, yet took more ſap from the root than any of the reſt: the ſon living in the memory of ſo worthy a father, the father living in the memory of ſo virtuous a ſon, who may ſay, as *Ageſilaus* once ſaid to his father, *I obey you in judging nothing contrary to law.*

I am glad this Gentleman is ſo naked of excuſe, yet heartily ſorry his defamation is ſo foul, as to draw ſuch a ſmart of puniſhment as this will be upon him; and here if neceſſity (the true defender of man's wickedneſs) ſhould ſtep in, I anſwer, Though neceſſity break through all laws, yet flying into the face of Juſtice, it muſt be broken by Juſtice; elſe no ſubject can be ſafe, nor no Court keep itſelf from infamy.

It is well, my Lord, that this fault falls out but ſeldom; for being exorbitant when it happens, it cannot but be foul. It is a pernicious example; for by this, when ſlanders are preſented inſtead of complaints, that is but to ſet diviſions between the King and his great Magiſtrates, to diſcourage Judges, and vilify Juſtice in the ſight and mouths of all the people.

Therefore I beſeech your Lordſhips to pardon me, if I be too long, and ſuffer me to ſhew your Lordſhips what this Court, in like caſes, hath done.

In the ſecond year of his Majeſty's reign, when Sir *Edward Coke*, according to his place, informed againſt *Foorth* in this Court, *ore tenus*, for petitioning his Majeſty againſt the laſt Lord-Chancellor, for granting an injunction for ſtaying of a ſuit at the Common Law, (which your Lordſhips know how neceſſary it is) he being convicted upon his own confeſſion, received a ſharp cenſure. I will conclude with this one, and I ſhall deſire your Lordſhips, in this place, to hear it read; and then do humbly beſeech your Lordſhips to hear the Gentleman at the Bar, either for his defence, or excuſe.

Then *Wraynham*'s Examinations were read in this Book and Epiſtle.

Then he was charged with theſe words following, in the end of his Epiſtle to his Majeſty: "He that judgeth unjuſtly, muſt, to maintain it, "ſpeak untruly; and the height of authority maketh men to preſume."

Alſo, in ſhewing of his Majeſty reaſons why the Maſter of the Rolls was faulty, he ſaid, *Firſt*, the Maſter of the Rolls had omitted many of his material proofs. *Secondly*, He ſhifted off other ſome. *Thirdly*, That he ſometimes wreſted the equity of his cauſe. *Fourthly*, That he did falſely cite *Fiſher*'s proofs. *Fifthly*, That he grounded the report upon the depoſition of Witneſſes that ſwore abſurdities, untruths, and mere impoſſibilities. And, *Laſtly*, as if the report had been condemned and damned before to the pit of hell, he ſaid it was raiſed as *ab inferno*.

In his Epiſtle to his Majeſty, he is charged with theſe words:

"I underſtand my Lord-Chancellor hath begged my pardon: it is out-
"wardly the ſhew of a great heart, but inwardly it argueth a guilty
"conſcience; otherwiſe, if firſt I had been found guilty, and his Lord-
"ſhip ſhould then have interceded with his Majeſty for me, it had been an

"argu-

" argument of an indulgent nature; but to beg pardon where there is no " need, was manifeſtly done to avoid an hearing, and not in pity towards " me; for he that deſpoils me of my goods, I will not truſt him with my " perſon. And therefore, far be it from me to hope, or truſt in his good- " neſs: I diſclaim his favour, and infinitely deplore the judgment of his " Majeſty."

And in the concluſion of his Epiſtle were theſe words: " I deſire to " ſuffer at your gates, if I ſhall dare to ſlander ſo great and eminent a " Judge, unto ſo great and wiſe a King.

" If he ſhould not deſire to reward the *Fiſhers* for their fraud and per- " juries, I know not why he ſhould have racked all out of joint.

" My Lord, with this his laſt cunning and rhetorick, hath palliated his " unjuſt proceedings againſt me; for my Lord's geſture and pronuncia- " tion in his ſpeech is wanting in my writing, out of which a cloudy " miſt may riſe to hide the verity of your princely Judgment.

" I could never ſee by what reaſons or words his Lordſhip hath co- " loured his dealings to excuſe himſelf unto your Majeſty, underſtanding " only a piece, and not the whole from your Majeſty. This muſt move " me moſt humbly to beſeech your Majeſty to ſave my wife and children; " and out of your princely juſtice to appoint a day of hearing, whereby " there ſhall appear unto your Majeſty, as well the ſincerity of my affir- " mations, as the unſoundneſs of his Lordſhip's actions. For I never " ſought corners, but openly, and ſometimes in my Lord's preſence, have " notified and complained of my wrongs, and deſire a public hearing be- " fore your Majeſty, which the greateſt ſubject dares not do without " truth and juſtice."

And in another place, *Wraynham* ſaith, " My Lord Chancellor proves " nothing by record, nor delivers any thing by writing, to anſwer the " things objected againſt him; but would hide himſelf from the eyes of " your Majeſty's juſtice."

His Majeſty ſaith, though he receive petitions from his ſubjects againſt his higheſt Juſtices; yet he will have his Judges know, that they are ſub- ject to his account only, and to none elſe upon earth.

His Majeſty received this petition on *Good-Friday* laſt, in which this Gentleman hath ſo far exceeded the meaſure of an humble complaint, that I muſt appeal to your Lordſhips againſt him.

Then was *Foorth*'s precedent read, bearing date *Mercurii decimo quarto Novembr. termino Mich.* 2 *Jac.* I.

And likewiſe *Foorth*'s two laſt petitions againſt my Lord-Chancellor, touching which reference is had. And the Lords aſked Mr. *Wraynham* what he could ſay for himſelf.

Mr. WRAYNHAM.

Right Honourable, and my very good Lords,

FROM a man ſo perplexed with ſo many miſeries, what can be ex- pected? and what marvel, if I ſhould faulter, or might let fall any ſpeech that might ſeem uncomely?

My Lords, I know not how to behave myſelf, I will not willingly of- fend any, but eſpecially the King's moſt excellent Majeſty; yet nature commands me to defend myſelf, for it cannot be thought he can be faithful to another, that is not ſo to himſelf. And therefore I humbly deſire, that what I offer in extenuation, or defence, that neither the meaneſt that hear it, nor your Lordſhips, which are to judge of it, would take it of- fenſively.

My Book conſiſteth of three parts.

Firſt, An Epiſtle to his Majeſty.

Secondly, The body of the book, which relateth the truth of all the pro- ceedings.

And, *Thirdly*, a concluſive ſpeech in the nature of an epilogue.

Touching the body of the book, and the truth of the cauſe, I con- ceive it not now called in queſtion, for I think your Lordſhips will not enter into the particulars; but becauſe it hath pleaſed *Mr. Attorney* to ſpeak ſomething of it, I will not be ſilent.

My accuſations, *my Lords*, are ſet forth in two things: *Firſt*, that the complaint is of the Right-Honourable the Lord-Chancellor. *Secondly*, That it is in bitter and unreverend terms.

For the *firſt*, I muſt fly for ſuccour and protection unto our dread So- vereign Lord the King; for it pleaſed his Majeſty, ſitting here in the ſa- cred Seat of Juſtice, to declare, that if any were wronged in point of Juſtice, to him they might come and have redreſs; and for proof thereof, I humbly deſire your Lordſhips to hear me read a ſentence or two in his Majeſty's Book.

" For, *ſaith he*, if any were wronged, their complaint ſhould have come " unto me; none of you but will confeſs you have a King of a reaſon- " able underſtanding," *&c.*

And in another place, " Why then ſhould you ſpare to complain unto " me, being the high-way; therefore as you come gaping to the Law for " Juſtice, *&c.*"

" But if you find bribery or corruption, then come boldly; but be- " ware of the juſtneſs of your cauſe."

Firſt, therefore, in his Majeſty's opinion, a man may be wronged in a Court of Juſtice.

Secondly, In that caſe, his Majeſty is not only willing to receive a com- plaint, but to reform what is amiſs: ſo that his Majeſty publiſhing this much to all his ſubjects, I hope your Lordſhips will not conceive that barely to complain is a fault; eſpecially ſeeing that his Majeſty ſaith, " Why do you ſpare to complain?"

The *ſecond* part of my accuſation is, becauſe I have uſed unreverend and bitter terms.

Firſt, I divided the collections objected againſt me into two parts.

(1.) Into two ſentences, which *Mr. Attorney* hath endeavoured to fa- ſten on the Lord-Chancellor by inference.

(2.) Into words, applied to his Lordſhip.

My Lords, Touching the *firſt*, I hope general ſpeeches ſhall have no ſuch conſtruction.

In the 116th *Pſalm*, the Prophet ſaith of himſelf, *I have ſaid in my fury, all men are lyars.* And in the 14th *Pſalm* it is ſaid of all men, *They have all gone out of the way, and are abominable; there is none that doeth good, no not one.* And in the Epiſtle to the *Romans*, it is ſaid, *Let God be juſt, and all men lyars.* And again it is ſaid in Scripture, *That the poiſon of Aſps is under their lips, that their throats were open ſepulchres.* And yet it was ne- ver heard, that any of the Prophets and Apoſtles (godly men) found fault with *David*, ſaying, *You have ſaid my throat is an open ſepulchre; that I am a lyar; and abominable*; becauſe they were but general ſpeeches. And therefore, *my Lords*, I humbly pray, that any general ſpeeches may not be applied to my Lord-Chancellor, for I had no ſuch meaning.

For particular words, they are, as I take it, theſe; Unſoundneſs of his Lordſhip's actions; unjuſt proceedings, oppreſſion, and injuſtice.

Now, *my Lords*, I muſt again fly to the King for ſuccour, in theſe words: for his Majeſty points forth the things for which a ſubject may complain.

For his Majeſty ſaith in his book, " If a man be wronged in the courſe " of Juſtice." What is it but injuſtice?

Secondly, His Majeſty ſaith, " That if one find bribery, corruption, " injuſtice, *&c.*" and then we ſhould come boldly.

Firſt, For the word Injuſtice: he that proves the juſtice of his cauſe, proves the Judgment given againſt it injuſtice: for, *my Lords*, I conceive, under your Lordſhips favour, that this very word contains all the reſt, and that all other words that I have uſed are but ſynonimies unto this; and I uſed them all, yea all, I proteſt, to avoid tautology, and to avoid al- ways uſing of the ſame word, Injuſtice.

And that alſo which urged me to uſe it, was neceſſity; and that twofold neceſſity; *Firſt*, For that unleſs I particularly accuſed his Lordſhip of injuſtice, I was out of hope ever to obtain an hearing of his Majeſty.

Secondly, My miſeries inforced me unto it: And therefore it may pleaſe your Lordſhips to underſtand, that in my firſt petition to his Majeſty, there was no ſuch word as Injuſtice, or that tended near unto it: but only it did ſet forth what the then Maſter of the Rolls, this Lord, and the laſt Lord Chancellor had done; and deſired his Majeſty to judge, whether the laſt Lord Chancellor, or the now Lord Keeper, had moſt juſtly diſtributed juſtice: It pleaſed his Majeſty to give anſwer, " That he would take ſome " other courſe, when he came near *London*."

When his Majeſty came to *Theobalds*, I framed two other petitions, and delivered the one to his Majeſty, and the other to Secretary *Winwood*; and in neither of theſe petitions was there mention of injuſtice, or a word ſavouring of it.

And when I beſought his Majeſty, at that time, to hear the cauſe, or to refer the examination, he gave me this anſwer: " If myſelf, and the " Lords ſhould trouble themſelves about hearing of Sentences, no other " buſineſs would be done by us, for every man would be ready to com- " plain."

And thus I had fallen off, but that his Majeſty ſaid further unto me, " Will you charge my Lord Chancellor with injuſtice or bribery?" I blanched the matter again, and deſired his Majeſty would be pleaſed to grant me an hearing of the cauſe.

After which, when I had meditated again of his Majeſty's queſtion, I found great coherence between this queſtion and the words in his Majeſ- ty's book, and thereupon was bold to uſe the word injuſtice. Unto which his Majeſty was pleaſed to anſwer, " Theſe accuſations are too too com- " mon: but I will have relation of the cauſe from my Lord himſelf."

After all this, underſtanding that the Lord Chancellor had endeavoured to anſwer this matter unto his Majeſty, and to this end had produced the Maſter of the Rolls, *Phillips*, his report; which, I confeſs, taken by itſelf, may not only ſatisfy my Lord Chancellor, but the King himſelf, or any man elſe living: and therefore, fearing that my Lord endeavoured to ſa- tisfy the King with that report, I ſaw there was no other courſe, but to give an anſwer unto it, which I could not do without the book. In making whereof, ſomething was required, both before and after, which drew me to make the Epiſtle and the Epilogue.

In the making whereof, I muſtered together all my miſeries; I ſaw my Land taken away, which had been before eſtabliſhed unto me; and after ſix- and-forty Orders, and twelve Reports, made in the Cauſe; nay, after Motions, Hearings, and Rehearings, fourſcore in number, I beheld all overthrown in a moment, and all overthrown without a new bill preferred. I diſcerned the repreſentation of a priſon gaping for me, in which I muſt from thenceforth ſpend all the days of my life without releaſe: for in this ſuit I have ſpent almoſt 3000*l.* and many of my friends were engaged for me, ſome damnified, others undone; and with this, did accompany many eminent miſeries, likely to enſue upon me, my wife, and four children, the eldeſt of which being but five years old; ſo that we, that did every day formerly give bread to others, muſt now beg bread of others, or elſe ſtarve, which is the miſerableſt of all deaths: and there being no means to move his Majeſty to hear the Cauſe, but to accuſe his Lordſhip of in- juſtice; this, and all theſe, moved me to be ſharp and bitter, and to uſe words, though dangerous in themſelves, yet I hope pardonable in ſuch ex- tremities.

And now I hope, if this will not acquit me, yet your Honours will be pleaſed to move the King for his gracious pardon: for miſery made pa- tient *Job* break out and ſwell againſt God himſelf; and therefore, my Lords, how much more may it make me ſo compleatly miſerable, to ſwell and tranſgreſs againſt man!

And if, my good Lords, you ſhould hear all the paſſages of the cauſe, I ſhould the better conceive your Lordſhips will not be troubled with it; and *Mr. Attorney* hath already ſet it forth in that faſhion, as it makes much againſt me: but if your Lordſhips will vouchſafe me that favour, I hope I ſhall alter, or at leaſt extenuate your Lordſhips opinions in this Cauſe.

In the year 1606, I preferred a bill in Chancery againſt *Edward Fiſher*, for defrauding me of a Leaſe of ſixty years: *Fiſher* forſwears the truſt, and preferred another bill againſt me for debts; both bills came to be heard before *Kingloſſe*: *Fiſher* offered to purchaſe the Leaſe, and the debts were referred to two Maſters. Theſe took great pains concerning the debts; after which, the Lord Chancellor referred the whole buſineſs to thoſe two Maſters of the Chancery, and then having examined both Truſt and Debts, they report the Truſt proved; and for the Debts, they think fit that I ſhould give *Fiſher* 2000 Marks, whereof 500 Marks were for da- mages. *Fiſher*, not ſatisfied, moves my Lord Chancellor to hear the Cauſe himſelf, and this was in 1608; and my Lord, upon an hearing, decreed, with the conſent of *Fiſher* and his Counſel, that he ſhould aſſure the Land, and I pay 2000 Marks within ſix Months.

After this, my Lord having made this decree by conſent, I ſerved *Fiſher* with it; but his contempt was ſuch, that after three commiſſions of Rebellion, I was enforced to take a Serjeant at Arms to attach him, and had a Commiſſion awarded to the Sheriff of *Norfolk*, to put me in poſ- ſeſſion.

Fiſher perceiving that the hiding of his head could not keep me from having poſſeſſion of the Land, takes another courſe by fraudulent conveyances between him and his brother, and others; and in a motion made in the name of Sir *Thomas Challoner*, (for they lodge the faſt intereſt in him) they inform that this conveyance was before my bill exhibited, and therefore deſire I might be put out of poſſeſſion; and ſo it was ordered, that the poſſeſſion ſhould remain then as it was.

Then I, to diſcover thoſe frauds, preferred a new Bill againſt *Fiſher* the deceiver, and three others. They in their anſwer ſet forth matter ſufficient to ſhew the fraud. For Sir *Thomas* ſaith, that this conveyance from Sir *Edward* his brother, was made and ſealed when he never thought of it; that 1700 *l.* was to be paid; but yet he never ſaw the Land, he never bargain'd or condition'd for it, but hearing the trouble of it, aſſured it to *Richard*, the younger ſon of *Fiſher*, the deceiver: and ſo becauſe he alſo was unable to go on in the purchaſe, he lodged it in the hands of Sir *Thomas Challoner*.

Hobart, Attorney, informs my Lord Chancellor of theſe frauds; my Lord gave them a day, to ſhew cauſe why I ſhould not have the Land till they could make better proofs. Then thoſe witneſſes, which were both *Fiſher*'s men, were examined by my Lord Chancellor in open Court, and one of them ſwears that the conveyance, which muſt defeat the Decree, was ſealed in the Hall; the other ſwears it was done in the Parlour; one, that it was read; the other, that it was not read: the one, that it was ſigned; the other, that it was not ſigned: one ſwears, that Sir *Edward Fiſher* was preſent; the other, not preſent; and both, that it was done at ſuch a time, when the Deed bears date twelve months after.

Then what remains after all this, but that I ſhould have a confirmation of the old decree, or elſe a new? But I find it true, *Nemo læditur niſi à ſeipſo*. For then the Lord Chancellor made a motion, that *Fiſher* ſhould buy the Land; againſt which, I not gainſaying, his Lordſhip referred the Mediation of the bargain to the Maſter of the Rolls, where it appeared, that Sir *Edward Fiſher* had made a Leaſe of half the land for 200 *l.* the year; and therefore it was agreed, that *Fiſher* ſhould give 2400 *l.* out of the which, he was to deduct 2000 Marks for his Debts, due by the firſt Decree, and the reſidue about 1066 *l.* I received, becauſe it did not appear what the Lands were worth. A Commiſſion was awarded out to Sir *L'Eſtrange Mordaunt* and three others, to find out the true value of the land, and a bargain was not commanded, but propounded by the Court: And I beſeech your Lordſhips to obſerve, that the Maſter of the Rolls being to conſider of all the Examinations, lawfully taken in the Cauſe, nine Witneſſes were taken by the Commiſſion and duly examined; five Witneſſes more were examined in the Examiner's Office, without my privity or conſent, and contrary to an Order in Court: which Witneſſes being examined, ſwore point-blank in all things; and according to thoſe proofs, the Maſter of the Rolls made his Certificate, and found 200 *l.* a-year to be as much as the lands were worth.

Hereupon the Lord Chancellor gave a day to ſhew cauſe, why the cauſe ſhould not be decreed, which was the Order, *quarto Maij*, 1610.

After this, the Lord *Hobart*, then Attorney, in the preſence of the Maſter of the Rolls himſelf, did ſet down the defects of his own Report.

Lord-Treaſurer. My Lords, this is contrary to all courſe, this muſt not be; for we mean not to enter into the merits of the cauſe.

Mr. At. *Yelverton.* Mr. *Wraynham*, for you to ſhift it off, doth but aggravate your offence; for when you ſay, you uſed the reſt of your phraſes as *ſynonymies* to Injuſtice, that implieth a taxation of his Lordſhip in point of juſtice; and ſo likewiſe do your words imply, when you ſay, by the greatneſs of his wit and eloquence, he doth palliate the injuſtice of the Cauſe: therefore tax my Lord particularly with one point of injuſtice.

Here Mr. *Wraynham* would not inſtance in any one particular.

Wrayn. Had I thought his Majeſty would not have heard my cauſe, I would have ſat down in ſilence, and have devoured my ſorrow. I have formerly ſet down to your Lordſhips, that my Decree was reverſed without a bill.

Mr. Att. That is, when the bill is abſolute and conſtant, for there it muſt have a bill of revivor; but when it depends upon ſubſequent acts, and is qualified and conditional, there it may be reverſed without bill.

Wrayn. I humbly ſubmit myſelf in all things to your honourable and clement cenſure: for the manner, I beſeech your Lordſhips pardon; and for the matter, I humbly crave compaſſion.

Mr. Serj. *Crew.* May it pleaſe your Lordſhips, the Priſoner at the Bar hath made a good ſubmiſſion at the laſt, I would he had begun with it.

My Lords, the Flux of foul mouths muſt be ſtopp'd, otherwiſe the greateſt Magiſtrates will be traduced and ſlandered to Majeſty himſelf; and though it be not Treaſon, yet I have heard it from a great and honourable Perſon ſitting in this place, that it is *Crimen læſæ Majeſtatis*.

My Lords, for the two Lords, the one that lives, the other that is dead, and their demeanor in this caſe, in honour of him that is dead, and without flattery to him that is alive; I ſay, they both judged according to their conſciences.

The Lord Chancellor that is dead, gave his judgment according to his conſcience, and not according to the conſcience of another man, but according to the integrity of his own heart: for Judges are to judge *ſecundum æquum & bonum in foro conſcientiæ*. And this Lord alſo judged out of his noble conſcience and integrity of his heart; for, my Lords, there was no binding decree.

As for the merits of the cauſe, it muſt not be examined of the one ſide, nor of the other, for both Lords have done according to conſcience, *coram Deo & hominibus*. And each hath delivered his own ſenſe according to their conſciences.

The Lord which is dead, when he was alive, was one of the oracles of the wiſdom of the time; and my living Lord attributes very much unto him, whom God hath alſo inriched with great ornaments of nature; for no Man, no Magiſtrate, hears with more attention, nor no Magiſtrate of Juſtice attends with more underſtanding and patience.

You then, Mr. *Wraynham*, thus to traduce my Lord, is a foul offence, with that black mouth of yours: you cannot traduce him of corruption, for, thanks be to God, he hath always deſpiſed riches, and ſet honour and juſtice before his eyes; and where the Magiſtrate is bribed, it is a ſign of a corrupted eſtate.

For the juſtice of the Cauſe;

My Lords, I was of Counſel with *Fiſher*, and I knew the merits of the cauſe; for my Lord Chancellor ſeeing what recompence *Fiſher* ought in juſtice to have received, and finding a diſability in *Wraynham* to perform it, was inforced to take the land from *Wraynham* to give it to *Fiſher*, which is hardly of value to ſatisfy *Fiſher*'s true debt and damages. And this, my Lords, was the true courſe of it; ſo it ſtands upon theſe parts your Lordſhips have heard.

I am glad at laſt, to hear Mr. *Wraynham*'s ſubmiſſion, and do humbly crave your Lordſhip's cenſure.

Sir *Edward Coke.* The cauſe before you, my Lords, is a very great cauſe, for a man muſt tread in this courſe upon a very ſlender bridge: I will ſingle out, as near as I can, the ſtate of the queſtion, and then I will ſhew you in others, upon what words, and in what I ſhall ground my ſentence: for a complaint to the King's Majeſty, or a petition by any man that thinks himſelf wrong'd, I hold that regularly to be no offence. God forbid it ſhould be ſo: I can make no hedge between the Sovereign and the Subject; nay, in ſome Kingdoms, *Querelas ſubditorum detrahere in principe deſerentur capitale eſt:* And that would be derogation from a Monarch, that no ſubject ſhould complain unto him; yet upon the Statute of *Weſtminſter*, and at Common Law, I make no queſtion but to ſhew you, that where petitions were made to the King in an unfit manner, they have been ſeverely puniſhed. Our caſe is now particularly in a ſentence given by my Lord Chancellor, an eminent Judge in this Court, and a ſole Judge in the higheſt Court of Equity that is in this Kingdom; yea, this caſe is after ſentence, and againſt the ſentence, and with many ſuch ſcandalous and opprobrious terms againſt ſo high a Judge; and that not in paper, but in a book preſented to the King; this book in my hand, which the King hath delivered to the Attorney General, that it might come before us for due puniſhment. Whether this book be juſtifiable, or no; that is the queſtion.

It is a black book, *Eſt jam conveniens luctibus iſte color*. And it is a ſtrange book for ſome things that I will ſhew you, for it is no petition; and yet I will confirm every word I ſay by ancient and modern authorities; whereof, I am ſorry, very ſorry in good faith, for the excellent and worthy parts that are in you, Mr. *Wraynham*. Now mark your own words in your book; you call it a Review, or Revivor of the Report of the Maſter of the Rolls, *Phillips*, and the Decree of my Lord Chancellor: the High Commiſſioners have ſometimes a Commiſſion of Review, but it is very rare; and that is a Commiſſion of Grace, not of Right: ſuch a Review is preſented unto his Majeſty by *Wraynham*, in which he deals not like a petitioner, but like a cenſurer, cenſuring every man that deals in the cauſe.

Mark how the Common Law ſets forth a Petitioner: It gives no ill words, it toucheth not men of injuſtice; for take this from me, that what grief ſoever a man hath, ill words work no good; and learned Counſel never uſe them.

And therefore the petitioner at the Common-Law, is, *Si placet majeſtati*, &c. *& quod juſtitia & rectum fiat*, &c. Now in your petition, ſee whether you have behaved yourſelf well: Firſt, you make your major propoſition; The unjuſt ſentence of a Judge, is far worſe than a particular murder: then your minor is, That my Lord-Chancellor hath ſatisfied his Majeſty, that I have informed him falſely; but his Majeſty knoweth, that he that judgeth unjuſtly, muſt, to maintain it, ſpeak untruly; and that your Lordſhips and all Logicians know, the concluſion followeth neceſſarily.

Firſt, he chargeth my Lord Chancellor with injuſtice, not complaining of any particular to be referred to examination; but ſaith in general, "He hath done unjuſtly, and is worſe than a murderer; and that he hath "informed the King falſely."

My Lords, You know, if a man put falſe metal into the King's Coin, it is Treaſon; and if my Lord Chancellor ſhall infuſe poiſon and falſe information into the King's ear, it was an heinous offence. Yet this contents not *Wraynham*; but he flieth at all, ſaying, "That the height of au- "thority maketh Men preſume." And hath a place of Scripture in his Book, *Woe be to them that write wicked Decrees:* and in another place he ſaith, "Oppreſſion is palliated with wit and eloquence."

My Lords, ought theſe things to be in a petitioner? A petitioner muſt go meekly and humbly to work, without ſhew of touch of any man.

I will not omit a dead man; for, tho' ſpoken of him, it is a living fault.

As for this Maſter of the Rolls, never man in *England* was more excellent for the Chancery than that man; and for aught I heard, (that had reaſon to hear ſomething of him) I never heard him taxed of corruption, being a man of excellent dexterity, diligent, early in the morning, ready to do juſtice: for him to be taxed in ſuch a high degree, as to omit ſome of the material proofs, to ſhift off others, to wreſt the equity of the cauſe, and ſuch-like: and in another place, "That the Maſter of the Rolls made "an unjuſt and corrupt gloſs upon a falſe text, *&c.*" And in another place, he ſaith, "That Sir *Edward Phillips*'s report was raiſed *ab in- ferno*."

My Lords, You know that the ſlander of a dead man is puniſhable in this Court, as *Lewis Pickering* is able to tell you, whom I cauſed here to be cenſured for a ſlander againſt an Archbiſhop that is dead; for Juſtice lives, though the party be dead: and ſuch ſlanders do wrong the living poſterity and alliance of the man deceaſed.

But Mr. *Wraynham* ſpares not the King himſelf; for in one place of his Book he ſaith, *aſſurgat Rex*, *&c.* as if the King ſlept. And in another place he ſaith, "That the Decree is reverſed without precedent." But that is not ſo, as I will ſatisfy you anon.

For Mr. *Wraynham*'s cenſure, I will never judge a man without authority and reaſon. 18 *E.* I. *in Rotulo Parliament.* 3. my Lord-Abbot there complained that *Solomon* of *Wragg*, and *Hugh Courtney* then *Chief-Juſtice*, had confederated to give Judgment againſt the Abbot. And the King anſwered, "Shall we, upon this petition, call a judgment in queſtion?" And in the end, the anſwer is, *Rex rogabit, & aliter facere non poteſt per legem terræ*. And my Lord-Abbot, becauſe he was a Lord, eſcaped puniſhment at that time.

Another precedent I will ſhew you, is, *Mich.* 18 *E.* III. *Rot.* 151. *coram Rege*. *Thomas Wilbraham* petitioned againſt the Juſtices of the King's-Bench, "That they had not done according to law and reaſon." And the petition was delivered to the repreſentative body of the King and his Council; for

for the which the ſaid *Wilbraham* was indicted, convicted, fined, and ranſomed in the King's Bench.

19 *Aſſ. p.* 3. Between Sir *William Scott* and *Humphrey Hunney*, who complained to King *Edw.* III. " That Sir *William Scott*, Chief-Juſtice, had " awarded an aſſize contrary to law." And the King ſent it to the Judges; whereupon *Hunney* was impriſoned, judged, fined, and ranſomed: yet he had no remedy but in Parliament.

The Statute hath made a ſharp law againſt ſuch as ſpeak ſcandalous news of the Chancellor, Juſtice of the King's-Bench, *&c.* And becauſe divers were puniſhed for ſlanders, in petitions to his Majeſty; therefore, 13 *R.* II. *Rot. Parl. numb.* 45. the Commons deſired they might not be troubled for any matter that ſhould be contained in petitions to the King: and the King anſwered, " Let every man complain, ſo it be with law and reaſon."

Wraynham objected a place of Scripture for himſelf, where the Pſalmiſt ſaith, *I have ſaid in my fury, that all men are lyars.* The text is, *Dixi in exceſſu:* ſo *Wraynham* ſaith, " It was not in his fury, but in his exceſs."

And another thing that *Wraynham* offered in his defence, was the King's words, where he ſaith, in his Book, *Be bold to complain.* But of what? Of corruption? So likewiſe in *Rot. Parl.* 24 *Edw.* III. *Parl.* 3. *numb.* 16. *If any man mix corruption with his cenſures, Anathema ſit.* So likewiſe it is extant in the Rolls of the Parliament *de la plbe*, that the great *de la Pole* was convicted of bribery, and put from his place; and Cardinal *Wolſey* was convicted of a foul corruption.

But if a man, according to ſincerity, give judgment, though he differ from another Judge, this is no injuſtice. Famous *Dyer* gave judgment in the Common-Pleas, and this was reverſed in the King's-Bench; yet he diſcharged his conſcience: and altho' it was afterwards reverſed, yet it was no Injuſtice. The like inſtance might be made of Sir *Chriſtopher Wray*, and others. Now, in this caſe, my Lord-Chancellor that is living, differs from the Lord-Chancellor that is dead. This is not ſtrange, it hath ever been, and ever will be; but if a Judge's conſcience be oiled and moiſten'd with corruption, then all is naught.

The King hath the Pleas of the Crown, and upon every Judgment one of the parties is angry and diſpleaſed: But this muſt not preſently produce a new hearing, for that will hinder all other buſineſſes. For I will put you a great caſe between a Nobleman here, and divers other Noblemen that were truſted by the Counteſs of *Southampton*, who were all Plaintiffs, and Sir *Moyle Finch* Defendant: and this was *Mich.* 42 *&* 43 *Eliz.* The main point that was controverted in the cauſe, was upon an exception of a Manor (as I remember) in the *Habendum* of the deed, which my Lord-Chancellor then thought void. And therefore decreed, " That my Lady " of *Southampton* ſhould have all." Whereupon Sir *Moyle Finch* petitioned Queen *Elizabeth*, that ſhe ſhould refer the examination of the Decree to ſome of the Judges; but the Queen would never refer any thing to thoſe that were named unto her, but ſhe referred it to two other Judges not named in the petition, who attended my Lord-Chancellor; and they then reſolved it againſt the Decree, and my Lord reverſed his own Decree.

I know I have held your Lordſhips long; yet I cannot tell, in theſe critical days, whether men will be ſatisfied, which hath made me longer than I would have been. Therefore, to conclude, I agree, in all things, with the ſentence given in *Foorth*'s caſe of 2 *Jac.*

Sir *Fulke Grevill*, Chancellor of the Exchequer. This Court hath no intent to diſcourage the meaneſt ſubject of his lawful appeal unto his Prince; for that were to diſinherit the people of law, and the King of the intelligence of the oppreſſion that might fall upon his people.

But this caſe I ſuppoſe not to be within the firſt. The matter in ſuch caſes, is but a review of an inferior ſentence of a ſuperior Magiſtate, my Lord-Chancellor of *England:* and that before he be heard, making the King his ſpeedy executioner.

But examine the nature of theſe accuſations, and you ſhall find them mere ſcandals, and impoſſibilities; as breaking Decrees, rewarding frauds and perjuries, palliating oppreſſions with greatneſs, wit, and eloquence.

Why, *my Lords*, if this liberty ſhould ſpread, then I deſire the indifferent hearers to ſee in what a miſerable caſe the ſubject ſtands, when the right of every good man ſhall ſtand in the malignity, and unquiet nature of every turbulent ſpirit? And, my Lords the Judges, in what a caſe ſtand they, if by ſuch clamours every delinquent ſhall be made Judge over them? and what privilege ſhall the King my Maſter have? For if this humour ſhould take a little head, will it not carry both him and Juſtice into the field? And therefore I conclude, that this is ſeverely to be puniſhed; and is not a petition, but a preſumptuous challenge, and of ſo far a worſe nature beyond duels, as honour and univerſal Juſtice is beyond particular right: And therefore I agree with him that went before me, leaving his good parts to mercy, and his ill parts to the cenſure of *Foorth*'s caſe.

Lord Chief-Baron, Sir *Laurence Tanfield.* This cauſe is a cauſe of a high nature, being a ſcandal of a great and principal Officer of the Kingdom, and of one that is an high and eminent perſon: which ſcandal is ſet forth in this Book, which certainly I cannot call a petition; for the petitioner hath preſumed too far, that it is a plain reviſe of a Decree. Every man knoweth, that the Chancellor hath the keeping of the Great-Seal, whereby is managed Mercy and Juſtice: and if this great perſon ſo truſted ſhall be thus traduced by every offender, how inſufferable will this miſchief be?

I doubt not but that by a right way, you may, by a petition in an humble courſe, and ſubmiſſive manner, deſire his Majeſty that he would be pleaſed to review a ſentence in Chancery, or elſe grant a commiſſion to others to review the ſame. But doth this man obſerve this courſe? No, but he will be his own Judge, ſentencing his own cauſe. I can call this Book no better, than a ſcandalous and malicious Invective againſt the Lord-Chancellor; and that not without great bitterneſs, as I have heard.

Firſt, he taxeth him with injuſtice: then mark the circumſtances; he ſaith, " My Lord-Chancellor hath reverſed the Decree, without cauſe, " without new matter, without legal proceeding, without precedent, and " upon a bare ſuggeſtion."

Then he goeth further, ſaying, " Injuſtice is worſe than murder; for " this Decree hath devoured him and his whole family."

And, not content with this, chargeth him with oppreſſion, and palliating it with greatneſs, wit, and eloquence; than which, a greater and heavier ſcandal cannot be!

You ſhall not be barred of acceſs to his Majeſty; but that by a petition you may deſire to have a Decree reviewed, and that his Majeſty would grant a commiſſion to review it. But theſe things muſt be done legally, and then the law protects us, tho' it be againſt a Nobleman. Sir *Richard Crofts* did ſue an action for forgery of falſe deeds againſt the Lord *Beauchamp*; whereupon my Lord *Beauchamp* ſued an action upon the Statute *de Scand. Magnat.* But that would bear no action, becauſe it was done legally: for a man may ſuppoſe in his Writ ſuch a fact, by the uſe of the ſaid Writ; but he muſt beware that he prove it well, or elſe he ſhall be well fined in the ſame Court. But much more ſhall he deſerve a fine, if he ſhall do it without Writ, or without ground or proof, as *Wraynham* hath done.

And therefore, becauſe I muſt be ſhort, I think him fully worthy of the cenſure before given, in all points.

Lord *Hobart*, Chief-Juſtice of the Common-Pleas. *Mr. Attorney* hath very worthily and like himſelf, according to his place, brought this man into this Court, to give anſwer for the greateſt and moſt outrageous offence that of this kind hath been committed; in which caſe, I will firſt tell you, what I do not queſtion, and then what I do queſtion.

For the firſt, Petitions may be exhibited to the King without controverſy; nay, in ſome caſes they muſt be exhibited; and God forbid, that any man's way ſhould be lock'd up, or that any Subject ſhould be barred of acceſs to his Majeſty; for when appeals fail, and when ordinary remedy is wanting, ſo that there is no Judge above the higheſt Judge; yet, you may ſtill reſort unto your Sovereign for extreme remedy: this is proper to a King, *Ceſſas regnare, ſi ceſſas judicare*; for it is an inherent quality to his Crown. So that without controverſy a man may petition againſt a ſentence; for God forbid, that we that are Judges, ſhould draw that privilege to ourſelves, to give ſentence, and not to hear it examin'd. But it is true, it muſt be preſented as a ſupplication, and you muſt go formally to work: ordinarily you muſt go to the proper Courts of Juſtice; if that fails, the ext aordinary courſe is open by the King: and this is no more than to ſhew to his Majeſty, how you find yourſelf grieved, and then remit the cauſe and form to the King's wiſdom.

But now ſee what this man hath done, he hath made neither the matter nor form of a petition.

Firſt, for matter, he pretends, that is not ſaying that my Lord-Chancellor hath expreſly infringed two Decrees, when he hath done nothing, only croſſed an order, than which, there is nothing more common, for they are but interlocutory, and not definitive.

And for form, this is no Petition, no book, as he wou'd call it, but an expreſs, peremptory and audacious libel. Then the manner offends yet more: for whereas a ſupplication imports, that a man ſhou'd ſpeak it upon his knees, for as it is in ſome Realms, men attempt nothing againſt law, but they muſt do it with a rope about their necks: ſo that he that goeth about to attempt any thing againſt a Decree, he doth it with a rope of the King's cenſure about his neck: but mark the carriage of this man, how inſolently he proceeds in this caſe!

Firſt, for the King, as hath been well obſerved, he ſaith, *aſſurgat Rex*; as if he ſhou'd bid the King ariſe and take revenge.

Therefore for the Decree, he ſaith, that the foundation of it came from hell; if that be ſo, then this ſentence muſt needs be helliſh, when he falls upon a poor man, the Maſter of the Rolls: I call him poor man, becauſe he is not living to anſwer for himſelf, but yet he was a worthy Miniſter of Juſtice, (for I had much cauſe to know him) and he was of as much dexterity and integrity, as ever man that ſat in his place, and I believe the Chancery will find want of ſuch a man. But not content with this, he ſcorns my Lord-Chancellor's courteſies, and carries himſelf, as if he wou'd trample all under foot.

So much for the manner: as for the matter, it is odious; the perſon with whom he hath to do, is the principal Officer and Magiſtrate of Juſtice in the Kingdom, one that hath the nomination of all the Juſtices of Peace, and the Principal that names all the Sheriffs; one that keeps and carries the Seal, and ſits chief Judge in this Court, and ſole Judge in the Chancery.

And ſhall we think that this man is bought and ſold to Corruption, to Injuſtice, to Murder? What more tends to the King's diſhonour, than that he ſhou'd place in the Judicature ſuch an unworthy man? a man infinitely the more wrong'd, becauſe he deſerves his place, as well as any man that went before him; and yet his laſt Predeceſſor was very excellent, and deſerved no ſmall commendations. But *Wraynham* I condemn, as a man barbarous both toward the living and the dead; wherefore, there is a juſtice and tribute due to the Maſter of the Rolls deceaſed. I wou'd have mention made of it in the Decree, and with that addition to the ſentence, I concur in all things with the Preſident of the Court.

Sir *Edward Mountague*, Lord Chief-Juſtice. My Lords, it is a true ſaying, *Judicium non redditur niſi in invitum.* For I yet never ſaw any man ſit down ſatisfied with a ſentence that went againſt him.

I wou'd not ſo far have blamed *Wraynham* as to have cenſur'd him for complaining to the King; yet this reſtraint I find in law, which any man may ſee in King *Edgar*'s laws. " Let no man complain to the King in mat- " ters of variance, except he cannot have right at home, or that right be too " heavy for him. Then let him complain to the King." Whereby it is meant, that if the laws be ſo ſtrict, he ſhall complain in a Court of Equity to the King himſelf. Then, to complain is not deny'd to any man, for all Juſtice comes from the King, and though he diſtribute his Juſtice to be miniſtered in ſeveral Courts, yet the primitive power reſides ſtill in his perſon. Therefore, to the Juſtice of his Majeſty may any ſubject have reſort; but this muſt be humbly as a Petitioner, not as Mr. *Wraynham* hath done here, who is not a ſuitor, but a cenſurer; and doth not complain, but proudly rails upon a high Judge.

Can you, Mr. *Wraynham*, charge your Judge with corruption, through fear or affection? (for I make them both alike:) Spare not the chief Judge nor higheſt Counſellor; I ſay, ſpare us not, whenever you can take us. But a judgment is pronounced from the ſincerity of our conſciences, and warranted

ranted by our judgment and learning: ſhall we then undergo the cenſure of every ſuitor? No State, at no time, ever ſuffered this.

My Lords, it lies upon us Judges as a duty, to reſtrain this boldneſs; our places as Judges, give us no privilege to do what we liſt, nor have ſuitors liberty to ſpeak as they liſt of Judges: God, and Order, hath ſet bounds to both.

For the matter heretofore handled in the Chancery, it is not a work of this day to deal with that; we meddle not with your Decrees, we cenſure you only for your ſcandals. I ſaw in your Book a ſmooth Pen, and from your Tongue I have heard fair ſpeeches; but in both I ſee a fiery ſpirit.

For you would raiſe up diſſention between the two Lord-Keepers of the King's conſcience, him that now is, and him that was, and now is with God: of theſe two Worthies I ſhall not ſay much; I will neither wrong the dead, nor flatter the living. The matter of difference, for any thing I can ſee, or you can ſay, is but an order againſt an order, wherein judgment may be varied by occaſions, and through circumſtances; true attributes are no flatteries.

This honour let me give to theſe two great men; of greater parts, better fitted for that place, never ſat in this place: nay, a man may truly ſay, that the World hath ſcarce yielded two ſuch men of ſo excellent gifts, in this latter age of the World.

But you, Mr. *Wraynham*, wronged both the living and the dead. Of the Maſter of the Rolls, that is dead, you ſpake your pleaſure: but all that hear you, and know him, will be ready to give you the lye. You ſay that he ſhould omit ſome of the proofs, and wreſt other-ſome, and ground himſelf upon Witneſſes that ſwore impoſſibilities, and abſurdities, *&c.* Whoever knew that man, knows him to be a true Reporter, and a judicious Collector upon proofs, as ever was. I will not diſſemble what others thought a fault in him, to be over-ſwift in judging: but this was the error of his greater experience, and riper judgment, than others had.

Now, for my Lord-Chancellor, by the words you uſe, you lay *four* of the greateſt Crimes upon him, that can be laid upon a Judge: *Preſumption*, *Oppreſſion*, *Falſity*, and *Injuſtice:* all theſe you utter, with one breath, charging him with all in one ſentence: for you ſay, "Height "of Authority makes great men preſume:" there is preſumption and oppreſſion. And in theſe words, "He that judges unjuſtly, muſt, to main-"tain it, ſpeak untruly:" there you accuſe him of falſity and injuſtice.

Ex ore tuo te judico, ſerve nequam. For in your book you ſay, "Let me "ſuffer as a Traitor, if all that I ſay prove not an entire truth, if I "ſhould dare to ſlander ſo great a Judge to ſo wiſe a King." Therefore, out of your own mouth I pronounce ſentence againſt you, *læſæ Majeſtatis:* and tho' not as a Traitor, yet as a great ſcandalizer. And if all were true that is ſaid in your book, yet would I cenſure you for your quarrel with my Lord-Chancellor for form; and yet yourſelf uſe no form, no, not common civility. So that if it were againſt a common man, it were puniſhable, to offer ſuch words to the eye of a King, as here you give to my Lord-Chancellor, calling him a rewarder of frauds and perjuries, an afflicter of the afflicted, a racker of things out of joint, a confounder of your eſtate, and the like.

Theſe are not words fitting a Petitioner, to be ſpoken of a Lord-Chancellor, to be offered to a King.

And, *my Lords*, this man's fault goeth one ſtep higher, touching the the Perſon of Majeſty itſelf. I am a Judge of Crown-matters; and in this Libel, I think he hath ſcandalized the King in four things:

Firſt, he ſaith, "The King is but a man, and ſo may err;" implying an error in the King.

Secondly, "That my Lord-Chancellor defends himſelf by ſecret "means, and that you are not called to anſwer." Than which, what greater tax unto ſo high a Majeſty, to condemn and not to hear!

Thirdly, "That my Lord-Chancellor doth cover his injuſtice with "wit and eloquence." When we all know, that we have a Sovereign of thoſe high and excellent gifts, that it is not rhetorick, or eloquence, that can caſt duſt in the King's eyes, or cauſe him any ways to turn aſide from juſtice.

Laſtly, you ſay, "That a man may diſtaſte truth, and ſuſpect judgment;" applying it unto his Majeſty. Which offences reaching ſo high, my cenſure ſhall be the heavier upon you.

Now it will reſt, what ſhall be done with this man? As I give my ſentence from his own mouth, ſo I will take advice from himſelf; he ſaith, *State ſuper viis antiquis*, Look what our anceſtors have done of old, ſo let us do. In this then, you ſhall ſee what they did in like caſes.

Mich. 13. of the Queen, *Rot.* 39. *Henry Blaunsford*, a Counſellor at Law, was committed to the *Fleet*, and fined for falſe reporting the opinion of the Lord *Leiceſter*, and Secretary *Cecil*, with theſe words, *Humanum eſt errare.*

So likewiſe, 19 *Hen.* VIII. my Lord *Stourton* was committed by the Court, and fined, for ſaying theſe words, "I am ſorry to ſee Rhetorick "rule where Law ſhould."

Sir *Rowland Flaxing* was committed, and fined, for reporting to the King, "That he could have no indifferency before the Lords of the Council:" For which he was deeply fined, 7 *Feb.* 18 *H.* VIII.

So likewiſe, in the time of *Hen.* VII. Sir *Richard Terres* was committed, fined, ſent to the Pillory, and adjudged to loſe both his ears for his ſlanderous complaint exhibited to the King in a written Book; and that againſt the Chief-Juſtice *Fitz-James:* the puniſhment of him that depraved the good Judge Sir *James Dyer*, is freſh in memory.

So that party which ſaid Judge *Catlyne* was an unjuſt Judge, 8 *Eliz. Rot.* 10. whoſe name was *Thomas Welch*, of *London*, who was indicted in the King's-Bench for this, as for an offence againſt the Common-Law. His words that were delivered, were theſe: "My Lord-Chief-Juſtice "*Catlyne* is incenſed againſt me, I cannot have Juſtice, nor can be "heard; for that Court now is made a Court of Conſcience." This Indictment was found, and the record was, that it was *in magnum contempt. Dominæ Reginæ ac cur' ſuæ, ac in magn' ſcandalum, ac ignominiam legis Angliæ, ac in ſcandalum capitalis Juſt. ac in malum exemplum omnium ſubditorum.*

So it is that this offence of *Wraynham*'s is againſt the Law, the Commonwealth, and the Juſtice of the Kingdom; and therefore, according to the laſt judgment in law, and with the ſentence that was pronounced againſt *Foorth*, I concur and pronounce the ſame againſt *Wraynham* in all things. And this right I would have done to the Lord-Chancellor living, the Lord-Chancellor and Maſter of the Rolls that are dead, that thoſe things be fitly expreſſed to their honours, in the drawing up of the decree.

Sir *Thomas Lake*, Principal Secretary. *My Lords*, If I had been the firſt that had ſpoken in this caſe, I ſhould have thought it the greateſt difficulty how to walk evenly between the not diſcouraging the King's ſubjects, and in judging the priſoner at the bar.

But for that, my Lords before me have ſo well ſpoken, that no man may be diſcouraged to come to his Majeſty in a diſcreet manner: And very good learning hath been delivered by all my Lords the Judges, ſuch as may ſatisfy every man; yea, and not ſatisfy only, but direct them what to do in ſuch caſes: therefore I may be the ſhorter.

I will not be long in ſpeaking of the honour due unto Magiſtrates; he that wades into that, ſhall have little of his own invention; nor of the offence that is now before us; for the King's Counſel hath ſo fully and perfectly delivered it, that perhaps by this time, he knows his own error. And my Lords the Judges have made it appear ſo, whereby I think it as great an offence, as ever was in this nature; and much more deſerveth puniſhment, becauſe it is againſt a man no leſs eminent in virtue, than in place.

Three things the Priſoner urgeth for himſelf.

Firſt, for the word Injuſtice, he ſaith, "That admitting the thing "were unjuſt, then he might call it unjuſt."

But I anſwer, for a private man to call a publick ſentence, Injuſtice, herein he ſheweth his error.

Secondly, He urgeth, that it cauſeth a great loſs unto him, and therefore he would be the rather excuſed.

It is true, I think, that men, by ſentence, have loſs, for *Judicium redditur in invitum;* but tho' it be a loſs, it is *Damnum abſque injuria.*

Thirdly, He went the wiſer way, when he urgeth commiſeration unto us. For my own part, I could commiſerate the man, but I commiſerate the Commonwealth much more; for if this ſhould be ſuffered, tumults, and a multitude of other inconveniencies would ariſe. And therefore I judge him as the reſt have done before me.

Sir *Henry Cary*, Comptroller. My Lords, before me have ſpoken ſo much, that I ſhall not need to ſpeak, neither do I make any ſcruple of the ſaid ſentence.

When I conſider how foully this man hath behaved himſelf, in Scandal and Invectives againſt ſo high a Magiſtrate, I muſt concur with the reſt of the Lords that have gone before me.

Biſhop of *Ely*, Dr. *Launcelot Andrews*. Tho' the ground of the complaint had been juſt, yet I believe my Lords the Judges, that the complaint being in ſo foul a manner, againſt ſo great a perſon, in ſo high a place, deſerves ſharp puniſhment: and therefore I agree with the former ſentence.

Biſhop of *London*, Dr. *John King*. I ſhall borrow a phraſe of him, tho' ſpoke to another purpoſe: "That in a Senate, where many aſſiſtants "were, after two or three have well ſpoken, and well agitated a cauſe, "there is required nothing of the reſt, but their aſſent."

It is a worthy ſaying, but when I find here before me an honourable perſon foully and deſpightfully ſpoke againſt, being one of the three vital parts of this Court, and without which it cannot have its ſubſiſtence; and of the three vital parts, the Principal, and alſo a Judge of another Court; and (as I learned of my Lords the Judges) of ſuch a temporal Court, where if the edge of the law be too keen, the equity of the Chancery doth abate it:

In regard of this duty, it becometh me to ſpeak, and becauſe the party wrong'd is a great Cnuoſellor and Officer of the State:

The firſt thing I ſay and lay hold of, is this, *intereſt reipublicæ*, it ſtands not with the honour of the King, with the ſafety and peace of the Kingdom, nor with the quiet of his Majeſty, that Counſellors of State, and Judges in the Seat of Juſtice and Conſcience, ſhould be depraved, *anima & vita regnorum authoritas*, take it away from the Magiſtrate of State, take it away from the King himſelf, *& ſubverſa jacet priſtina ſedes ſoliorum.*

For the place wherein this honourable perſon ſits, is great between blood and blood, plea and plea, plague and plague, for the Judge ſhall end the controverſy.

So that the firſt leſſon which I ſhall make, is that which *Cambyſes* made to another, *memento ex quo loco*, they ſit in God's ſeat, and execute his, and not their own judgments: It is their art, their faculty, their profeſſion, their learning to judge, and it is not open to every man, but it is *peregrina & unuſquiſque in arte ſua artifex*; and therefore, for mine own part, I ſhall ever bend the beſt of my thoughts, the favourableſt of my wiſhes, and the moſt of my prayers, that ſitting in ſeats as they do, they may judge as they ought.

I know, that while they carry fleſh about 'em, their faculties and judgments will be unperfect; they are but men, *& ſcientia juris infinita:* ſo that I know not (amongſt the number of mortal Wights) that man that can conceive every particularity of the law.

No marvel then, if one Judge differ from another, when the ſame man differs from himſelf; *Socrates puer differt a Socrate ſene.* And though the Judges walk not in the ſame way, they tend to the ſame end; and tho' there be not *idem curſus*, yet there is the ſame, *idem portus, & non mutant, ſed aptant legem*, according as the matter comes before them is varied, ſhaped, and faſhioned.

It is unreaſonable then to complain of a Judge, or unuſual to go to the King with complaints; nay, it muſt be done with *calamo & atramento temperato*; and it muſt be done, *libello ſupplici, non famoſo*, not as a ſycophant and ſlanderer, but as a ſupplicant with a petition; not with a petulant invective declaration againſt a perſon of ſo great and honourable a place. This is a fact ſo unnatural, and unlawful, that all laws are broke both of God and Nations, and civility, and good manners, and all; nay, I know not how the laws of ſpeech are kept, they are but three, *quid, de quo, cuique*, the matter foul, ſpoken of ſo honourable a perſon, and to ſo tranſcendant a Magiſtrate.

Wraynham is a man, that did not only curſe in the bitterneſs of his ſoul, but he comes *in amaritudine linguæ & chartæ.* It is not fit, God gives not bleſſing to theſe hiſtrices and porcupine quills: it ſhoots far, it enters deep, it wounds ſore, it is not to be tolerated!

Let him keep his poiſon in his ſurmatico and invective Book.

Wherein

Wherein, let me add for my laſt, the manner of preſenting it, the writing itſelf; and then withal the defence now made, which, when I heard it, I was more offended than with the Book itſelf; and I may juſtly make a queſtion, whether he were more fooliſh in writing it, or more vain in defending it?

His defence is a two-fold neceſſity: firſt, a neceſſity to induce the King to hear him; like *Abſalom*, that would needs ſet *Tobias*'s fields on fire, to get his ear.

The other, a neceſſity of Eſtate, proceeding out of the Laws of neceſſity; *Graviſſimi ſunt morſus irritatæ neceſſitatis.* One part of ſpeech was general; in that he meant not my Lord-Chancellor: but in the general there is a major, and in the particular there is the application; and then every man can make the concluſion, as hath been well obſerved by Sir *Edward Coke*.

You are a man of a private and profane ſpirit, and if you know not of what ſpirit you are, I can teach you; I ſay, of that ſpirit, that you compare yourſelf with Apoſtles and Prophets, and you miſapply Scripture; your *dixi in exceſſu & trepidatione*, ſheweth a difference between ſinning upon paſſion, and deliberation. It comes fully home into your own boſom, *& pulchrum patet guttur in ore.*

The beſt part of this anſwer, was the laſt, and I wou'd it had been all in all; and ſo I agree with the ſentence given before me.

Viſcount *Wallingford.* I am ſorry a man ſhou'd deſerve ſo great a cenſure as this man's foul fault will make; yet I am very glad in this bold and quick-ſighted age, that other men, by his example, may take heed not to exceed the bounds of modeſty.

This humour, it ſeemeth ſelf-love (which believes nothing but itſelf) hath begot that, that hath bred this Gentleman up ſo unmannerly, that he ſpares not to accuſe the higheſt and greateſt Judge of the Kingdom, of Oppreſſion, Injuſtice, Murder, nay, of any thing; which is not only ſpoken by ſo ill a tongue, but aggravated by his anſwer.

For it ſeems, he wou'd encourage other men by the King's Book to do the like, wherein we may ſee the malice of this man, that will get poiſon from the faireſt flower; yet every ſubject may take comfort in his Majeſty's Book, and God forbid, that he which is wrong'd, ſhou'd be reſtrained to complain to his Sovereign; yet, this complaint is no Petition, but a very Libel, and deſerves no better name.

The King's will is, that you ſhould be bold, and that you ſhould come to him; but yet you muſt be ſure that your cauſe muſt be juſt and right. This is a good and gracious ſpeech of a King; but 'tis pity Mr. *Wraynham* alledges Scripture to maintain an ill cauſe: and I do clear my Lord Chancellor dead, and alive, to be as worthy men as any in my time, and yet I have lived a long age; and God forbid their Conſciences ſhou'd be led by private men's humours.

I ſay no more, but let every man that hears us this day, take heed, that their humours lead them not into theſe outrageous courſes, but carry themſelves with modeſty. I ſhall not need to enlarge, but conſent with my Lords before me.

Earl of *Arundel.* I ſhall not need to uſe many words for the matter; in brief, *Wraynham* hath forgot himſelf fully againſt a great and high inſtrument of Juſtice, renewing complaints upon complaints; after the King had told him in my hearing, that the Lord-Chancellor had done juſtly, as he himſelf would have done; and therefore I think him very much to blame, and well deſerving the cenſure given. And the uſe is (as you ſee by him) for malicious men not to ſuck honey, but venom and poiſon out of the wholeſome flowers; as his preſumption is to be hated, ſo his humiliation and ſubmiſſion is to be pitied; yet I agree with my Lords in all things.

Pembroke, Lord-Chamberlain. No man's mouth is ſo ſtopp'd, but in caſe of grief he may ſeek redreſs. I think there is little ſcruple, that either the Maſter of the Rolls that is dead, or this Lord-Chancellor that is living, did proceed without Juſtice; becauſe it is but an order againſt an order, a thing very frequent and uſual in this, and in all other arbitrary Courts.

For the ſentence, I agree with the Court, being ſorry, ſince his laſt ſubmiſſion was humble, that before he hath abuſed this good part, and uſed his wit to his own confuſion.

Duke of *Lenox.* I am ſorry that *Wraynham* hath not the Grace of God to make uſe of his Majeſty's Book, which is not to complain without juſt cauſe; and without he could make proof of his complaint. I will not repeat the worth of my Lord-Chancellor living, or dead: but I am ſorry that a man of ſo great parts ſhou'd deſerve ſo heavy a ſentence; whereunto in all things I agree.

Worceſter, Lord Privy-Seal. My Lords, I am of opinion, as formerly my Lords have been; I do hold this a very ſcandalous Libel, being againſt a perſon of ſuch worth; the greater the perſon is, the more ſevere ſhou'd the puniſhment be for the offender: and ſo I concur in opinion with my Lords before me, and do think this offence to have exceeded his puniſhment; and therefore if a great fine had been laid upon him, I ſhou'd have agreed unto it.

Abbot, Lord Archbiſhop of *Canterbury.* The Lord, the Fountain of Wiſdom, hath ſet this glorious work of the World in the order and beauty wherein it ſtands, and hath appointed Princes, Magiſtrates, and Judges to hear the cauſes of the people, not ſo much out of authority, as out of juſtice and reaſon: for if no ſuch perſons were to hear and determine other men's cauſes, every man muſt be his own Judge, which wou'd tend to nothing but ruin and prepoſterous confuſion: God therefore, in his wiſdom, order'd and ordain'd their bounds, in the Magiſtrate on the one ſide with inſtruction, and the Subject on the other ſide with protection; which inſtruction when he ſhewed them, the King's Throne is upheld by juſtice: and *David* was commanded to rule his people with juſtice and judgment; and the like commandment is given to others in ſubordinate places, not to pity the perſon of the poor, nor to ſtand in awe of the face of the mightieſt, but to weigh the ſimplicity and integrity of Conſcience. For mark the examples of the moſt holy and reverend Judges, *Moſes*, *Samuel*, and the reſt, to whom their greateſt comfort was, that they could ſay, *Whoſe Ox or Aſs have I taken? From whom have I received a reward?* And by the courſe of piety and divinity, we that ſit ſometimes to judge others, are at another time to ſtand at an higher bar, to receive judgment from Heaven.

With the great grace, and benefit of protection, God calls them by his own name, God's Children of the Higheſt; God being preſent amongſt 'em to direct them, and defend them; God ſtandeth in the Congregation of Princes, he is amongſt all the People: thou ſhalt not detract nor ſlander the Judge, nor ſpeak evil of the Princes of the people. And in two ſeveral Epiſtles, both in *Peter* and in *Jude*, it is ſaid, "That in the latter "days there ſhall be wicked men, that ſhall ſpeak evil of Magiſtrates, "and men of authority, blaſpheming 'em;" as if it were blaſphemy, tho' not againſt God, yet againſt thoſe that are the Image of ſo great a God.

And therefore, ſince *Wraynham* hath blaſphemed, ſpoken evil, and ſlander'd a chief Magiſtrate as any in the Kingdom; it remaineth, that in honour to God, and in duty and juſtice to the King and Kingdom, that he ſhou'd receive ſevere puniſhment; for it is his cauſe to-day, and it may be ours every day: and have not ſome, for juſtice ſake, been inforc'd to endure the threatning of their heads? Wherefore, if greater puniſhment had been given him, I ſhou'd have aſſented; for Juſtice belongeth to us, but Mercy to our gracious Sovereign. Wherefore I agree in all things with the ſentence before given.

Suffolk, Lord-Treaſurer. I perceive, as the priſoner at the bar was charged at firſt, that he had foully offended, and ought to have yielded himſelf at the firſt, and not to have made his offence greater, by defending a bad cauſe.

My Lords who have heard his fault in part laid out, and cenſured him, I think they have done very worthily. For the party himſelf, I would I could come to him with a little better charity than I can, for his anſwer did more diſpleaſe me, than his cenſure; for I ſee his ſpleen and his humour grows, rather to defame a worthy man, than to free himſelf, how unjuſtly, I appeal to the whole World; who came to his place with as much ſatisfaction to all hearts, and applauſe, with as good carriage as any man I ever heard came before him.

The thing that I would conclude with, is, that I would be glad that all that hear us might take us aright that are Judges; we deſire not to be forborn by any Subject's tongue, that hath cauſe to complain: and therefore do it not for any particular reſpect to ourſelves, but for the public courſe of juſtice, and for the care we have of the publick good, and for nothing elſe.

For the fault itſelf, it hath been ſo well opened by all the Lords, that I will ſpare to hold you longer in ſpeaking of it. And for the ſentence, I think it very fit and juſt: and therefore agree with the reſt.

XVI. Proceedings on the *Habeas Corpus*, brought by Sir *Thomas Darnel*, Sir *John Corbet*, Sir *Walter Earl*, Sir *John Heveningham*, and Sir *Edmund Hampden*, *Nov.* 1627. 3 *Car.* I. at the *King's-Bench*, in *Weſtminſter-Hall.*

THE King having deprived himſelf of the proſpect of all parliamentary Aids, by diſſolving the Parliament, and yet reſolving to proſecute the war; it was neceſſary to project all poſſible ways and means of raiſing money; to which end letters were ſent to the Lords-Lieutenants of the Counties, to return the names of the perſons of ability, and what ſums they could ſpare; and the Comptroller of the King's Houſhold iſſued forth letters in the King's name, under the Privy Seal, to ſeveral perſons returned for the Loan-money; ſome were aſſeſſed 20 *l.* ſome 15, and others 10 *l.* and Commiſſioners were appointed with private inſtructions how to behave themſelves in this affair, and divers Lords of the Council were appointed to repair into their Counties to advance the Loan *. Collectors were alſo appointed to pay into the Exchequer the ſums receiv'd, and to return the names of ſuch as refus'd, or diſcovered a diſpoſition to delay the payment of the ſums impos'd. This aſſeſſment of the general-Loan did not paſs currently with the people, for divers perſons refus'd to ſubſcribe or lend at the rate propos'd; the non-ſubſcribers of high rank in all Counties were bound over by recognizances to tender their appearance at the Council-board, and perform'd the ſame accordingly, and divers of them committed to priſon: which caus'd great murmuring. But amongſt thoſe many Gentlemen who were impriſon'd throughout *England*, for refuſing

* Sir *Randolf Crew* ſhewing no zeal for the advancement thereof, was then removed from his place of Lord Chief-Juſtice, and Sir *Nicholas Hyde* ſucceeded in his room: a perſon who, for his parts and abilities, was thought worthy of that preferment; yet nevertheleſs came to the ſame with a prejudice, coming in the place of one ſo well-beloved and ſo ſuddenly remov'd. *Ruſhworth*, Vol. I. Page 420.

Croke (Charles) pag. 52. Mem. upon *Friday* the 10th of *Nov.* Sir *Randolf Crew*, Chief-Juſtice of the *King's Bench*, was diſcharged of that place, by Writ under the Great Seal, for ſome cauſe of diſpleaſure conceived againſt him; but for what, was not generally known.

to lend upon the Commiſſion for Loans, only five of them brought their *Habeas Corpus*, viz. Sir *Thomas Darnel*, Sir *John Corbet*, Sir *Walter Earl*, Sir *John Heveningham*, and Sir *Edmund Hampden*.

Arguments upon the *Habeas Corpus*.

Sir Thomas Darnel *his Caſe*, Michaelis, 3° *Caroli*, *Banco Regis*.

SIR *Thomas Darnel*, Baronet, being impriſoned in the *Fleet*, by virtue of a warrant ſigned by the King's Attorney-General, upon the third of *November*, by Serjeant *Bramſton*, his aſſigned Counſel, moved the Juſtices of the King's-Bench to grant him a Writ of *Habeas Corpus cum cauſa*, directed to the Warden of the *Fleet*, to ſhew that Court the cauſe of his impriſonment, that thereupon they might determine whether his reſtraint were legal or illegal; and it was granted by the Court returnable *Thurſday* following, the 8*th* day of *November*.

On *Thurſday*, Sir *Thomas Darnel* expected that his Writ ſhould be returned, but it was delayed; and it was moved that the return ſhould be on *Saturday*, the 10th of *November*, which made Sir *Thomas Darnel* the more remiſs in ſuing out an *Alias* upon his *Habeas Corpus*.

On *Saturday* the Writ was not returned, and thereupon the King's Attorney-General gave order for an *Alias* upon the *Habeas Corpus* for Sir *Thomas Darnel*, returnable upon *Thurſday* morning the 15th of *November*; by virtue of which Writ, the Warden of the *Fleet* brings Sir *Thomas Darnel* to the King's-Bench, and returneth as followeth:

Executio iſtius Brevis patet in quadam ſchedula annexat' huic brevi.

The return was this:

" Ego Henricus Liloe Miles guardianus priſonæ Domini Regis de " *le Fleet*, ſereniſſimo domino Regi certifico quod dict' *Thomas Darnel* Ba- " ronet' detentus eſt in priſona prædict' ſub cuſtodia mea virtute cujuſ- " dam Warranti duorum de Privato Conſilio mihi directi, cujus tenor " ſequitur in his verbis, *viz.*

" *Whereas heretofore the Body of Sir* Thomas Darnel *hath been commit-* " *ted to your cuſtody, theſe are to require you ſtill to continue him; and to let* " *you know that he was and is committed by the ſpecial command of his Ma-* " *jeſty*, &c."

Et hæc eſt cauſa detentionis prædict' Thomæ Darnel.

Serj. *Bramſton*. MAY it pleaſe your Lordſhip, I did not expect this cauſe at this time, neither did I hear of it until I came now into the Hall; and therefore I ſhall now humbly ſhew you what my Client hath informed me ſince my coming hither. I underſtand by him that he expected not his coming to this place to-day; the Writ by which he was brought hither was not moved for by him, but was procured without his privity; and ſeeing his caſe is ſo, and that he perceives the cauſe of his coming, which before he knew not, his motion to your Lordſhip is, that you would be pleaſed to let him have the copy of the return, and give him time to ſpeak unto it, and that this Writ being not ſent out by his procurement, may not be filed.

Heath, Attorney-General. My Lords, it is true that this Gentleman, Sir *Thomas Darnel*, being impriſoned in the *Fleet*, did heretofore move your Lordſhips for a *Habeas Corpus*, *&c.* and it was granted him: and his Majeſty being made acquainted therewith, was very willing that he and all his people might have equal juſtice; and when they deſire that which ſeems to accord with the rules of the law, they ſhould have it. But it fell out ſo, that on the day when the Writ ſhould have been returned, the Warden of the *Fleet* did not return it, as it was his duty to have done; he did forbear to do it upon a commandment, becauſe it was conceived, there being five at that time to appear, the Court would have been ſtraitened for want of time: but I imagined that theſe Gentlemen who did deſire the Writ before, ſhould have again been earneſt to renew them, which it ſeems they did not. This *Habeas Corpus* was ſent out by ſpecial command, becauſe theſe Gentlemen gave out in ſpeeches, and in particular this Gentleman, That they did wonder why they ſhould be hinder'd from Trial, and what ſhould be the reaſon their Writs were not returned: nay, his Majeſty did tell me, that they reported that the King did deny them the courſe of Juſtice, and therefore he commanded me to renew the Writ, which I did, and think I may do it *ex officio*.

Sir *Tho. Darnel*. My Lords, I knew not until now, but that I was committed by Mr. *Attorney*'s Warrant only, and thereupon I did deſire a *Habeas Corpus* at the bar, which you were pleaſed to grant me; but now I underſtand that my reſtraint is by another means, and therefore I ſhall crave leave to have ſome time to ſpeak to it. And as for the words alledged againſt me, as if I had ſpoken them, I humbly pray they may be no diſparagement to my Cauſe, for I do patiently refer myſelf to your grave cenſures, as being accuſed of a fact whereof I am no ways guilty.

Hyde, L. C. Juſtice. You give a temperate and fair anſwer; and now you may perceive the upright and ſincere proceedings that have been in this buſineſs. You did no ſooner petition to have Counſel aſſigned you, but you had it granted to you, for indeed we cannot deny it; and I know not but that any Counſel might have moved for you, without having been aſſigned for you, and yet have had no blame; for it is the King's pleaſure his laws ſhould take place and be executed, and therefore do we ſit here. When you made a motion for a *Habeas Corpus*, that was likewiſe granted; whether the commitment be by the King or others, this Court is a place where the King doth ſit in perſon, and we have power to examine it; and if it appears that any man hath injury or wrong by his impriſonment, we have power to deliver and diſcharge him; if otherwiſe, he is to be remanded by us to priſon again. Now it ſeems you are not ready to ſpeak to this return; if you deſire a further day, we ought to grant it.

Sir *Tho. Darnel*. My Lords, I humbly deſire it.

L. C. J. I know no cauſe why it ſhould be denied.

Serj. *Bramſton*. My Lords, we ſhall deſire the Writ may not be filed, and that we may have a copy of the return.

Attorn. Gen. You cannot deny the filing of the Writ, if you deſi to have a copy of the return.

L. C. Juſtice. Although you be remanded at this time to priſon, becauſe you are not ready to ſpeak to the return, we can adjourn you to a new day upon the Writ, and ſo you may prepare yourſelf; but if you will not have this filed, there muſt go out a new *Habeas Corpus*, and thereupon muſt be another return.

Serj. *Bramſton*. My Lord, we deſire ſome time, that we may be adviſed whether we may proceed or not.

L. C. Juſtice. Will you ſubmit yourſelf to the King?

Sir *Tho. Darnel*. My Lord, I deſire ſome time to adviſe of my proceedings: I have moved many men, and offered to retain them of my Counſel; but they refuſe me, and I can get none to be of Counſel with me without your aſſiſtance.

L. C. Juſtice. You ſhall have what Counſel aſſigned you you will have or deſire; for no offence will be taken againſt any man that ſhall adviſe you in your proceedings in Law.

Attorn. Gen. I will paſs my word, they that do adviſe you, ſhall have no offence taken againſt them for it; and I ſhall give conſent to any way that you ſhall deſire, either that it may be filed, or that it may not be filed; for if you deſire Juſtice, you ſhall have it, and the King will not deny it; but if it ſhall be conceived, as it is rumoured, that there was a denial of Juſtice on the King's part, you muſt know that his Majeſty is very tender of that. And for the Gentleman, now he is brought hither, I conceive, but yet I leave it to your Lordſhip's judgment, that the Writ muſt be filed, and you muſt either deliver him, or remand him, or elſe it will be an eſcape in the Warden of the *Fleet*.

Sir *Tho. Darnel*. I would not have it thought that I ſhould ſpeak any thing againſt my Prince, and for thoſe words I do deny them; for upon my conſcience they never came into my thought: perhaps you ſhall find that they have been ſpoken by ſome other, but not by any of us.

L. C. Juſtice. Sir, you have made a fair anſwer, and I doubt not but Mr. *Attorney* will make the like relation of it; you move for the not filing of the Writ; if you refuſe to have it filed, whereby it ſhould not be of record, you muſt have no Copy of it; but if you will have it filed you ſhall have a Copy of it, and further time to ſpeak to it; chuſe whether of them you will.

Serj. *Bramſton*. We deſire to have the return read once more.

And it was read as before.

Serj. *Bramſton*. So as the Writ may not be filed, we will deſire no copy of the return.

L. C. Juſtice. Then the Gentleman muſt return back again into the cuſtody of the Warden of the *Fleet*; and therefore I aſk you, whether you deſire to come hither again upon this Writ, or will you have a new one?

Sir *Tho. Darnel*. I deſire your Lordſhip that I may have time to conſider of it.

L. C. Juſtice. Then in God's name take your own time to think of it.

Michaelis, 3°. *Caroli Regis*. Thurſday 22 November, 1627.

Sir *John Corbet*, Baronet, Sir *Walter Earl*, Sir *John Heveningham*, Sir *Edmund Hampden*, Knights, were brought to the Bar.

Serj. *Bramſton* MAY it pleaſe your Lordſhip to hear the return read, or ſhall I open it?

L. C. Juſtice. Let it be read.

Mr. *Keeling* reads the return, being the ſame as that of Sir *Thomas Darnel*.

Serj. *Bramſton*. May it pleaſe your Lordſhip, I ſhall humbly move upon this return in the behalf of Sir *John Heveningham*, with whom I am of Counſel; it is his petition, that he may be bailed from his impriſonment: it was but in vain for me to move that to a Court of Law, which by Law cannot be granted: and therefore in that regard, that upon this return it will be queſtioned, whether as this return is made, the Gentleman may be bailed or not? I ſhall humbly offer up to your Lordſhip the caſe, and ſome reaſons out of mine underſtanding, ariſing out of the return itſelf, to ſatisfy your Lordſhip that theſe priſoners may, and, as their caſe is, ought to be bailed by your Lordſhip.

The exception that I take to this return, is as well to the matter and ſubſtance of the return, as to the manner and legal form thereof: the exception that I take to the matter, is in ſeveral reſpects.

That the return is too general, there is no ſufficient cauſe ſhewn in ſpecial or in general of the commitment of this Gentleman; and as it is inſufficient for the cauſe, ſo alſo in the time of the firſt impriſonment: for howſoever here doth appear a time upon the ſecond Warrant from the Lords of the Council to detain him ſtill in priſon, yet by the return no time can appear when he was firſt impriſoned, tho' it be neceſſary it ſhould be ſhewn; and if that time appear not, there is no cauſe your Lordſhip ſhould remand him; and conſequently he is to be delivered.

Touching the matter of the return, which is the cauſe of his impriſonment, it is expreſſed to be *per ſpeciale mandatum domini Regis*: this is too general and uncertain, for that it is not manifeſt what kind of command this was.

Touching the legal form of the return, it is not, as it ought to be, fully and poſitively the return of the Keeper himſelf only, but it comes with a *ſignificavit*, or *prout*, that he was committed *per ſpeciale mandatum domini Regis*, as appeareth by Warrant from the Lords of the Council, not of the King himſelf; and that is not good in legal form.

For the matter and ſubſtance of the return, it is not good, becauſe there ought to be a cauſe of that impriſonment.

This Writ is the means, and the only means that the ſubject hath in this and ſuch-like caſe to obtain his liberty; there are other Writs by which men are delivered from reſtraint, as that *de homine replegiando*, but extends not to this cauſe, for it is particularly excepted in the body of the Writ *de manucaptione, & de cautione admittenda*, but they lie in other caſes: but the Writ of *Habeas Corpus* is the only means

means the ſubject hath to obtain his liberty, and the end of this Writ is to return the cauſe of the impriſonment, that it may be examined in this Court, whether the parties ought to be diſcharged or not: but that cannot be done upon this return: for the cauſe of the impriſonment of this Gentleman at firſt is ſo far from appearing particularly by it, that there is no cauſe at all expreſſed in it.

This Writ requires that the cauſe of the impriſonment ſhould be returned, and if the cauſe be not ſpecially certified by it, yet ſhould it at the leaſt be ſhewn in general, that it may appear to the Judges of the Court; and it muſt be expreſſed ſo far, as that it may appear to be none of thoſe cauſes for which by law of the kingdom the ſubject ought not to be impriſoned; and it ought to be expreſſed that it was by preſentment or indictment, and not upon petition or ſuggeſtion made to the King and Lords, which is againſt the Statute made in the 25 *Edw.* III. *c.* 4. 42 *Edw.* III. *c.* 3.

By the Statute 25 *Edw.* III. *cap.* 4. it is ordained and eſtabliſhed, That no man from henceforth ſhall be taken by petition or ſuggeſtion made to the King or his Council, but by indictment or courſe of law; and accordingly it was enacted, 42 *Edw.* III. *cap.* 3. the title of which Statute is, None ſhall be put to anſwer an accuſation made to the King without preſentment. Then, my Lord, it being ſo, although the cauſe ſhould not need to be expreſſed in ſuch manner as that it may appear to be none of theſe cauſes mentioned in the Statute, or elſe the ſubject by this return loſeth the benefit and advantage of theſe laws, which be their birth-right and inheritance; but in this return there is no cauſe at all appearing of the firſt commitment, and therefore it is plain, that there is no cauſe for your Lordſhip to remand him; but there is cauſe you ſhould deliver him, ſince the Writ is to bring the body and the cauſe of the impriſonment before your Lordſhip.

But it may be objected, that this Writ of *Habeas Corpus* doth not demand the cauſe of the firſt commitment, but of the detaining only; and ſo the Writ is ſatisfied by the return; for though it ſhew no cauſe of the firſt commitment, but of detaining only, yet it declareth a cauſe why the Gentleman is detained in priſon: this is no anſwer, nor can give any ſatisfaction; for the reaſon why the cauſe is to be returned, is for the ſubject's liberty, that if it ſhall appear a good and ſufficient cauſe to your Lordſhip, then to be remanded; if your Lordſhip think and find it inſufficient, he is to be enlarged.

This is the end of this Writ, and this cannot appear to your Lordſhip, unleſs the time of the firſt commitment be expreſſed in the return. I know that in ſome caſes the time is not material, as when the cauſe of the commitment is (and that ſo eſpecially) returned, as that the time is not material, it is enough to ſhew the cauſe without the time, as after a conviction or Trial had by Law; but when it is in this manner, that the time is the matter itſelf: for intend what cauſe you will of the commitment, yea though for the higheſt cauſe of Treaſon, there is no doubt but that upon the return thereof the time of it muſt appear; for it being before Trial and Conviction had by law, it is but an accuſation, and he that is only accuſed ought by law to be let to bail.

But I beſeech your Lordſhip to obſerve the conſequence of this cauſe. If the law be, that upon this return this Gentleman ſhould be remanded, I will not diſpute whether or no, a man may be impriſoned before he be convicted according to the law; but if this return ſhall be good, then his impriſonment ſhall not continue on for a time, but for ever; and the ſubjects of this Kingdom may be reſtrained of their liberties perpetually, and by law there can be no remedy for the ſubject: and therefore this return cannot ſtand with the laws of the Realm, or that of *Magna Charta*; nor with the Statute of 28 *Edw.* III. *cap.* 3. for if a man be not bailable upon this return, they cannot have the benefit of theſe two laws, which are the inheritance of the ſubject.

If your Lordſhip ſhall think this to be a ſufficient cauſe, then it goeth to a perpetual impriſonment of the ſubject: for in all thoſe cauſes which may concern the King's ſubjects, and are applicable to all times and caſes, we are not to reflect upon the preſent time and government, where juſtice and mercy floweth, but we are to look what may betide us in the time to come, hereafter.

It muſt be agreed on all ſides, that the time of the firſt commitment doth not appear in this return; but by a latter warrant from the Lords of the Council, there is a time indeed expreſſed for the continuing of him in priſon, and that appears; but if this ſhall be a good cauſe to remand theſe Gentlemen to priſon, they may lie there theſe ſeven years longer, and ſeven years after them, nay, all the days of their lives. And if they ſue out a Writ of *Habeas Corpus*, it is but making a new Warrant, and they ſhall be remanded, and ſhall never have the advantage of the laws which are the beſt inheritance of every ſubject.

And in *Edw.* VI. *fol.* 36. the laws are called the great inheritance of every ſubject, and the inheritance of inheritances, without which inheritance we have no inheritance.

Theſe are the exceptions I deſire to offer up to your Lordſhip touching the return, for the inſufficiency of the cauſe returned, and the defect of the time of the firſt commitment, which ſhould have been expreſſed.

I will not labour in objections till they be made againſt me, in regard the Statute of *Weſtminſter primo* is ſo frequent in every man's mouth, that at the Common Law thoſe men that were committed in four caſes were not repleviſable; *viz.* thoſe that were taken for the death of a man, or the commandment of the King, or his Juſtices for the Foreſt. I ſhall ſpeak ſomething to it, though I intend not to ſpend much time about it, for it toucheth not this caſe we have in queſtion.

For that is concerning a caſe of the Common Law, when men are taken by the King's Writs, and not by word of mouth, and it ſhall be ſo expounded, as Mr. *Stamford*, *fol.* 73. yet it is nothing to this caſe, for if you will take the true meaning of that Statute, it extends not at all to this Writ of *Habeas Corpus*; for the words are plain, they ſhall be repleviſable by the common Writ, that is, by the Writ *de homine replegiando*, directed to the Sheriff to deliver them, if they were bailable: but this caſe is above the Sheriff, and he is not to be Judge in it, whether the cauſes of the commitment be ſufficient or not, as it appears in *Fitz-Herbert*, *de homine replegiando*, and many other places, and not of the very words of the Statute: this is clear, for there be many other cauſes mentioned, as the death of a man, the commandment of the Juſtices, *&c.* in which the Statute ſaith, men are not repleviſable. But will a man conceive that the meaning is, that they ſhall not be bailed at all, but live in perpetual impriſonment? I think I ſhall not need to ſpend time, in that it is ſo plain; let me but make one inſtance.

A man is taken *de morte hominis*; he is not bailable by Writ; ſaith this Statute; that is, by the common Writ: there was a common Writ for this caſe, and that was called *de odio & acia*, as appeareth, *Bracton*, *Coron.* 34. This is the Writ intended by the Statute, which is a common Writ, and not a ſpecial Writ; but, my Lord, as this Writ *de odio & acia* was before this Statute, ſo it was afterwards taken away by the Statute of 28 *Edw.* III. *cap.* 9. But before that Statute, this Writ did lie in the ſpecial caſe, as is ſhewn in *Coke*'s 9th report, the *Poulterer*'s caſe; and the end of this Writ was, that the ſubject might not be too long detained in priſon, as till the Juſtices of *Eyre* diſcharged them. So that the Law intended not that a man ſhould ſuffer perpetual impriſonment, for they were very careful that men ſhould not be kept too long in priſon, which is alſo a liberty of the ſubject; and, my Lord, that this Court hath bailed upon a ſuſpicion of High-Treaſon, I will offer it to your Lordſhip, when I ſhall ſhew you precedents in theſe caſes of a commitment by the Privy-Council, or by the King himſelf: but before I offer theſe precedents unto your Lordſhip, of which there be many, I ſhall by your Lordſhip's favour ſpeak a little to the next exception, and that is to the matter of the return, which I find to be *per ſpeciale mandatum domini Regis*. And what is that? It appears by this Writ, there may be ſundry commands by the King: we find a ſpecial command often in our Books, as in the Statute of *Marl. cap.* 8. they who were impriſoned *Red ſſ.* ſhall not be delivered without the ſpecial command of our Lord the King. And ſo in *Bracton*, *de Actionibus*, the laſt chapter, where it appears that the King's commandment for impriſonments is by ſpecial Writ; ſo by Writ again men are to be delivered, for in the caſe of *Rediſ.* or *Poſt Rediſſ.*, if it ſhall be removed by a *Certiorari*, that is by a ſpecial Writ to deliver parties. So that by this appears, that by the King's commandment to impriſon, and to deliver in thoſe caſes, is underſtood this Writ, and ſo it may be in this caſe which we have heard.

And this return here is a ſpecial *Mandatum*; it may be underſtood to be under ſome of the King's Seals, 42 *Aſſ.* and ought to be delivered; and will you make a difference between the King's command under his ſeal, and his command by word of mouth? What difference there is, I leave it to your Lordſhip's judgment; but if there be any, it is the more material that it ſhould be expreſſed what manner of command it was, which doth not here appear; and therefore it may be the King's command by Writ, or his command under his ſeal, or his command by word of mouth alone.

And if there is any of theſe commands of an higher nature than the other, doubtleſs, it is that by Writ, or under ſeal, for they are of record, and in theſe the perſon may be bailed, and why not in this? As to the legal form, admitting there were ſubſtances in the return, yet there wants legal form; for the Writ of *Habeas Corpus* is the commandment of the King to the Keeper of the priſons, and thereupon they are to make return both of the body, and of the cauſe of the commitment, and that cauſe is to appear of them who are the immediate Officers. And if he doth it by ſignification from another, that return is defective in law, and therefore this return cannot be good, for it muſt be from the Officer himſelf; and if the cauſe returned by him be good, it binds the priſoners.

The Warrant of the Lords was but a direction for him; he might have made his return to have been expreſsly by the King's commandment, there was Warrant for it, I ſhall not need to put you caſes of it; for it is not enough that he returns that he was certified that the commitment was by the King's command, but he muſt of himſelf return this fact as it was done. And now, my Lord, I ſhall offer to your Lordſhip precedents of divers kinds, upon commitments by the ſpecial command of the King, and upon commitments both by the King and the Lords together. And howſoever I conceive, which I ſubmit to your Lordſhip, that our caſe will not ſtand upon precedents, but upon the fundamental Laws and Statutes of this Realm; and though the precedents look the one way or the other, they are to be brought back unto the laws by which the Kingdom is governed. In the firſt of *Henry* VIII. *Rot. Parl.* 9. one *Harriſon* was committed to the *Marſhalſea* by the command of the King; and being removed by *Habeas Corpus* into the Court, the cauſe returned was, that he was committed *per mandatum Domini Regis*, and he was bailed.

In the fortieth of *Elizabeth*, *Thomas Wenden* was committed to the Gatehouſe by the commandment of the Queen, and the Lords of the Council; and being removed by an *Habeas Corpus*, upon the general return he was bailed.

In 8 *Jacobi*, one *Cæſar* was committed by the King's commandment, and this being returned upon his *Habeas Corpus*, upon the examination of this caſe it doth appear that it was over-ruled, that the return ſhould be amended, or elſe the priſoner ſhould be delivered.

The precedents concerning the commitment by the Lords of the Council, are in effect the ſame with theſe where the commitment is, by the reaſon why the cauſe of the commitment ſhould not be ſhewn, holds in both caſes, and that is the neceſſity of ſuit; and therefore Mr. *Stamford* makes the command of the King, and that of the Lords of the Privy-Council, to be both as one; and to this purpoſe, if they ſpeak, he ſpeaks; and if he ſpeaks, they ſpeak.

The precedents that we can ſhew you, how the ſubject hath been delivered upon commitment by the Lords of the Council, as in the times of *Hen.* VIII. and in the times of Queen *Elizabeth*, and Queen *Mary*, are infinite; as in the 9th of *Elizabeth*, *Thomas Lawrence* was committed to the Tower by the Lords of the Council, and bailed upon an *Habeas Corpus*.

In the 43d of *Elizabeth*, *Calvin*'s caſe.

In the 3d of *Elizabeth*, *Vernon*'s caſe

Theſe were committed for High-Treaſon, and yet bailed; for in all theſe caſes there muſt be a conviction in due time, or a deliverance by law.

There be divers other precedents that might be ſhewn to your Lordſhip. In 12 *Jacobi*, *Miles Renards*. In 12 *Jacobi*, *Rot.* 155. *Richard Beckwith*'s caſe. In 4 *Jacobi*, Sir *Thomas Monſon* was committed for Treaſon to the Tower of *London*, and afterwards was brought hither, and bailed; and ſince our caſe ſtands upon this return, and yet there is no ſufficient cauſe in law expreſſed in the return of the detaining this Gentleman; and ſince theſe precedents do warrant our proceedings; my humble ſuit to this Court is, that the Gentleman, Sir *John Heveningham*, who hath petitioned

tioned his Majeſty, that he may have the benefit of the law, and his Majeſty hath ſignified it; it is his pleaſure that juſtice according to the law ſhould be adminiſtered at all times in general to all his ſubjects; and particularly to theſe Gentlemen, which is their birth-right: my humble ſuit to your Lordſhip is, that theſe Gentlemen may have the Benefit of that law, and be delivered from their impriſonment.

Mr. Noye's *Argument of Counſel with Sir* Walter Earl *at that Time.*

May it pleaſe your Lordſhip, I am of Counſel with Sir *Walter Earl*, one of the priſoners at the bar; the return of this Writ is as thoſe that have been before, they are much of one tenor, and as you have heard the tenor of that, ſo this Gentleman coming hither by an *Habeas Corpus*, I will by your Lordſhip's favour read the Writ.

" Carolus, Dei gratia, &c. Johanni Liloe Milit' Guardian' Priſon' " noſtræ de le Fleet ſalut', Præcipimus tibi quod corpus *Walteri Earl* " Milit' in priſon' noſtra ſub cuſtodia tua detent' ut dicit' una cum cauſa " detentionis ſuæ quocunque nomine prædict' *Walter*' cenſeat in eadem " Habeas Corpus, ad ſubjiciendum et recipiendum ea quæ curia noſtra de " eo adtunc et ibidem ordin' conting' in hac parte et hæc nullatenus omit' " periculo incumbend' et habeas ibi hoc breve. Teſt' *Hyde*, apud *Weſt-* " *minſter*, quarto die Novembris, Anno 8."

Executio iſtius Brevis patet in quadam ſchedula huic brevi annexat'.

Reſponſ. Johan' Liloe Guardian' Priſon' de le Fleet.

" Ego Johannes Liloe Mil' Guardian' Priſon' domini Regis de le Fleet, " Sereniſſimo Domino Regi, apud *Weſtminſter* 8. Poſt receptionem hu- " jus brevis quod in hac ſchedula eſt mentionat', Certifico quod *Walter* " *Earl* miles, in eodem brevium nominat' detentus eſt in Priſona de le " Fleet ſub cuſtodia mea prædict' per ſpeciale mandatum domini Regis " mihi ſignificatum per Warrantum duorum et aliorum de Privato Con- " cilio perhonorabiliſſimi dicti Domini Regis, cujus quidem tenor ſequi- " tur in hæc verba."

Whereas Sir *Walter Earl*, Knight, was heretofore committed to your cuſtody, theſe are to will and require you ſtill to detain him, letting you know, that both his firſt commitment, and this direction for the continuance of him in priſon, were and are by his Majeſty's ſpecial commandment, from *Whitehall*, 7 *Novembris*, 1627.

Thomas Coventry, C. S.	*Marlborough.*
Henry Manchester.	*Pembroke.*
Thomas Suffolk.	*Saliſbury.*
Bridgewater.	*Totneſs.*
Kelly.	*Grandiſon.*
R. Dunelm'.	*Guliel' Bath & Wells.*
Thomas Edmunds.	*Robert Nanton.*
John Cook.	*Richard Weſton.*
	Humphry Mayes.

To the Guardian of the Fleet or his Deputy.

" Et hæc eſt cauſa detentionis prædict' *Walteri Earl* ſub cuſtodia mea " in Priſon' prædict'. Attamen corpus ejuſdem *Walteri* coram Domino " Rege ad diem et locum prædictum, poſt receptionem brevis prædict' pa- " rat' habeo prout iſtud breve in ſe exiget et requiret."

Reſton' Johan' Liloe Milit' Guardian' Priſon' de le Fleet.

My Lord, the firſt *Habeas Corpus* bears date the 4th of *November*, then there is an *Alias Habeas* bears *Teſte* after that, and the tenor thereof is a command to the Warden of the *Fleet*, *quod Habeas Corpus* Walteri Earl, *coram nobis ad ſubjiciendum & recipiendum ea quæ curia noſtra de eo &c. ordin' conting'*. And the Warden of the *Fleet*, he certifies as your Lordſhip has heard. May it pleaſe your Lordſhip, I deſire as before was deſired for the other Gentlemen, that Sir *Walter Earl* may be alſo bailed, if there be no other cauſe of his impriſonment: for if there were a cauſe certified, and that cauſe were not ſufficient to detain him ſtill in priſon, your Lordſhip would bail him; and if a man ſhould be in a worſe caſe, when there is no cauſe certified at all, that wou'd be very hard.

The Writ is, that he ſhould bring the Priſoner *coram nobis*, before the King, the end of that is *ad ſubjiciendum & recipiendum*; now I conceive, that tho' there be a ſignification of the King's pleaſure to have this Gentleman impriſoned, yet when the King grants this Writ to bring the priſoner hither, *ad ſubjiciendum & recipiendum*, his pleaſure likewiſe is, to have the priſoner let go, if by law he be not chargeable; or otherwiſe to detain him ſtill in priſon, if the caſe ſo require it.

I will put your Lordſhip in mind of a caſe, and it was *Paſch.* 9 *Edw.* III. *M.* 3. I will cite by the *Placita*, becauſe my Book is not paged as other Books are; it is in the caſe of a *Ceſſavit*.

In that caſe there were two things conſiderable: the one that there was a ſignification of the King's pleaſure paſt, and that determined with him: the other, that though there was a ſignification of the King's pleaſure before, yet there comes after that a Writ; and that was another ſignification of the King's pleaſure, that the Priſoner ſhall be brought hither *ad ſubjiciendum*, to ſubmit himſelf to puniſhment, if he have deſerved it; or *ad recipiendum*, to receive his enlargement, and be delivered, if there be no cauſe of his impriſonment.

And if upon an *Habeas Corpus*, a cauſe of commitment be certified, that cauſe is to be tried here before your Lordſhip. But if no cauſe be ſhewn, then the proceedings muſt be *ut curia noſtra ad mar' contigerit*, the Court muſt do that which ſtands with Law and Juſtice, and that is to deliver him.

My Lord, I ſhall be bold to move one word more touching this return: I conceive that every Officer to a Court of Juſtice muſt make his return of his own act, or of the act of another, and not what he is certified of by another.

But in this caſe the Warden of the *Fleet* doth not certify himſelf, of himſelf, that this Gentleman was commanded to him by the King, but that he was certified by the Lords of the Council, that it was the King's pleaſure that he ſhould detain him. But in our caſe the Warden of the *Fleet* muſt certify the immediate cauſe, and not the cauſe of the cauſe, as he doth by this return; *Detentus eſt ſub cuſtodia mea per ſpeciale mandatum Domini Regis mihi ſignificatum per Warrantum duorum de Privato Concilio*; that is not the uſe in law, but he ought to return the primary cauſe, and not the ſubſequent cauſe: as in 32 *Edw.* III. return, *Rex vicecom'* 87. in a Writ *de homine replegiando*, againſt an Abbot, the Sheriff returns, that he hath ſent to the Bailiff of the Abbot, and he anſwered him, that the party was the Abbot's villain, and ſo he cannot deliver him; that it is held an inſufficient return, and a new *Alias* was granted. But if the Sheriff had returned, that the Abbot did certify him ſo, it had been good; but he muſt not return what is certified him by another.

In one of the precedents that hath been noted, as that of *Parker*, 22 *Hen.* VIII. there the Guardian of the priſon certifies, that Parker *detentus eſt ſub cuſtodia mea per mandatum Domini Regis mihi nunciatum per* Robertum Pecke; now our caſe is by the nunciation of many, but in law *majus & minus non variant in ſpeciem*, the certification of one and of many is of the ſame effect, although in moral underſtanding there may be a difference.

Trin. 2 *Edw.* III. *Rot.* 46. in this Court in 21 *Edw.* III in the printed Book there is a piece of it: the Abbot of *Bury* brings a prohibition out of this Court, the Biſhop of *Norwich* pleaded in bar of that, *Quod mihi teſtificatum quod continetur in Archivis*, that he is excommunicated; there were two exceptions taken to this caſe in this precedent, and they are both in one caſe: the firſt was, that no cauſe appeareth, why he was excommunicated; there may be cauſes why he ſhould be excommunicated, and then he ſhould be barred, and there may be cauſes why the excommunication ſhould not bar him: for it may be the excommunication was for bringing the action, which was the King's Writ; and therefore becauſe there was no cauſe of the excommunication returned, it was ruled that it was not good. The other reaſon is that upon the Roll, which is *mihi teſtificatum*.

Now every man, when he will make a Certificate to the Court, *Proprium factum ſuum non alterius ſignificare debet*, he muſt inform the Court of the immediate act done, and not that ſuch things are told him, or that ſuch things are ſignified unto him; but that was not done in this caſe, and therefore it was held inſufficient, and ſo in this caſe of ours I conceive the Return is inſufficient in the form. There is another cauſe, my Lord, for which I conceive this return is not good.

But firſt I will be bold to inform your Lordſhip, touching the Statute of *Magna Charta* 29. *Nullus liber homo capiatur vel impriſonetur, &c. nec ſuper eum mittimus niſi per legale judicium parium ſuorum, vel per legem terræ.*

That in this Statute theſe words *in Carcerem* are omitted out of the printed Books: for it ſhould be *nec eum in Carcerem mittimus*. For theſe words *per legem terræ*; what *Lex terræ* ſhould be, I will not take upon me to expound, otherwiſe than I find them to be expounded by Acts of Parliament; and this is, that they are underſtood to be the proceſs of the law, ſometimes by Writ, ſometimes by Attachment of the perſon: but whether *ſpeciale mandatum Domini Regis* be intended by that or no, I leave it to your Lordſhip's expoſition upon two petitions of the Commons, and anſwer of the King, in 36 *Edw.* III. N°. 9. and N°. 20.

In the firſt of them the Commons complain that the great Charter, the Charter of the Foreſt, and other Statutes were broken, and they deſire that for the good of himſelf and of his people, they might be kept and put in execution, and that they might not be infringed by making an arreſt by ſpecial command, or otherwiſe: and the anſwer was, that the aſſent of the Lords eſtabliſhed and ordained, that the ſaid Charter and other Statutes ſhould be put in execution according to the petition, and that is without any diſturbance by arreſt by ſpecial command or otherwiſe; for it was granted, as it was petitioned.

In the ſame year, for they were very careful of this matter, and it was neceſſary it ſhould be ſo, for it was then an uſual thing to take men by Writs *quibuſdam de cauſis*, and many of theſe words cauſed many Acts of Parliament; and it may be ſome of theſe Writs may be ſhewn: and I ſay in the ſame year they complained that men were impriſoned by ſpecial command, and without Indictment or other legal Courſe of law, and they deſired that thing may not be done upon men by ſpecial command againſt the great Charter.

The King makes anſwer, that he is well pleaſed therewith: that was the firſt anſwer; and for the future he hath added farther, if any man be grieved, let him complain, and right ſhall be done unto him. This, my Lord, is an explanation of the great Charter, as alſo the Statute of 37 *Edward* III. *ch.* 18. is a Commentary upon it, that men would not be committed upon ſuggeſtion made to the King, without due proofs of law againſt them, and ſo it is enacted twice in one year.

We find more printed Books, as in *Hen.* VI. *Mrus de fiacts*, *Fitz.* 182. which is a ſtrong caſe, under favour, in an action of treſpaſs for cutting down trees. The Defendant ſaith, That the place where the trees are cut, is parcel of the Manor of *B.* whereof the King is ſeized in fee, and that the King did command him to cut them: and the opinion of the Court was, that this was no good plea, without ſhewing the ſpecialty of the command; and they ſaid, if the King command me to arreſt a man, and I arreſt him, he ſhall have an action of falſe impriſonment againſt me, although it were done in the King's preſence.

In 1 *Joh cap.* 7. *fol.* 46. it is in print, and there we leave it.

Huſſey Chief Juſtice ſaith, that Sir *John Markham* told King *Edw.* IV. that he could not arreſt a man upon ſuſpicion of Felony or Treaſon, as any of his ſubjects might; becauſe if he ſhould wrong a man by ſuch arreſt, the parties could have no remedy againſt him, if any man ſhall ſtand upon it. Here is a ſignification of the King's pleaſure, not to have the cauſe of the commitment examined; he hath here another ſignification of his pleaſure by Writ, whereby the party is brought hither *ad ſubjiciendum & recipiendum*, that he hath made your Lordſhip judge of that, which ſhould be objected againſt this Gentleman, and either to puniſh him, or to deliver him; and if there be no cauſe ſhewn, it is to be intended that the party is to be delivered, and that it is the King's pleaſure it ſhould be ſo: and the Writ is a ſufficient Warrant for the doing of it, there being no cauſe ſhewn of the impriſonment. And now, my Lord, I will ſpeak a word to the Writ of *de homine replegiando*, and no other Writ, for that was the common Writ; and the four cauſes expreſſed in that Statute, to-wit, the death of a man, the command of the King, or his Juſtice, or Foreſt, were excepted in that Writ before that Statute made, as appears *Bracton* 133. ſo that the Writ was at the Common-Law before that Statute.

And

And it appears by our Books, that if a Man be brought hither by an *Habeas Corpus*, though he were impriſoned *de morte hominis*, as in the 21 *Edw.* IV. 7. *Winckfield* was bailed here, this Court bailed him, for he was brought hither *ad ſubjiciendum & recipiendum*, and not to lie in Priſon God knows how long; and if the Statute ſhould be expounded otherwiſe, there were no bailing Men outlawed, or Breakers of Priſon, for they are not within this Statute, and yet this Court doth it at pleaſure.

But plainly by the Statute itſelf, it appears, that it meant only the common Writ; for the Preamble recites, that the Sheriffs and others had taken and kept in Priſon Perſons detected of Felony, and let out to Plevin ſuch as were not repriſable, to grieve the one Party, and to the Gain of the other; and foraſmuch as before this time it was not determined what Priſoners were repriſable, and what not, but only in certain Caſes were expreſſed, therefore it is ordained, *&c.*

Now this is no more than for Direction to the Keepers of the Priſons; for it leaves the Matter to the Diſcretion of the Judges, whether bailable or not; for when the Statute hath declared who are repleviable, who are not, as Men outlawed, thoſe who have abjured the Realm, Breakers of Priſon, Burners of Houſes, Makers of falſe Money, counterfeiting of the King's Seal, and the like; it is then ordained, that if the Sheriff, or any other, let any go at large by Surety, that is not repriſable, whether he be Sheriff, Conſtable, or any other that hath the keeping of Priſons, and thereof be attainted, he ſhall loſe his Office and Fee for ever; ſo that it extends to the common Gaolers and Keepers of Priſons, to direct them in what Caſes they ſhall let men to bail, and in what Caſes not: And that they ſhall not be Judges whom to let to replevin, and whom to keep in Priſon; but it extends not to the Judges, for if the Makers of the Statute had meant them in it, they ſhould have put a Pain or Penalty upon them alſo.

So then I conclude, under your Lordſhip's Favour, that as this Caſe is, there ſhould have been a Cauſe of the Commitment expreſſed, for theſe Gentlemen are brought hither by Writ *ad ſubjiciendum*, if they be charged; and *ad recipiendum*, if they be not charged; and therefore in regard there is no Charge againſt them, whereupon they ſhould be detained in Priſon any longer, we deſire that they may be bailed or diſcharged by your Lordſhip.

Mr. Selden's *Argument at the* King's-Bench *Bar the ſame Day.*

MY Lords, I am of Counſel with Sir *Edmund Hampden*; his caſe is the ſame with the other two Gentlemen: I cannot hope to ſay much, after That that hath been ſaid; yet if it ſhall pleaſe your Lordſhip, I ſhall remember you of ſo much as is befallen my lot. Sir *Edward Hampden* is brought hither by a Writ of *Habeas Corpus*, and the Keeper of the Gatehouſe hath returned upon the Writ, that Sir *Edmund Hampden* is detained in priſon *per ſpeciale mandatum domini Regis, mihi ſignificatum per Warrantum duorum Privati Concilii dicti domini Regis.* And then he recites the Warrant of the Lords of the Council, which is, that they do will and require him to detain this Gentleman ſtill in priſon, letting him know that his firſt impriſonment, *&c.*

May it pleaſe your Lordſhip, I ſhall humbly move you that this Gentleman may alſo be bailed; for under favour, my Lord, there is no cauſe in the return, why he ſhould be any farther impriſoned and reſtrained of his liberty.

My Lord, I ſhall ſay ſomething to the form of the Writ, and of the return; but very little to them both, becauſe there is a very little left for me to ſay.

My Lord, to the form, I ſay it expreſſeth nothing of the firſt caption, and therefore it is inſufficient; I will add one reaſon, as hath been ſaid: the *Habeas Corpus* hath only theſe words, *quod habeas corpus ejus una cum cauſa detentionis, & non captionis.* But, my Lord, becauſe in all impriſonments, there is a cauſe of caption and detention, the caption is to be anſwered as well as the detention.

I have ſeen many Writs of this nature, and on them the caption is returned, that they might ſee the time of the caption, and thereby know whether the party ſhould be delivered or no, and that in regard of the length of his impriſonment.

The next exception I take to the form is, that there is much uncertainty in it, ſo that no man can tell when the writ came to the Keeper of the priſon, whether before the return or after; for it appears not when the King's command was for the commitment, or the ſignification of the Council came to him. It is true, that it appears that the Warrant was dated the 7th of *November*; but when it came to the Keeper of the priſon, that appears not at all: and therefore, as for want of mentioning the ſame time of the caption, ſo for not expreſſing the ſame time when this warrant came, I think the return is faulty in form, and void.

And for apparent contradiction alſo, the return is inſufficient; for in that part of the return which is before the Warrant, it is ſaid, *Quod detentus eſt per ſpeciale mandatum domini Regis.* The Warrant of the Lords of the Council, the very ſyllables of that Warrant are, that the Lords of the Council do will and require him ſtill to detain him, which is contrary to the firſt part of the return.

Beſides, my Lord, the Lords themſelves ſay, in another place and paſſage of the Warrant, that the King commanded them to commit him, and ſo it is their commitment; ſo that upon the whole matter, there appears to be a clear contradiction in the return; and there being a contradiction in the return, it is void.

Now, my Lord, I will ſpeak a word or two to the matter of the return; and that is touching the impriſonment, *per ſpeciale mandatum domini Regis*, by the Lords of the Council, without any cauſe expreſſed: and admitting of any, or either, or both of theſe to be the return; I think that by the conſtant and ſettled Laws of this Kingdom, without which we have nothing, no man can be juſtly impriſoned by either of them, without a cauſe of the commitment expreſſed in the return. My Lord, in both the laſt Arguments the Statutes have been mentioned and fully expreſſed: yet I will add a little to that which hath been ſaid.

The Statute of *Magna Charta*, *cap.* 29. that Statute if it were fully executed as it ought to be, every man would enjoy his liberty better than he doth.

The Law ſaith expreſly, no Freeman ſhall be impriſoned without due proceſs of the law; out of the very body of this Act of Parliament, beſides the explanation of other Statutes, it appears, *Nullus liber homo capiatur vel impriſonatur niſi per legem terræ.* My Lord, I know theſe words *legem terræ*, do leave the queſtion where it was, if the interpretation of the Statute were not. But I think under your Lordſhip's favour, there it muſt be intended by due courſe of law, to be either by preſentment or by indictment.

My Lords, if the meaning of theſe words, *per legem terræ*, were but, as we uſe to ſay, according to the laws, which leaves the matter very uncertain; and *per ſpeciale mandatum, &c.* be within the meaning of theſe words, according to the law; then this Act had done nothing. The Act is, No Freeman ſhall be impriſoned but by the law of the land. If you will underſtand theſe words, *per legem terræ*, in the firſt ſenſe, this Statute ſhall extend to Villeins as well as to Freemen; for if I impriſon another man's Villein, the Villein may have an action of falſe impriſonment. But the Lords and the King (for then they both had Villeins) might impriſon them; and the Villein could have no remedy. But theſe words in the Statute, *per legem terræ*, were to the Freeman, which ought not to be impriſoned, but by due proceſs of law: and unleſs the interpretation ſhall be this, the Freeman ſhall have no privilege above the Villein.

So that I conceive, my Lords, theſe words, *per legem terræ*, muſt be here ſo interpreted, as in 42 *Eliz.* The Bill is worth obſerving. It reciteth that divers perſons without any writ or preſentment were caſt into priſon, *&c.* that it might be enacted, that it ſhould not be ſo done hereafter. The anſwer there is, that as this is an article of the great Charter, this ſhould be granted: So that it ſeems the Statute is not taken to be an explanation of that of *Magna Charta*, but the very words of the Statute of *Magna Charta.*

I will conclude with a little obſervation upon theſe words, *nec ſuper eum mittimus*; which words of themſelves ſignify not ſo much, a man cannot find any fit ſenſe for them.

But, my Lord, in the 7th year of King *John*, there was a great Charter, by which this Statute in the 9th of *Henry* III. whereby we are now regulated, was framed, and there the words are, *nec eum in carcerem mittimus*, We will not commit him to priſon; that is, the King himſelf will not; and to juſtify this, there is a ſtory of that time in *Matthew Paris*, and in that Book this Charter of King *John* is ſet down at large, which Book is very authentick, and there it is entered: and in the 9th of *Henry* III. he ſaith, that the Statute was renewed in the ſame words with the Charter of King *John*. And, my Lord, he might know it better than others, for he was the King's Chronologer in thoſe times: and therefore, my Lord, ſince there be ſo many Reaſons, and ſo many Precedents, and ſo many Statutes, which declare that no Freeman whatſoever ought to be impriſoned but according to the laws of the land; and that the liberty of the ſubject is the higheſt inheritance that he hath; my humble requeſt is, that according to the ancient laws and privileges of this Realm, this Gentleman, my Client, may be bailed.

The Argument of Mr. Calthrop, *at the King's-Bench Bar*, 22 Novembris, Mich. 3 Caroli Regis.

SIR *John Corbet* being brought to the King's-Bench Bar, with Sir *Edmund Hampden*, Sir *Walter Earl*, and Sir *John Heveningham*, who were alſo brought thither by ſeveral writs of *Habeas Corpus*, with the ſame return; I being aſſigned by the Court of King's-Bench, upon a petition delivered, to be of Counſel with Sir *John Corbet*, did move that Sir *John Corbet* might be diſcharged of his impriſonment, and put in bail; for I did conceive that the return of this *Habeas Corpus* was inſufficient, both in the matter of the return, and in the manner of the return, and ſo there ought not to be a longer detaining of Sir *John Corbet* in priſon. For as to the manner of the return, it is not laid down preciſely, that Sir *John Corbet* is detained in priſon by the ſpecial commandment of the King, ſignified by the warrant of the Lords of the Council; the which is not a direct affirmation that he is detained by the ſpecial command of the King, but that the Lords of the Council, by their warrant, have ſignified unto him that he was committed and ſtill detained by the ſpecial command of the King.

And howſoever the Lords of the Council had ſignified that he was detained by the commandment of the King, yet it may be he was not detained by the commandment of the King; for their ſignification of the ſame by warrant may be untrue, and the warrant of the Lords of the Council that is returned *in hæc verba*, importeth that the Keeper of the Gatehouſe rather took upon him to return, that it was ſignified unto him by the warrant of the Lords of the Council, that Sir *John Corbet* was committed and detained by the ſpecial commandment of the King; becauſe if the Keeper had taken upon him to affirm it upon his return, then needed he not to have returned the warrant of the Lords of the Council: and the warrant itſelf ſheweth that he had only his information from the Lords of the Council. For their warrant is to let the Keeper know, that both the firſt commitment, and this direction for the continuing of him in priſon, were and are by his Majeſty's ſpecial commandment; and I do not ſee, as this return is made, that an accord upon the caſe can lie upon the Keeper of the Gatehouſe, if Sir *John Corbet* was not committed nor detained by the ſpecial commandment of the King, ſo long as the warrant of the Lords of the Council be returned as it was made, becauſe he doth return the ſame as the Significavit of the Lords by their warrant. *Regiſter* 65. the writ of Excommunicat' *Capiend'* goeth, *Rex vicecom' Lincoln' S. ſignificavit nob' venerabilis pater Henricus Lincolnienſis Epiſcopus per Literas ſuas Patentes quod R. ſuus Parochial' propter ſuam manifeſtam contumac' authoritate ipſius Epiſc' ordin' excom' eſt, nec ſe vult per cenſuram Eccleſiaſticam juſticiar' &c. tibi præcipimus quod prædict' R. per corpus ſuum ſecundum conſuetud' Angliæ juſtic' &c.* And yet no man will ſay that there is an information of the King, that *R.* is excommunicated, but only that the Biſhop of *Lincoln* had ſignified unto him that *R.* was excommunicated. And in *Fitz. Nat. Br.* 663. and *Regiſter* 65. it appears that the form of the writ of Excommunication *deliberand'* is, *Rex Vicecom' London Salut'. Cum Thom' Jay allutar' London' qui nuper ad denuntiat. venerabil' patris Archiep' Eborum pro contumaciis ſuis ratione contractus in civitate noſtra Eborum habit' ut dicebat. tanquam excom' & claves Eccleſiæ contemnent' per corp' ſuum ſecundum conſuetud' Angliæ per te juſtic' præcepimus, donec &c. eſſet ſatisfact' eid' Archiepiſcop. ad ſatisfaciendum Deo et ſanctæ eccleſiæ, ſufficientem expoſuit cautionem, per quod eidem Archiepiſcopus offic. Archidiac. London. mutuæ viciſſitudin' obtentu ſcripſit ut ipſum abſolvat ab excom' ſenten' memorata ſicut idem Archiepiſcopus per Literas ſuas patentes nob' ſignificavit, tibi præcipimus quod præd' Thom. cum tibi conſtare poterit ipſum ab excom' prædict' per prædict' Official' abſolvi a Priſon' qua detinetur ſi ea occaſione & non alia detineat' in eadem ſine dilatione deliberari fac'.* And yet it can-

cannot be ſaid, that although the King recited in his writ that the Archbiſhop had ſignified unto him that he had written unto the Official of the Arch-deacon, that the King ſaid, that the Archbiſhop had written; for he doth not affirm ſo much preciſely, but only referreth himſelf unto the Certificate of the Archbiſhop.

Plowden 122. *Buckley* and *River*'s caſe, it is put, that if a man will bring an action of debt upon an obligation, and declare that it appears by the obligation that the defendant ſtood bound to the plaintiff in twenty pounds, the which he hath not paid, this declaration is not good; inſomuch as it is not alledged by matter in fact, that he was bound unto him in twenty pound, but the deed is alledged by recital only, 21 *Ed.* IV. 43.

Plowden Com' 126. & 143. *Browning* and *Beeſton*'s caſe.

The Abbot of *Waltham* being appointed collector of a Diſme granted unto the King, in diſcharge of himſelf, in the Exchequer, pleadeth, *Quo inter recordat' Ter. Paſc. anno* 15. *domini Regis Edwardi* I. *inter alia continetur quod R.* II. had granted unto the predeceſſors of the ſaid Abbot, that he nor any of his ſucceſſors ſhould be any collectors of any Diſmes to be granted afterwards, and it was adjudged that this plea was ill.

For the ſaying [It was contained among the Records], it is no preciſe affirmation that the King had granted to his predeceſſors, that they ſhould be diſcharged of the collecting any Diſmes, but it is only an allegation by way of recital, and not by preciſe affirmation, the plea may not be good.

2 & 3 *Mar. Dyer* 117. & 118. the plaintiff's reply in bar of all pleadeth, that *John* Abbot of *W.* was ſeized of his lands in right of his Church, and ſo ſeized by the aſſent of the tenant by indenture, 14 *Hen.* IV. *teſtat' quod prædict' Abbat' & convent' demiſerunt & tradiderunt* unto the plaintiff; and ruled, that this form of pleading was ill, inſomuch as it was not alledged by preciſe affirmation, *quod demiſerunt, ſed indentura teſtatur, quod demiſerunt*; which is not ſufficient, inſomuch as it is only an allegation by way of recital, that the indenture doth witneſs, and the ſame indenture may witneſs ſo much, and yet not be a demiſe.

And if in pleading there muſt be direct affirmation of the matter alledged, then *à fortiori* in a return, which muſt be more preciſe than in pleading; and ſo by all the caſes I have formerly touched, it appeareth that this return is no expreſs affirmation of the Keeper of the Gatehouſe, that Sir *John Corbet* is detained in priſon by the ſpecial commandment of the King, but only an affirmation of the Lords of the Council, who had ſignified unto him that his detainment in priſon was by ſpecial command of the King.

The return, which ought to be certain, and punctual, and affirmative, and not by the way of information out of another man's mouth, may not be good, as appeareth by the ſeveral books of our Law.

23 *Ed.* III. *Rex vic'* 181. upon a *Homine replegiando*, againſt the Abbot of *C.* the Sheriff returneth that he had ſent to the Bailiff of the Abbot, that anſwered him, that he was the Villein of the Abbot, by which he might not make deliverance, and a *Sicut alias* was awarded, for his return was inſufficient; inſomuch that he had returned the anſwer of the Bailiff of the Abbot, where he ought to have returned the anſwer of the Abbot himſelf out of his own mouth.

Trin. 22 *Ed.* II. *Rot.* 46. *parent' vill' & Burg. Eveſque de Norwich, repl'* 68. *Nat. Br. Caſe* 34. *Fitz. Nat. Br.* 65. & 34 *Ed.* III. *Excom'* 29. the caſe appeareth to be ſuch in a treſpaſs; the defendant pleadeth, the plaintiff is excommunicate, and ſheweth forth the letter of the Biſhop of *Lincoln*, witneſſing that for divers contumacies, &c. and becauſe he had certified no *excommunic'* done by himſelf, but by another, the letter of Excommunication was annulled, for the Biſhop ought to have certified his own act, and not the act of another.

Hillarii 21 *Hen.* VIII. *Rot.* 37. it appeareth by the return of an *Habeas Corpus*, that *John Parker* was committed to priſon for ſecurity of the peace, and for ſuſpicion of felony, as *per mandatum domini Regis nunciatum per Robertum Peck, de Clifford's-Inn*; and upon his return, *John Parker* was bailed: for the return *Commiſſ. fuit per ſpeciale mandatum domini Regis, nunciatum per Robertum Peck*, was not good, inſomuch that it was not a direct return that he was committed *per mandatum domini Regis*.

And for the firſt point, I conclude, that this return is inſufficient in form, inſomuch, that it doth not make a preciſe and direct return, that he was committed and detained by the ſpecial command of the King, but only as it was ſignified by the warrant of the Lords of the Council, which will not ſerve the turn. And upon the book of 9 *Hen.* VI. 44. the return of the cauſe of a man's Impriſonment ought to be preciſe and direct upon the *Habeas Corpus*, inſomuch as thereby to be able to judge of the cauſe, whether it be ſufficient or not: for there may not any doubt be taken to the return, be it true or falſe, but the Court is to accept the ſame as true; and if it be falſe, the party muſt take his remedy by action upon the caſe.

And as concerning the matter of the return, it will reſt upon theſe parts:

Firſt, Whether the return, that he is detained in priſon by ſpecial commandment of our Lord the King, be good or not, without ſhewing the nature of the commandment, or the cauſe whereupon the commitment is grounded in the return?

The ſecond is, Whether the time of the firſt commitment by the commandment of the King, not appearing to the Court, is ſufficient to detain him in priſon?

Thirdly, Whether the impriſonment of the ſubjects without cauſe ſhewed, but only by the commandment of the King, be warrantable by the Laws and Statutes of this Realm?

As to the firſt part, I find by the books of our law, that commandments of the King are of ſeveral natures, by ſome of which the impriſonment of a man's body is utterly unlawful: and by others of them, although the impriſonment may be lawful, yet the continuance of him without bail or mainpriſe, will be utterly unlawful.

There is a verbal command of the King, which is by word of mouth of the King's only; and ſuch commandment by the King, by the books of our law, will not be ſufficient either to impriſon a man, or to continue him in priſon, 16. 6. *Monſtrans de faict ſi*, upon an action of treſpaſs brought for cutting of trees, the defendant pleadeth that the place where he cut them is parcel of the Manor of *D.* whereof the King is ſeized in fee, and the King commanded him to cut the trees; and the opinion of the Court there is, that the plea in bar was ill, becauſe he did not ſhew any ſpecial commandment of the King; and there it is agreed by the whole Court, that if the King commandeth one to arreſt another, and the party commanded did arreſt the other, an action of treſpaſs or falſe impriſonment is maintainable againſt the party that arreſted him, although it were done in the preſence of the King. 39 *H.* VI. 17. where one juſtifieth the ſeizure of the goods of a perſon that is outlawed by the commandment of the King, ſuch a party being no Officer, may not in an action brought againſt him have any aid of the King; for ſuch a commandment given to one that is not an Officer, will not any ways avail him, that is to juſtify himſelf by the return of that commandment.

37 *Hen.* VI. 10. If the King give me a thing, and I take the ſame by his commandment by word of mouth, it is not juſtified by law; nothing may paſs without matter of Record.

10 *Hen.* VII. 7. & 17. 18. it is agreed, that Juſtices may command one to arreſt another that is in their view or preſence, but not one that is out of their view or preſence. (1 *Croke. Holliday V. Oxenbridge.*)

And *Keble* 10 *Hen.* VII. 13. ſaid, that where one is arreſted by a parol command in their view or preſence, it is fitting that a record may be made of it, inſomuch, that without ſuch a record there can hardly be a juſtification in another Term.

Secondly, There is a commandment of the King by his Commiſſion, which, according to *Calvin*'s caſe in *Coke*'s ſeventh Report, it is called by him, *breve mandatum non remediabile*; and by virtue of ſuch a commandment, the King may neither ſeize the goods of his ſubject, nor impriſon his body, as it is reſolved in 42 *Aſſ. pl.* 5. where it is agreed by all the Juſtices, that a Commiſſion to take a man's goods, or impriſon his body without indictment or ſuit of the party, or other due proceſs, is againſt the law.

Thirdly, There is a commandment of the King, which is grounded upon a ſuggeſtion made to the King or to his Council; and if a man be committed to priſon by ſuch a ſuggeſtion, by commandment of the King, it is unlawful, and not warranted by the Law of the Realm.

The 25 of *Edw.* III. cap. 4. *de proviſionibus*, where it is contained in the great Charter of the *Franchiſes* of *England*, that none ſhall be impriſoned or arreſted of his Freehold or of his Franchiſes, nor of his free Cuſtoms, but by the law of the land.

It is awarded, conſented and eſtabliſhed, that from henceforth none ſhall be taken by petition or ſuggeſtion made to our Sovereign Lord the King, or to his Council, until it be by indictment or preſentment of his good and lawful neighbours, where ſuch deeds are done in due manner, or by proceſs made by writ original at the common law; nor that none ſhall be arreſted of his Franchiſes, nor of his Freehold, unleſs he be duly brought in, and anſwer, and forejudged of the ſame by way of law: and if any thing be done againſt the ſame, it ſhall be redreſſed and holden for nought.

37 *Ed.* III. *cap.* 10. although it be contained in the great Charter, that no man be taken or impriſoned or put out of his freehold, without due proceſs of the law; nevertheleſs, divers perſons make falſe ſuggeſtions to the King himſelf, as well for malice as otherwiſe, whereby the King is often grieved, and divers of the Realm put in great damages, contrary to the form of the ſame Statute.

Wherefore it is ordained, that all they that make ſuch ſuggeſtions, be ſent with their ſuggeſtions to the Chancellor or Treaſurer, and they and every of them find ſureties to purſue their ſuggeſtions, and endure the ſame pain as the other ſhould have had in caſe that his ſuggeſtion be found untrue; and that then proceſs of the law be made againſt them, without being taken or impriſoned, againſt the form of the ſame Charter, and other Statutes.

So that it appears by theſe ſeveral Statutes, that ſuch commandments of the King as are grounded upon ſuggeſtion, either made to himſelf or to his Council, for the impriſonment of a man, are againſt the law.

Fourthly, I find that there is a commandment of the King which is made under his hand, with his ſignet; for in the fourth and the fifth of *Philip* and *Mary*, *Dyer* 162. where the Statute of 1 *Ric.* II. *cap.* 11. reſtraineth the Warden of the Fleet for letting any man at large that is in upon judgment at the ſuit of any man, except it be by Writ or other commandment of the King; it was doubted, whether the Queen by letter under her hand and privy-ſignet doth give commandment to the Warden of the Fleet to ſuffer a man that is there in execution to go about his buſineſs, or the affairs of the Queen; whether this be a warrantable command or not within the Statute: and the Law hath always been conceived upon that book, that ſuch a commandment is not warrantable by Law. And if ſuch a command will not ſerve the turn, to give unto a man his liberty, which the law favoureth, and had the countenance of an Act of Parliament for the doing of it; then I conceive it ſhould be a more ſtrong caſe, the King ſhould not have power by his commandment to impriſon a man without due proceſs of the Law, and reſtrain him of his liberty, when there had been ſo many Acts of Parliament made for the liberty of the ſubjects.

Fifthly, I do find that there is the commandment of the King, which is by his Writ under the Great-Seal, or the Seal of the Court out of which it iſſueth, *Regiſt. f.* 69, & 70. In the Writ *de cautione admittenda*, I find the words, *mandatum Regis* expounded to be *breve Regis*, for the Writ goeth: *Rex vic' ſalutem. Cum nuper ad requiſitionem S. de Iſle canonici Lincolne venerabilis Patris H. Lincoln. Epiſcopi ipſo in remotis agente Vicarii general. per Literas ſuas Patentes nobis ſignificantes Nicho. B. dict. Lincoln. Dioc. propter manifeſtam contumaciam Authoritate ipſius Epiſcopi Ordinar. excommunicat. eſſe nec ſi velle, &c. vobis præceperimus quod præfat. &c. ſatisfactum ex parte ipſius N. qui virtute mandati noſtri prædict. per vos Capt. & in Priſon. noſtra de Newgate detent. exiſtit, &c. nos nolentes quod præfat. N. per breve noſtrum prædict. via præcludatur, &c. proſequi poſſit in forma Juris maxim. &c. integer eſſe debeat, vobis præcipimus quod ſcire &c. quod ſit &c. quare prædict. N. a Priſona prædict. deliberari non debeat. Rex juſticiar' ſuis de Banco ſalut. Cum nos nuper ad ſignificationem S. de Iſle &c. uſque ibi excommunicat. extitiſſe, nec ſe velle &c. eſſet ſatisfactum ex parte ipſius N. virtute mandati noſtri præd. cap. & in Priſona noſtra de Newgate tunc detenti, &c. et nolentes eo prætextu præfato N. per breve noſtrum præd. via præcludat. quo minus appellat. ſuæ negotium &c. proceſſerat. & appellant. ſtatut. &c. per breve noſtrum præceperimus præfat. vic. quod ſcire facerent, &c. vobis ſignific. & conſult.*

ſult. & circumſpect. in placitis per breve prædict. coram vobis pendentibus procedere valeatis ſecundum legem & conſuetudinem Regni noſtri.

Staf. 72. 5 *E.* III. *c.* 8. 1 *E.* III. *c.* 9. ſaith, that every *Capias* in a perſonal action is a commandment of the King, for it is *Præcipimus tibi quod capias, &c.* and yet the defendant, as there it is ſaid, is repleviſable by the Common Law. 7 *R.* 20. *a. Calvin*'s caſe, ſaith, that there are two kind of Writs, *viz. brevia mandatoria & remedialia, & brevia mandatoria & non remedialia. Brevia mandatoria & remedialia*, are Writs of right, formed on, *&c.* debts, treſpaſſes, and ſhortly all Writs real and perſonal, whereby the party wronged is to recover ſomewhat, and to be remedied for that wrong which is done unto him.

Sixthly, I do find by our books of Law, and by the *Regiſter*, that this ſpecial *mandatum domini Regis*, is expounded to be this Writ, and that the law taketh no notice of any other *ſpeciale mandatum*, than by this Writ. The which being ſo, when the return is made, that he is impriſoned and detained in priſon by the ſpecial commandment of the King, how can the Court adjudge upon this return, that Sir *John Corbet* ought to be kept in priſon, and not to be bailed; when the nature of the ſpecial commandment is not ſet forth in the return, whereby it may appear unto the Court that he is not bailable? In *Bracton*, *c.* 12. 112. you ſhall ſee a Writ reciting, *Præcipimus tibi quod non implacites nec implacitari permittas talem de libero tenemento ſuo tali villa, ſint ſpeciali præcepto noſtro vel Capitalis Juſticiar' noſtri.*

And the reaſon of it there is given, *quia nemo de libero tenemento ſine brevi ſive libello conventionali niſi gratis voluerit reſpondebit.* So as the exception of ſpecial commandment by the very book, appeareth to be *breve ſive libellus conventionalis. Regiſt.* 271. the Writ of Manucaption goeth in this manner: *Rex vic. Salut. Cum nuper aſſignaverimus dilectos & fideles noſtros A. B. & C. D. ad inquiſitiones de forſtallariis. & tranſgreſſionibus contra formam ſtatuti dudum apud Winton. editi in com. tuo faciend. & ad illos quos inde culpabiles invenirent. capiend. & in Priſona noſtra ſalvo cuſtod. faciend. donec aliud inde præcipiſſemus quod C. D. & E. pro hujuſmodi forſtallamentis & tranſgreſſionibus unde coram præfat. A. B. & C. D. indict. fuerint, capt. & in priſona de L. detent. exiſt. à qua deliberari non poſſunt, ſine mandato noſtro ſpeciali, nos volentes eiſdem C. D. & E. gratiam in hac parte facere ſpecialem, tibi præcipimus quod ſi prædict. C. D. & E. occaſione prædict. & non alia in Priſona prædict. detineantur, & pro tranſgreſſionibus illis ſecundum legem & conſuetudinem Regni noſtri Angliæ replegiabiles exiſtunt &c. tunc impos' C. D. & E. a Priſona prædict. ſi ea occaſione, & non alia detineantur in eadem, interim deliberari facias per manucapt. ſupradict. & habeas ibi tunc coram præfat. Juſticiar. nomina manucapt. illorum & hoc breve.*

And the expoſition of this *ſpeciale mandatum domini Regis*, mentioned in the Writ, is expounded to be *breve domini Regis*, and thereupon is this Writ directed unto the Sheriff for the delivery of them.

And ſo much for the firſt branch of the firſt part: I conclude, that the ſpecial command of the King, without ſhewing the nature of the commandment of the King, is too general, and therefore inſufficient; for he ought to have returned the nature of the commandment of the King, whereby the Court might have adjudged upon it, whether it were ſuch a commandment that the impriſonment of Sir *John Corbet* be lawful or not; and whether it were ſuch a commandment of the King, that although the impriſonment were lawful at the firſt, yet he might be bailed by law.

And as for the general return of *ſpeciale mandatum domini Regis*, without ſhewing the cauſe of the impriſonment either ſpecial or general, I hold, that for that cauſe alſo the return is inſufficient,

Firſt, in regard of the *Habeas Corpus*, which is the commandment of the King only, made the 15th of *November*.

According to the *Teſte* of the Writ, commanding the Keeper of the Gatehouſe to have the body of Sir *John Corbet*, *una cum cauſa detentionis, & ad ſubjiciendum & recipiendum ea quæ curia noſtra de eo ad tunc ibid. ordinar. contingat'*; ſo as the commandment of the Writ being to ſhew the cauſe of his detaining in priſon, the Keeper of the Gatehouſe doth not give a full anſwer unto the Writ, unleſs the cauſe of the detainment in priſon be returned; and the Court doth not know how to give their judgment upon him, either for his impriſonment, or for his diſcharge, according to the purport of the Writ, when there is not a cauſe returned. And foraſmuch as upon an *Excommengement* certified, it hath been adjudged oftentimes that Certificates were inſufficient, where the cauſe of the commitment hath not been certified; that the Court might adjudge whether the Eccleſiaſtical Judges, who pronounced the excommunication, had power over the original cauſe according to the Book of 14 *Hen.* IV. 14. 8. *Rep.* 68. *Trollop*'s caſe, and 20 *Edw.* III. *Excommengement* 9.

So upon an *Habeas Corpus* in this Court, where a man hath been committed by the Chancellor of *England*, by the Council of *England*, Marches of *Wales*, Warden of the Stannaries, High-Commiſſion, Admiralty, Dutchy, Court of Requeſt, Commiſſion of Sewers or Bankrupts; it hath ſeveral times been adjudged that the return was inſufficient, where the particular cauſe of impriſonment hath not been ſhewn, to the intent that it might appear, that thoſe that committed him had juriſdiction over the cauſe, otherwiſe he ought to be diſcharged by the law: and I ſpare to recite particular cauſes in every kind of theſe, becauſe there are ſo many precedents of them in ſeveral ages of every King of this Realm: and it is an infallible maxim of the law, That as the Court of the King's-Bench, and Judges, ought not to deny an *Habeas Corpus* unto any priſoner that ſhall demand the ſame, by whomſoever he be committed; ſo ought the cauſe of his impriſonment to be ſhewn upon the return, ſo that the Court may adjudge of the cauſe, whether the cauſe of the impriſonment be lawful or not. And becauſe I will not trouble the Court with ſo many precedents, but ſuch as ſhall ſuit with the cauſe in queſtion, I will only produce and vouch ſuch precedents, where the party was committed either by the commandment of the King, or otherwiſe by the commandment of the Privy-Council, which *Stamford. fol.* 72. termeth the mouth of the King; ſuch Acts as are done by the Privy-Council, being as Acts done by the King himſelf.

And in all theſe cauſes you ſhall find that there is a cauſe returned as well as a *ſpeciale mandatum domini Regis &c.* or *mandatum Privati Concilii domini Regis*, whereby the Court may adjudge of the cauſe, and bail them if they ſhall ſee cauſe.

In the 8th of *Hen.* VII. upon return of an *Habeas Corpus* awarded for the body of one *Roger Sherry*, it appeareth that he was committed by the Mayor of *Windſor* for ſuſpicion of felony, and *ad ſectam ipſius Regis pro quibuſdam feloniis & tranſgreſſionibus ac per mandatum domini Regis.* 21 *Hen* VII. upon the return of an *Habeas Corpus* ſent for the body of *Hugh Pain*, it appeared that he was committed to priſon, *per mandatum dominorum Privati Concilii domini Regis pro ſuſpicione feloniæ.*

Primo Henrici Octavi, Rot. 9. upon the return of an *Habeas Corpus* ſent for the body of one *Thomas Harriſon* and others, it appears that they were committed to the Earl of *Shrewſbury*, being Marſhal of the Houſhold, *per mandatum domini Regis, & pro ſuſpicione feloniæ, & pro homicidio facto ſuper Mare.*

3 & 4 *Philip. & Mariæ*, upon a return of an *Habeas Corpus*, ſent for the body of one *Peter Man*, it appeareth that he was committed *pro ſuſpicione feloniæ, ac per mandatum domini Regis & Reginæ.*

4 & 5 *Philippi & Mariæ*, upon the return of an *Habeas Corpus* ſent for the body of one *Thomas Newport*, it appeared that he was committed to the Tower, *pro ſuſpicione contrafact' monetæ per privatum Concilium domini Regis & Reginæ.*

33 *Elizabethæ*, upon the return of an *Habeas Corpus* for the body of one *Laurence Brown*, it appeareth that he was committed, *per mandatum Privati Concilii dominæ Reginæ pro diverſis cauſis ipſam Reginam tangent' ac etiam pro ſuſpicione proditionis.*

So as by all theſe precedents it appeareth where the return is either, *per mandatum domini Regis*, or *per mandatum dominorum Privati Concilii domini Regis*, there is alſo a cauſe over and beſides the *mandatum* returned. As to that which may be objected, that *per mandatum domini Regis*, or *Privati Concilii domini Regis*, is a good return of his impriſonment, I anſwer,

Firſt, That there is a cauſe: for it is not to be preſumed that the King or Council would commit one to priſon without ſome offence; and therefore this *mandatum* being occaſion'd by the offence or fault, the offence or fault muſt be the cauſe, and not the command of the King or Council, which is occaſion'd by the cauſe.

Secondly, It appears that the juriſdiction of the Privy-Council is a limited juriſdiction, for they have no power in all cauſes, their power being reſtrained in certain cauſes by ſeveral Acts of Parliament, as it appeareth by the Statute of 20 *E.* III. *c.* 11. 25 *E.* III. *c.* 1. *Stat.* 4. (*vide* 4 *Inſtit. p.* 53.) the private petition in Parliament permitted in the 1 *R.* II. where the Commons petition that the Privy-Council might not make any ordinance againſt the Common Law, Cuſtoms or Statutes of the Realm; the 4 *Hen.* IV. *cap.* 3. 13 *Hen.* IV. 7. 31 *Hen.* VI. And their juriſdiction being a limited juriſdiction, the cauſe and grounds of their commitment ought to appear, whereby it may appear if the Lords of the Council did commit him for ſuch a cauſe as was within their juriſdiction: for if they did command me to be committed to priſon for a cauſe whereof they had not juriſdiction, the Court ought to diſcharge me of this impriſonment. And howſoever the King is *Vicarius Dei in terra*, yet *Bracton*, *cap.* 8. *fol.* 107. ſaith, *quod nihil aliud poteſt Rex in terris cum ſit Miniſter Dei & Vicarius, quam ſolum quod de jure poteſt, nec obſtat, quod dicitur quod principi placet, legis habet vigorem, quia ſequitur in fine legis cum lege Regia quæ de ejus imperio lata eſt; id eſt, non quicquid de voluntate Regis temere præſumptum eſt, ſed animo condendi Jura, ſed quod conſilio Magiſtratuum ſuorum Rege author. præſtant. & habita ſuper hoc deliberatione & tract. rect. fuer. definit. Poteſtat. itaque ſua juris eſt, & non injuriæ.* The which being ſo, then alſo it ought to appear upon what cauſe the King committeth one to priſon; whereby the Judges which are indifferent between the King and his Subjects, may judge whether his commitment be againſt the Laws and Statutes of this Realm, or not.

Thirdly, It is to be obſerved, that the King's command by his writ of *Habeas Corpus*, is ſince the commandment of the King for his commitment; and this being the latter commandment, ought to be obeyed: wherefore that commanding a return of the body *cum cauſa detentionis*, there muſt be a return of ſome other cauſe than *per mandatum domini Regis*, the ſame commandment being before the return of the Writ.

Paſch. 9. *E.* III. *pl.* 30. *fol.* 56. upon a Writ of *Ceſſavit* brought in the County of *Northumberland*, the Defendants plead, That by reaſon of the Country being deſtroyed by wars with the *Scots*, King *Ed.* II. gave command that no Writ of *Ceſſavit* ſhould be brought during the wars with *Scotland*, and that the King had ſent his Writ to ſurceaſe the plea, and he averreth that the wars with *Scotland* did continue.

Hearle that giveth the rule ſaith, That we have command by the King that now is, to hold this plea, wherefore we will not ſurceaſe for any Writ of the King that is dead. And ſo upon all theſe reaſons and precedents formerly alledged, I conclude, that the return that Sir *John Corbet* was committed and detained in priſon, *per ſpeciale mandatum domini Regis*, without ſhewing the nature of the commandment, by which the Court may judge whether the commandment be of ſuch a nature as he ought to be detained in priſon, and that without ſhewing the cauſe upon which the commandment of the King is grounded, is not good. As to the ſecond part, which is, whether the time of the commitment by the return of the Writ, not appearing unto the Court, the Court ought to detain him in priſon, or no? I conceive that he ought not to be continued in priſon, admitting that the firſt commitment by the command of the King were lawful; yet when he hath continued in priſon by ſuch reaſonable time, as may be thought fit for that offence for which he is committed, he ought to be brought to anſwer, and not to continue ſtill in priſon without being brought to anſwer.

For it appears by the books of our laws, that liberty is a thing ſo favoured by the law, that the law will not ſuffer the continuance of a man in priſon for any longer time than of neceſſity it muſt; and therefore the law will neither ſuffer the Party, Sheriffs or Judges to continue a man in priſon by their power and their pleaſure, but doth ſpeed the delivery of a man out of priſon, with as reaſonable expedition as may be.

And upon this reaſon it is reſolved, in 1 & 2 *El. Dyer* 175. & 8 *Ed.* IV. 13. That howſoever the law alloweth that there may be a term between the teſte of an original Writ and the return of the ſame, where there is only a ſummons, and no impriſonment of the body; yet it will not allow that there ſhall be a term between the teſte of a Writ of *Capias*, and the return of the ſame, where the body of a man is to be impriſoned: inſomuch that it will give no way, that the party ſhall have any power to continue the body of a man impriſoned any longer time than needs muſt. 39 *E.* III. 7. 10 *H.* VII. 11. 6 *E.* IV. 69. 11 *E.* IV. 9. 48 *E.* III. 1. 17 *E.* III. 1 & 2 *Hen.* VII.

Keilaway's

Keilaway's Reports do all agree, that if a *Capias* ſhall be awarded againſt a man for the apprehending of his body, and the Sheriff will return the *Capias* that is awarded againſt the party, a *non eſt inventus*, or that *languidus eſt in priſona*, yet the law will allow the party againſt whom it is awarded, for the avoiding of his corporal penance and dureſs of impriſonment, to appear *gratis*, and for to anſwer.

For the law will not allow the Sheriff by his falſe return to keep one in priſon longer than needs muſt, 38 *Aſſ. pl.* 22. *Brooks* impriſonment 100. ſaith, That it was determined in Parliament that a man is not to be detained in priſon, after he hath made tender of his fine for his impriſonment; therefore I deſire your Lordſhip that Sir *John Corbet* may not be longer kept in durance, but be diſcharged according to the law.

L. C. Juſtice. Mr. Attorney, you have heard many learned arguments; if you be provided to anſwer preſently, we will hear you; but if you will have a longer day, for that you are not provided to argue, you may, we will give it you.

Doderidge. If you will, you may ſee the precedents; it may be you have not ſeen ſome of them, and we muſt ſee them too.

Attorn. Gen. *Heath.* May it pleaſe your Lordſhip, the Gentlemen that be of Counſel with the Knights at the Bar, they have ſaid much, and ſpoken very long for their Clients, and to good purpoſe and pertinently. It is a cauſe that carrieth with it a great deal of weight, both towards the King and his Subjects alſo, and I am not ſo haſty to put myſelf upon the main point of this cauſe, when it is almoſt time for your Lordſhip to riſe.

My Lord, the Gentlemen have ſeverally ſpoken, and given and inſiſted upon ſeveral reaſons, and they have cited many precedents. I could ſay ſomething of them at this preſent, and that ſome of them have been miſtaken; and therefore I beſeech your Lordſhip, that I may have time to anſwer, that I may not wrong the cauſe of the King's part, or ſlight the cauſe on the Subject's part.

But that which I deſire to ſay now is, that theſe Gentlemen have all of them gone in one form, to divide the cauſe into two parts:

The firſt, the form of the return.

The ſecond, the matter of the return.

For the form, methinks we may put an end to that now, if your Lordſhip pleaſe, that we may have no return to that another day, but I may apply myſelf unto the matter of the return.

To the form of the return they have taken divers exceptions, but they eſpecially inſiſted upon two main heads:

Firſt, That the return is not good, becauſe it is not an abſolute return. I confeſs the ground is well laid, and the major is good, that if this return be not poſitively the return of the Warden of the *Fleet* himſelf, but the relation of another, it is no good return, therefore I need ſpend no time in that, the ground being well laid. But under your Lordſhip's favour, the minor propoſition I deny, we differ only in that; for I ſay that this return is certain, and that it is not the words of any man elſe, but the expreſs words of the Warden himſelf, and that this is added *ex abundanti* to give ſatisfaction to the Court, that he had order to make the return: therefore I deſire your Lordſhip to caſt your eyes upon the ſubſtance of the return, and diſtinguiſh it into parts.

The words are, *Detentus eſt in priſona ſub cuſtodia mea per ſpeciale mandatum domini Regis, mihi ſignificatum per Warrantum duorum Privati Concilii dicti domini Regis, &c.* If he had turned theſe words, and ſaid, *Detent' eſt prout mihi ſignificat' per Warrantum duorum Privati Concilii per ſpeciale mandatum domini Regis*, then it might be taken to be the words of the Lords of the Council: but the firſt words being poſitive, *Detentus eſt per ſpeciale mandatum domini Regis*, that is ſufficient, and the reſt is ſurpluſage, and he doth not ſay, *prout mihi ſignificat'*, but *mihi ſignificat'* only; which is abſolute, and the reſolution thereof reſteth more in your Lordſhip's expounding of the words; than in putting any caſe upon them.

The ſecond exception is taken to the form of the return, for that there is not the cauſe of the impriſonment returned, but of the detaining alone.

My Lord, I ſay no more at preſent to that, but this: No man is bound to anſwer more than that which is the contents of the Writ. But the Writ it may be to know ſpecially the cauſe of the detaining, or what the cauſe of the caption is only, and if the Officer make anſwer to that which is required of him in the Writ, it is ſufficient. It may be, there be precedents both ways, I am ſure there are for detentions, and there is no cauſe why the Officer ſhall ſhew the time of his commitment: but if the priſoner ſhall deſire it, your Lordſhip may grant him a Writ, to ſhew the cauſe both of his caption and detention alſo.

Thirdly, They ſay that this return is uncertain, and that it is the Warrant of the Lords of the Council, and not of the King, by which he is committed.

For that, my Lord, I ſay, that if it had all been left out, and he had only ſaid, *Detentus fuit per ſpeciale mandatum domini Regis*, it had been ſufficient: but when he doth more, it is ſuperfluous, and not neceſſary, for it appeared before by whom he was committed; and when he returns the Warrant of the Lords of the Council, it is not their words that commit him: But they being the repreſentative body of the King, they do expreſs what the King's command is, but they ſignify nothing of their own; and therefore I deſire your Lordſhip to deliver your opinion in that point of the return, whether it be poſitive or no.

This cauſe, as it greatly concerns the Subjects, ſo it much concerns the King too. I am ſorry there ſhould be any occaſion to bring theſe things in queſtion; but ſince it is now here, I hope I ſhall give ſatisfaction to your Lordſhip, and to the parties too, and I deſire that I may have till *Monday* for it.

L. C. Juſtice. I think it is not beſt for us to declare our opinions by piece-meals, but upon all the caſe together, and as you are a ſtranger to the return, ſo are we; and there be many Precedents and Acts of Parliament not printed, which we muſt ſee.

Doderidge. This is the greateſt cauſe that ever I knew in this Court; our judgments that we give between party and party, between the King and the meaneſt ſubject, ought to be maturely adviſed on, for ſo are the entries of our judgments, *Quod matura deliberatione habita*, It was judged, *&c.* And we muſt ſee the Precedents and Acts of Parliament that we hear mentioned.

Juſtice *Jones.* Mr. Attorney, if it be ſo that the Law of *Magna Charta* and other Statutes be now in force, and the Gentlemen be not delivered by this Court, how ſhall they be delivered? Apply yourſelf to ſhew us any other way to deliver them.

Doderidge. Yea, or elſe they ſhall have a perpetual impriſonment.

Per Curiam. Monday was appointed for the Attorney's argument, and in the interim the Counſel for the Gentlemen were by order appointed to attend the Judges with all the precedents and unprinted Statutes which they mentioned, and that they ſhould let the Attorney ſee them alſo.

And the Gentlemen being aſked if they deſired to come again, anſwered they did, and a rule was entered for it.

Monday, 26 November 1627. *Tertio Michaelis, 38 Caroli Regis, in Banco Regis.*

Sir *John Corbet*, Sir *Walter Earl*, Sir *John Heveningham*, Sir *Edmund Hampden*, Knights, were brought to the Bar.

Attorn. Gen. *Heath.* MAY it pleaſe your Lordſhip, theſe Gentlemen, Sir *John Corbet*, Sir *Walter Earl*, Sir *John Heveningham*, and Sir *Edmund Hampden*, upon their motion to this Court to have their *Habeas Corpus*, and that themſelves, and the cauſe of their detaining them in their ſeveral priſons, might be brought before your Lordſhip, had it granted to them.

My Lord, at the firſt motion of it, the knowledge thereof coming, and that they had ſuch a deſire, his Majeſty was very willing to grant unto them (as to all his ſubjects) this common caſe of Juſtice; and tho' it be a caſe which concerns himſelf in a high degree, yet he hath been ſo gracious and ſo juſt, as not to refuſe to leave the examination and determination thereof to the laws of this kingdom.

My Lord, it is very true that this is a very great cauſe, and hath raiſed a great expectation, and for the manner of it, more than was neceſſary; but, my Lord, I am afraid theſe Gentlemen whom it concerns, have rather adviſed their Counſel, than their Counſel them: but I ſhall take the caſe as now I find it, and as the Gentlemen's Counſel, on the other ſide, have led me the way to it.

My Lord, the exceptions that have been taken by the Counſel on the other ſide, to the return made by the Warden of the *Fleet*, and the reſt of the Guardians of ſeveral priſons, have been two. For renewing of your Lordſhip's memory, we will read one of the returns, they are all alike.

Then the return was read for Sir *John Heveningham*, by Mr. *Keeling*.

Attorn. Gen. May it pleaſe your Lordſhip, againſt this return the Counſel of the Gentlemen have taken ſome exceptions, and have divided their objections into two main points, the one the form, the other the matter. To the form they have objected four ſeveral things:

Firſt, That the return is not poſitive, but referred to the ſignification made by another, as the Lords of the Council.

Secondly, That the keepers of the priſons have not returned the cauſe of the commitment, but the cauſe of the cauſe, which is not good.

Thirdly, That the return is imperfect, for that it ſhews only the cauſe of the detaining in priſon, and not the cauſe of the firſt commitment.

And *laſtly*, That the return is contradictory in itſelf, for that in the firſt part thereof there is a certification that the detaining of theſe Gentlemen in priſon, is *per ſpeciale mandatum domini Regis*; and when the Warrant of the Lords of the Council is ſhewed, it appears that the commitment is by the command of the King, ſignified by the Lords of the Council: and by your Lordſhip's favour, I will give a ſeveral anſwer to every of theſe ſeveral objections. And for the firſt, that the return is not poſitive and affirmative, but depends upon and hath relation to ſome other, and therefore it is not good; I do agree that the ground is true, that if the return be not poſitive, it is not good: we differ only in the minor, that the return is not poſitive and affirmative; for I agree that theſe Book-caſes, that have been put, are good law: as 27 *Aſſ. pl.* 65. that if the Sheriff return that he had ſent to the Bailiff of the Hundred, and he gives him that anſwer, that is no good return; for the Sheriff ought to make the return as of his own act, without naming of the Bailiff of the Hundred in his return: for if he return, *Quod mandavi Ballivo itineranti qui habet retorn' omnium brevium & executionem eorund' per Cartam domini Regis qui mihi dedit nullum reſponſum*; this is not good, if he were not Bailiff of a franchiſe or ſigniory, for ſo is 21 *H.* VII. *fol.* 4.

There hath been cited to maintain theſe objections, 20 *Ed.* III. The record I have peruſed, and there I find that the Biſhop ſaid, that it is found *in Archivis*, in the record, *&c.* that he was excommunicated; but it was found to be *in Archivis*, *&c.* and that is no poſitive return that it is ſo. I will oppugn what hath been ſaid by the Counſel on the other ſide; it muſt be granted that if the return here be not poſitive, it is imperfect, and in 5 *H.* VII. 28. it is ſaid, that an imperfect return is no return at all, it is all one; but if the return was ſo, that was not much material, for then it were but temporary, and it might be amended: but, my Lord, they have miſtaken the minor propoſition, for they have taken it as granted that there is an imperfect return from the Lords of the Council. My Lord, I ſhall intreat you to caſt your eyes upon the return, and you ſhall find the firſt words poſitive and affirmative: the words are, *Quod detentus eſt ſub cuſtodia mea per ſpeciale mandatum domini Regis:* the other words, *mihi ſignificatum*, follow after, but are not part of the affirmation made before it. But if they will have it as they ſeem to underſtand it, then they muſt turn the words thus: *Quod teſtificatum*, or *ſignificatum eſt mihi per dominos Privati Concilii quod detentus eſt per ſpeciale mandatum domini Regis*; and then indeed it had not been their own proper return, but the ſignification of another, the Lords of the Council: the turning of the ſentence will reſolve this point; the thing itſelf muſt ſpeak for itſelf. I conceive by your Lordſhip's favour, that it is plain and clear, here is a poſitive return, that the detaining is by the commandment of the King: and the reſt of the return is rather for ſatisfaction to myſelf and the Court, than otherwiſe any part of the return.

The

The ſecond objection hath dependance upon this, as that he hath returned the cauſe of the cauſe, and not the cauſe itſelf, wherein, under your Lordſhip's favour, they are utterly miſtaken; for the return is affirmative, *Ego Johannes Liloe teſtifico, &c.* I know that among the Logicians there are two cauſes, there is *Cauſa cauſans*, and *Cauſa cauſata:* the *Cauſa cauſans* here in this caſe is not the warrant from the Lords of the Council, for that is *Cauſa cauſata:* but the primary and original cauſe, which is *Cauſa cauſans*, is *ſpeciale mandatum domini Regis*; the other is but the Council's ſignification or teſtification, or warrant for him that made the return.

To the third objection, that the return is imperfect, becauſe it ſhews only the cauſe of the detaining in priſon, and not the cauſe of the firſt commitment:

My Lords, for that I ſhall not inſiſt much upon it, for that I did ſay the laſt day, which I muſt ſay again, it is ſufficient for an Officer of the Law to anſwer that point of the Writ which is in command.

Will your Lordſhip pleaſe to hear the Writ read, and then to ſee, whether the Wardens of the Priſons have not made anſwer to ſo much as was in command?——Then the Writ was read by Mr. *Keeling*.

Att. Gen. My Lord, the Writ itſelf clears the objection; for it is to have the Party mentioned in it, and the cauſe of his Detention, returned into this Court; and therefore the anſwer to that is ſufficient. Only, my Lord, the Warden of the *Fleet*, and the reſt of the Keepers of the Priſons, had dealt prudently in their Proceedings, if they had only ſaid, that they were detained *per ſpeciale mandatum Domini Regis*, and it had been good, and they might have omitted the reſt: but becauſe, if they ſhould make a falſe return, they were liable to the Actions of the Party, they did diſcreetly to have the Certification of the Lords of the Council, in ſuſpicion that if this return was not true, they were liable to the Actions of theſe Gentlemen.

In 9 *H.* VI. 40, 44. it is ſaid, that whatſoever the cauſe be that is returned, it muſt be accepted by the Court; they muſt not doubt of the truth of the Return, and the Officer that ſhall return it is liable to an Action if the Return is falſe; and therefore the Guardians of the Priſons did wiſely, becauſe they knew this was a caſe of great expectation, to ſhew from whom they had their warrant, and ſo to ſee whether the cauſe be true or not.

The laſt Objection to the Return is, that it is contradictory in itſelf, as that the firſt Part of it is, that they are detained in priſon *per ſpeciale mandatum Domini Regis*; but in this relation of it, it ſhews that they are detained by the command of the Lords of the Council; for the words of their Warrant are, to require you ſtill to detain him, *&c.*

But, my Lord, if they will be pleaſed to ſee the whole Warrant together, they ſhall find that the Lords of the Council ſpeak not their own words or command in that Warrant, but they ſay that you are to take notice of it, as the words and command of the King; for, my Lord, the Lords of the Council are the Servants to the King, they ſignify his Majeſty's pleaſure to your Lordſhip and they ſay it is his Majeſty's Pleaſure you ſhould know that the firſt commitment, and this preſent detaining him in Priſon, are by his Majeſty's ſpecial Commandment.

And this, my Lord, is all that I will ſay for the ſufficiency of the Form of the Return, to prove that it is ſufficient.

Touching the matter of the Return, the main Point thereof, it is but a ſingle queſtion, and I hope, my Lord, of no great difficulty; and that is, whether they be repleviſable, or not repleviſable? It appears that the commitment is not in a legal and ordinary way, but that it is *per ſpeciale mandatum Domini Regis*; which implies, not only the fact done, but ſo extraordinarily done, that it is notorious to be his Majeſty's immediate Act and Will it ſhould be ſo; whether in this caſe they ſhould be bailable or not in this Court, which I acknowledge to be the higheſt Court of Judicature for ſuch a Caſe as is in Queſtion.

The Counſel on the other ſide deſire, that they may be bailed, and have concluded that they may not be remanded; their grounds of Argument (though they were many that did ſpeak) I have in my Collection divided into five Points:

The firſt was, reaſons that they muſt be ſo, ariſing from the inconveniences that would fall to the Subjects, if it ſhould not be ſo in the main points of their liberty.

The ſecond was, they ſhewed divers Authorities out of their Law-books, which they endeavoured to apply.

The third was, The Petition of the Commons anſwered by ſeveral Kings in Parliament.

The fourth was, Acts of Parliament in print.

The laſt was, Precedents of divers times, which they alledged to prove, that men committed by the King's commandment, and by the commandment of the Lords of the Privy-Council, (which I conceive to be all one, for the body of the Privy-Council repreſents the King himſelf) that upon ſuch commitment in ſuch cauſes men had been bailed.

In the courſe of my arguments I will follow their method, firſt, to anſwer their reaſons, and then thoſe Books which they have cited, which I conceive to be pertinent to this queſtion, and then the Petition and Anſwer made in Parliament, and then their Acts of Parliament, next their Precedents; and laſtly, I will give your Lordſhip ſome reaſons of my own, which I hope ſhall ſufficiently ſatisfy your Lordſhip and all others, but the parties themſelves, for I except them.

My Lord, the great and mighty reaſon that they inſiſted upon, was the inconveniences that might come to the ſubjects in their liberties, if this return ſhould be good; and this reaſon they inferred out of records and books of the Common Law, which gives the liberty of the ſubjects; I do acknowledge that the liberty of the ſubject is juſt, and that it is the inheritance of the ſubject, but yet it is their inheritance *ſecundum legem terræ*.

My Lords, they put many caſes likewiſe to enforce it, 1 & 2 *Eliz. Dyer, fo.* 175. that the continuance of a *Capias* ſhall be from term to term, without a term betwixt, becauſe otherwiſe the party defendant may be kept too long in priſon; and 38. *Aſſ. pl.* 22. *Broke tit.* Impriſonment 100. that impriſonment is but to detain the party till he have made fine to the King, and therefore the King cannot juſtly detain him in priſon after the fine tendered; and 16 *H.* VI. *monſtrans de faict* 182. if the King command me to arreſt a man, and thereupon I do arreſt him, he may have an action of falſe impriſonment, or of treſpaſs againſt me, though it be done in the King's preſence: and 1 *H* VII. 4. the diſcourſe of *Huſſey*, where he ſaith, that Sir *John Markham* delivered unto King *Edward* the Fourth, that he ſhould not arreſt upon treaſon or felony any of his Subjects becauſe he could not wrong his ſubjects by ſuch arreſt, for they could not have remedy againſt him.

These, my Lord, are the cauſes that they inſiſted upon for this purpoſe.

To the two firſt, I ſhall give but one anſwer; which is, that the reſtraint in theſe two caſes, and moſt of the other caſes before cited, appears to be in the ordinary courſe of Judicature fit for *Weſtminſter-Hall*, and not for the King's Council-Table. A Writ of *Capias* was the firſt original of it, and therefore not to be applied to the cauſe of ours.

And for the other two caſes, the law preſumeth that the active part of them is not ſo proper for the Majeſty of a King, whoever doth theſe things by his ſubordinate Officers; but that the ſubject ſhould not be committed by the King, was never heard of, for the King may commit any man at his pleaſure; but that is not our caſe: but whether when the King hath committed one, he muſt render a cauſe of that commitment, that it may appear whether the party be bailable or not, or elſe the party muſt be delivered.

The Book 9 *E.* III. *fol.* 16. *pl.* 30. cited of a *Ceſſavit*, the King having by Proclamation commanded, that in the County of *Northumberland* no *Ceſſavit* ſhould be brought, *&c.* during the war; the tenant pleaded this command, and it was denied him, and he, notwithſtanding that, was commanded to plead; but the reaſon thereof was, becauſe the commandment thereof was given by *E.* II. who being dead, the commandment was determined.

The Book of *Edward* the Third, 4 *fol.* 16. is indeed, where the commandment was given by the ſame King, and that was likewiſe denied him; for the King cannot command your Lordſhip, or any other Court of Juſtice, to proceed otherwiſe than according to the Laws of this Kingdom; for it is part of your Lordſhip's oath, to judge according to the Law of the Kingdom. But, my Lord, there is a great difference between thoſe legal commands, and that *abſoluta Poteſtas* that a Sovereign hath, by which a King commands; but when I call it *abſoluta poteſtas*, I do not mean that it is ſuch a power as that a King may do what he pleaſeth, for he hath rules to govern himſelf by, as well as your Lordſhips, who are ſubordinate Judges under him. The difference is, the King is the Head of the ſame fountain of Juſtice, which your Lordſhip adminiſters to all his ſubjects; all Juſtice is derived from him, and what he doth, he doth not as a private perſon, but as the Head of the Commonwealth, as *Juſticiarius Regni*, yea, the very eſſence of Juſtice under God upon earth is in him: and ſhall not we generally, not as ſubjects only, but as Lawyers, who govern themſelves by the rules of the Law, ſubmit to his commands, but make inquiries whether they be lawful, and ſay that the King doth not this or that in courſe of Juſtice?

If your Lordſhip ſitting here ſhall proceed according to Juſtice, who calleth your actions in queſtion, except there are ſome errors in the proceeding? and then you are ſubject to a Writ of Error.

But who ſhall call in queſtion the Actions or the Juſtice of the King, who is not to give any account for them? as in this our caſe, that he commits a ſubject, and ſhews no cauſe for it.

The King commits and often ſhews no cauſe, for it is ſometimes generally, *Per ſpeciale mandatum domini Regis*, ſometimes *Pro certis cauſis ipſum dominum Regem moventibus*; but if the King do this, ſhall it not be good? It is all one when the commitment is *Per ſpeciale mandatum domini Regis*, and when it is *Pro certis cauſis ipſum dominum Regem moventibus*; and it is the ſame if the commitment be *Certis de cauſis ipſum dominum Regem tangentibus.*

And, my Lord, unleſs the Return to you doth open the ſecrets of the commitment, your Lordſhip cannot judge whether the party ought by Law to be remanded, or delivered: and therefore if the King allow and give warrant to thoſe that make the return, that they ſhall expreſs the cauſe of the commitment, as many times he doth, either for ſuſpicion of felony, or making money, or the like; we ſhall ſhew your Lordſhip that in theſe cauſes this Court in its Juriſdiction were proper to try theſe criminal cauſes, and your Lordſhip doth proceed in them although the commitment be *Per ſpeciale mandatum domini Regis*, which hath not a ſecret in it in theſe cauſes, for with the warrant he ſendeth your Lordſhip the cauſe of the committing; and when theſe warrants are made and brought into this Court, your Lordſhip may proceed: but if there be no cauſe expreſſed, this Court hath always uſed to remand them; for it hath been uſed, and it is to be intended a matter of State, and that it is not ripe nor timely for it to appear.

My Lord, the main fundamental grounds of Arguments upon this caſe begins with *Magna Charta*, from thence have grown Statutes for explanation thereof, ſeveral Petitions of Parliament, and Precedents for expedition; I ſhall give anſwers to them all.

For *Magna Charta*, in the 29th Chapter, hath theſe words; No Freeman ſhall be taken or impriſoned, or diſſeiſed, of his freehold liberties, nor free cuſtoms, nor be outlawed, or exiled, nor any other way deſtroyed, nor we will not paſs upon him nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Realm.

My Lord, this Statute hath been many times confirmed; the Lord *Coke* numbered up the number to be about twenty; and we are to conclude on this, it is the foundation of our liberties.

No Freeman can be impriſoned but by *legale judicium Parium ſuorum, aut per legem terræ.* But will they have it underſtood that no man ſhould be committed, but firſt he ſhall be indicted or preſented? I think that no learned man will offer that; for certainly there is no Juſtice of Peace in a County, nor Conſtable within a Town, but he doth otherwiſe, and might commit before an Indictment can be drawn or a Preſentment can be made: what then is meant by theſe words, *Per legem terræ?* If any man ſhall ſay, this doth not warrant that the King may for reaſons moving him commit a man, and not be anſwerable for it, neither to the party, nor (under your Lordſhip's favour) unto any Court of Juſtice, but to the High Court of Heaven; I do deny it, and will prove it by our Statutes.

My Lord, it was urged by the Counſel on the other ſide, that our printed *Magna Charta*, which ſaith *nec ſuper eum mittimus*, is miſtaken; and that in divers Manuſcripts it is expreſly ſet down to be, *nec eum in carcerem mittimus.* I cannot judge of the Manuſcripts that I have not ſeen; but, my Lord, I have one here by me, which was written many Ages ago, and the words in print are word for word as that which is here written.

Then they ſay, that *Matthew Paris* ſets it down ſo in his Hiſtory: My Lord, we do not govern ourſelves by Chronicle, but to anſwer that of *Matthew Paris*, he reports a Thing done in King *John*'s Time, but it was then but thought on, and it was enacted in the Time of *Henry* the Third; and there be many Things ſaid to be done in *Matthew Paris* which were not, and many Things omitted by him which were done.

This Charter was but in Election in the Time of King *John*, and then it might be, *nec eum in carcerem mittimus*; but it was not enacted till the Time of *Henry* the Third, and then that was omitted, and the Charter granted as now we have it.

But if they do ſee no more than I in this Clauſe, I know not why we ſhould contend about theſe Words, ſeeing the firſt Part of this Statute ſaith, *Nemo imprisonetur*, why then may not I ſay as well, *nec eum in carcerem mittimus?* I ſee no Difference in the Words, and therefore, my Lord, I ſhall not inſiſt any longer upon the literal Expoſition of the Words of *Magna Charta*, but I will reſort to the reſt of it, which is expreſt in the ſubſequent Statute and in common Practice.

The Counſel on the other Side ſaid, that the Statute of 28 *E.* III. *c.* 3. expreſſeth and giveth Life to this Charter; I ſhall deſire to have that Statute read.

Keeling, Clerk. *Item*, Whereas it is contained in the great Charter, *&c. Vide* all theſe Statutes in *Littleton*'s Argument in Parliament *poſtea*.

Attorney Gen. My Lord, the reading of this Statute will give Anſwer to it; for it is apparent by the Words thereof, none ſhall be taken by Petition, *&c.* and that the Court be extended to the firſt Arreſt, but they are to be underſtood that none ſhall be condemned, but he ſhall be brought to anſwer, and be tried.

And if it be expounded otherwiſe, it will be contrary to that Practice which was then in uſe.

But it is utterly forbidden by this Statute, that any Man ſhould be condemned upon Suggeſtions or Petitions made to the King or Council, without due Trial by Law.

The next Statute they cited was 25 *E.* III. *cap.* 4. My Lord, I deſire that That may be read.

Keeling, Clerk. *Item*, That no Man, of what Eſtate or Condition ſoever he be, ſhall be put out of Land or Tenement, nor taken, nor impriſoned, nor diſinherited, nor put to Death, without being brought to anſwer by due Proceſs of Law.

Attorney Gen. My Lord, this Statute is intended to be a final Proſecution: For if a Man ſhall be impriſoned without due Proceſs, and never be brought to anſwer, that is unjuſt, and forbidden by this Statute; but when a Man is taken in Cauſes that are unknown to us, (who walk below Stairs) we are not privy to the Circumſtances which may cauſe the Trial to be delayed; and peradventure it is not time to bring the Matter to Trial, becauſe it is not yet come to Maturity, and therefore this is not within the meaning of the Statute.

Another Statute that they mention is in the ſame Year, and it is Page 9. *chap.* 9. I deſire it may be read.

Keeling, Clerk. *Item*, Becauſe the People of the Realm, *&c. Vide Littleton*'s Argument *poſtea*.

Attorney Gen. My Lord, it is very clear that this Statute had no manner of Thought of this Cauſe in Queſtion; but whereas Sheriffs did procure Commiſſions to be awarded to themſelves for their private Gain, to the Prejudice of the Subject, the Statute condemneth thoſe Commiſſions, but it maketh nothing to this Queſtion which we have now in Hand. The next Statute which they cited, was 37 *Ed.* III. *cap.* 18. I beſeech it may be read.

Keeling, Clerk. *Item*, Though it be contained in the great Charter, *&c. Vide* as aforeſaid.

Attorney Gen. My Lord, this Statute ſeems to be a Commentary and Light to the other Statutes, the Scope whereof is againſt private Suggeſtions made to the King or his Council, and not in a legal Way, and therefore it condemns them; and this is more fully expreſſed in the Statute of 38 *Ed.* III. *cap.* 9. which they likewiſe mentioned: By which Statute Direction is given what Security, thoſe Perſons which make ſuch Suggeſtions are to give, that they ſhould proſecute their Suggeſtions, and what Puniſhment they ſhall undergo, if their Suggeſtions be found falſe.

Keeling, Clerk. *Item*, As to the Article made at the laſt Parliament, *&c. Vide* as before ſaid.

Attorney Gen. My Lord, this and the laſt Statute ſeem to conduce both to one Purpoſe, that they that in their Accuſations went not in a legal Way to bring the Party to his Anſwer, it was directed by this Statute, that they ſhould go a legal Way.

The laſt Act of Parliament in Print, the Counſel on the other Side produced, was the Statute of 1 *R.* II. *cap.* 12. which I deſire may be read.

Keeling, Clerk. *Item*, Whereas divers People at the Suit of Parties were committed to the *Fleet*, &c. *Vide* as before.

Attorney Gen. My Lord, it appeareth that the Scope of this Statute is againſt the Wardens of the *Fleet*, for ſome Miſcarriages in them; but there is one thing in this Statute which I ſhall deſire your Lordſhip to obſerve; and that is, for thoſe Miſdemeanors he ſhall forfeit his Office, except it be by Writ from the King, or his Commandment; ſo that it was no new Doctrine in thoſe Times, that the King might then give ſuch Commandment for committing The Scope of this Statute had two Hands: Firſt, That the Warden ſhould forfeit his Office; and, ſecondly, that he ſhould recompenſe the Party.

In the fourth and fifth of *Phil. & Mar. Dyer* 162. it was reſolved, That if the Warden ſhall deliver a Man out of Priſon without Command, he forfeiteth his Office, and Damage unto the Party; but if he have the Command of the King, that ſhall excuſe the Forfeiture of his Office: But he muſt bring the Party hither, and here theſe Gentlemen are now, for that Commandment of the King is no Exception for him not to obſerve.

If he receives a Writ from this Court, to ſhew the Court from whence he receives his Warrant, it may excuſe the Forfeiture of his Office, but notwithſtanding he is ſubject to the Action of the Party.

But I deſire your Lordſhip to obſerve that Part of the Statute, which the other Party would not make uſe of, which is, that the King may command by Writ or otherwiſe; theſe were all the printed Statutes cited by the Counſel on the other Side.

But becauſe I would not miſinterpret theſe Statutes, I thought it equal to deſire your Lordſhip that they might be read.

Beſides the printed Statutes, they mentioned Petitions by the Commons, and the Anſwers to them of ſeveral Kings in Parliament. The firſt is, *Rot. pl.* 6 *Ed.* III. *numero primo & numero viceſimo:* Beſides theſe two, there is one other of 28 *Ed.* III. *num.* 18.

My Lord, of theſe three Petitions and their Anſwers, the two firſt were mentioned by the Counſel on the other Side; and that in 28 *Ed.* III. 28. I have produced, all of them even to one Purpoſe.

The Commons then petitioned the King, that all the Statutes made in Expoſition of *Magna Charta*, and of the Foreſt, may be kept and obſerved: The King makes Anſwer, that it ſhall be done. And in one of the Anſwers it is ſaid, If any Man be grieved, he may complain. But what is all this to the Point in Queſtion? Could there be any other Anſwer to give Life to theſe Requeſts?

The King he is petitioned that ſome are injured; he anſwers, That if they complain, they ſhall be relieved.

And now, my Lord, we are where we were, to find out the true Meaning of *Magna Charta*, for there is the Foundation of our Caſe; all this that hath been ſaid concerneth other things, and is nothing to the thing in Queſtion.

There is not a Word either of the Commitment of the King, or Commandment of the Council, in all the Statutes and Records.

And now, my Lord, I am at an End of thoſe Statutes, and come to That that was alledged and mentioned to be in 3 *H.* VI. 46. and if I could have found it, I would have brought it, but I could not find it; therefore if they have it, I deſire that they will ſhew it, but I think they have it not, and therefore I will let that go.

My Lord, I come to that which I inſiſted upon, the Queſtion as it was at firſt, not whether the King or the Lords of the Council can commit a Man, and ſhew no Cauſe wherefore they do commit him; but whether the ordinary Courts of Juſtice have Power to bail him or no; for that I will inſiſt upon the Statute of *Weſtm. primo*, which I deſire your Lordſhip may be read, and then I will apply. *Vide Weſtm. primo.*

My Lord, this Statute, if I miſunderſtand it not, is a full Expreſſion to the Purpoſe of *Magna Charta*; the Scope whereof is to direct us in what Caſes Men impriſoned were to be bailed.

It was eſpecially for Direction to the Sheriffs and others; but to ſay Courts of Juſtice are excluded from this Statute, I conceive it cannot be.

It recites, That whereas heretofore it was not reſolved in what Caſes Men were repleviſable, and in what Caſes not, but only in theſe four Caſes; for the Death of a Man, or by the Commandment of the King, or of his Juſtices, or of the Foreſt.

My Lord, I ſay that this Statute expreſſeth not the Law was made by this Statute, that in theſe Caſes Men were not repleviſable; but it expreſſeth that the Law was clear in theſe Caſes; in theſe four Caſes it was clearly reſolved before.

I pray you, my Lord, obſerve the Time of the making of this Statute; that of *Magna Charta* was made in the Time of *Henry* III. and this of *Weſtminſter* in the Time of *Edw.* I. ſo that it was made in the Time of the ſame.

And, my Lord, if they had underſtood the Statute of *Magna Charta* in another Senſe, would they not have expreſſed it ſo in this Statute? Was it not fitter for them than for us, they being nearer the firſt making of *Magna Charta* than we are? But certainly the Statute of *Magna Charta* was expounded at the Time, as I have ſhewed before; if not, without all doubt at the Time of making of *Weſtm. primo.*

The Parliament would not have been ſo careful to provide for Things of leſſer Moment, and omit this of ſo great Conſequence, if there had been any Queſtion of it. In all Times and Ages, *Magna Charta* hath been confirmed, but they ſhew not any one Law that doth except againſt this poſitive Law of *Weſtminſter* the firſt, or any Acts of Parliament; nay more, in any printed Books, that in this caſe Men ſhould be repleviſable.

My Lord, if you know nothing printed or unprinted, if any will deſire to alter a Courſe that always hath been held, you will ſeek for Precedents, for the conſtant Uſe and Courſe is the beſt Expoſition of the Law; it is not enough for me to ſay, This it is, unleſs I make it good.

Firſt then, I ſay, they on the other Side cannot cite one Book, Statute, or other Thing, to prove, that they that have been committed *per ſpeciale mandatum domini Regis*, are bailable.

But, my Lord, I find ſome to the contrary, that they are not bailable, and I will cite ſome of them, and read of others; for I would not in a Caſe of that Expectation, that it ſhould be thought that any thing ſhould be miſinterpreted.

In the 33 *Hen.* VI. *folio viceſimo tertio*, *Robert Poyning*'s Caſe, he was committed *pro diverſis cauſis ipſum dominum Regem tangent'*; this alters not the Caſe, for it was as good as no Cauſe, for it was the Warrant *domini Regis*, and there is no Queſtion upon this: But, my Lord, I know this is not the Point in Queſtion.

The next Thing I ſhall ſhew unto your Lordſhip, is *Paſch.* 21 *Edwardi primi*, *Rot. cla. ſecund.* and this, my Lord, was near the time of making of the Statute of *Weſtm. prim.* and this Precedent is to this Purpoſe:

The Sheriff of *Leiceſterſhire* and *Warwickſhire* (for then there was but one Sheriff to both thoſe Shires) did receive Commandment by Letters from the King, That whereas the Earl of *Warwick* had commanded divers Perſons to the Cuſtody of the ſaid Sheriff, the King ſent a Letter to the ſaid Sheriff, commanding, that to thoſe who were committed to his Cuſtody by the Earl of *Warwick*, he ſhould ſhew no Grace to them; that is, they ſhould not be bailed.

The Sheriff, notwithſtanding this Command, lets ſome of thoſe Priſoners to bail; whereupon he was complained of in Parliament, that he had done againſt the King's Commandment, and he was condemned for it.

This was in Parliament; I wonder this ſhould be done in Parliament, and that it was not ſaid there, that this Commitment, being done by the King's Commandment, was not good; no, he was condemned in Parliament, for it was one that did break the Statute of *Weſtm. prim.*

My Lord, the uſe that I make of this Record is this: It recites, that the Earl of *Warwick* committed divers, it might be that he did commit them by Direction from the King; but the Record mentioneth not ſo much, but it ſhews, that the King by Letters commanded the Sheriff, that he ſhould ſhew thoſe Perſons no Grace, and yet he did; he was examined upon this, and by Parliament committed.

The next Matter I will offer to your Lordſhip's Judgment for the true Expoſition of the Law in this Caſe, is the Book we call The *Regiſter*, an

Authority

reſpected, it is the foundation of all our Writs at the Common Law; I bring not the Book.

In this Book there is one Writ ſaith thus, *Rex, &c. Quod repiar' fac' A. niſi fuerit per ſpeciale mandatum domini Regis.*

Juſtice *Doderidge.* In what Writ is that, *de homine replegiando?*

Attorn. Gen. Yes, in the Writ *de homine replegiando*; and there is another Writ directed to the Conſtable of *Dover*, in the very ſame words; by which it appears that they that are impriſoned by the King's command, *non ſunt replegiabiles.*

Mr. *Fitzherbert*, a grave Judge, and is in authority with us, peruſing theſe Writs, expreſſed it in theſe words plainly: "There are ſome caſes "wherein a man cannot have this Writ, although he be taken and de-"tained in priſon; as if he be taken by the death of a man, or if he be "taken by the commandment of the King's Juſtices;" and mentions not Chief Juſtice: which I believe is to be intended not of the Chief of the Court of Judicature, but of the Chief Juſtice of *England*, for there was ſuch a one in thoſe days. Thus, my Lord, you ſee the opinion of Mr. *Fitzherbert* in this caſe.

The next thing, that I will ſhew your Lordſhip is the opinion of Mr. *Stamford*, in his Pleas of the Crown, *fol.* 72. where he ſets down the Statute of *Weſtminſter primo*, and then he adds, that by this it appears, that in four caſes at the Common Law a man is not repleviſable; in thoſe that were taken for the death of a man, or by the commandment of the King, or of his Juſtices, or of the Foreſt: and there he ſaith, that the commandment of the King is to be intended, either the commandment of his mouth or of his Council, which is incorporated to him, and ſpeak with the mouth of the King.

My Lord, I ſhall deſire no better Commentaries upon a Law, than theſe reverend grave Judges, who have put Books of Law in print, and ſuch Books as none, I believe, will ſay their judgments are weak.

The next thing, I ſhall offer unto your Lordſhip is this, that I cannot ſhew with ſo great authority as I have done the reſt, becauſe I have not the thing itſelf by me; but I will put it to your Lordſhip's memory, I preſume you may well remember it; it is the reſolution of all the Judges, which was given in the four-and-thirtieth of Queen *Elizabeth*, it fell out upon an unhappy occaſion, which was thus: the Judges they complain that Sheriffs and other Officers could not execute the proceſs of the law as they ought, for that the parties on whom ſuch proceſs ſhall be executed were ſent away by ſome of the Queen's Council, that they could not be found: the Judges hereupon petitioned the Lord-Chancellor, that he would be a ſuitor to her Majeſty that nothing be done hereafter. And thereupon the Judges were deſired to ſhew in what caſes men that were committed were not bailable, whether upon the commitment of the Queen or any other.

The Judges make anſwer, that if a man ſhall be committed by the Queen, by her command, or by the Privy-Council, he is not bailable: if your Lordſhip aſk me what authority I have for this, I can only ſay, I have it out of the Book of the Lord *Anderſon*, written with his own hand.

My Lord, I pray you give me leave to obſerve the time when this was done; it was in a time, and we may truly call it a good time, in the time of good Queen *Elizabeth*, and yet we ſee there was then cauſe of complaint: and therefore I would not have men think that we are now grown ſo bad (as the opinion is we are), for we ſee that then in thoſe times there was cauſe of complaint, and it may be more than is now.

This, my Lord, was the reſolution of all the Judges and Barons of the Exchequer, and not by ſome Great one.

Now I will apply myſelf to that, which has been enforced by the Counſel on the other ſide, which was the reaſon that the ſubject hath intereſt in this caſe.

My Lord, I do acknowledge it, but I muſt ſay that the Sovereign hath great intereſt in it too. And ſure I am, that the firſt ſtone of Sovereignty was no ſooner laid, but this power was given to the Sovereign: if you aſk me whether it be unlimited; my Lord, I ſay it is not the queſtion now in hand: but the Common Law, which hath long flouriſhed under the Government of our King and his Progenitors Kings of this Realm, hath ever had that reverend reſpect of their Sovereign, as that it hath concluded the King can do no wrong: and as it is in the Lord *Berkley*'s caſe in *Plowden*'s *Com.* 246 *b.* it is part of the King's prerogative that he can do no wrong.

In the fourth of *Edw.* IV. *fol.* 25. the King cannot be a Diſſeiſor; and ſo it is alſo in the Lord *Berkley*'s caſe in 32 *Hen.* VIII. *Dyer*, *fol.* 8.

The King cannot uſurp upon a Patron, for the Common Law hath that reverend reſpect to him, as that it cannot conceive he will do any injury.

But the King commits a ſubject, and expreſſeth no cauſe of the commitment: What then? Shall it be thought that there is no cauſe why he ſhould be committed?

Nay, my Lord, the courſe of all times hath been, to ſay there is no cauſe expreſſed, and therefore the matter is not ripe, and thereupon the Courts of Judicature have ever reſted ſatisfied therewith, they would not ſearch into it.

My Lords, there be *Arcana Dei*, & *Arcana Imperii*; and they that ſearch too far into them, and make themſelves buſier with them than their places do require, they will make themſelves, *&c.* I will ſay no more; but I ſhall be able to ſhew that there ſhall as much prejudice come to the Kingdom, if God direct not the heart of the King, which is in the hand of God, as the rivers of waters: I ſay, there may as much hazard come to the Commonwealth in many other things, with which the King is truſted, as in this particular there can accrue to the ſubject.

If a Treaſon be committed, as it was not long ago, not far removed from our memories; ſince there was a Treaſon, and the actors thereof fled, ſome to the Court of *Rome*, ſome to *Bruſſels*, when it was to be put in execution; the Treaſon being diſcovered, one is apprehended upon ſuſpicion of it, and is put into the Tower, and there he lieth, and thinketh the time very long; and I cannot blame him.

It may be he is innocent, and thereupon he brings a *Habeas Corpus*, and by virtue of that writ he is brought hither; and will your Lordſhip think it fit or convenient to bail him, when the accuſation againſt him muſt come from beyond the ſea? I think you will rather ſo reſpect the proceedings of the State, as that you will believe theſe things are done with a cauſe, than inquire further of them.

Peradventure ſome great miſdemeanor may be committed, and ſome of the parties make away, ſo as Proclamation cannot overtake them, and ſome are taken, is it fit that they that are in priſon ſhould be tried before the principal be taken?

I will give you an inſtance, that lately was put into my mind; there be ſome priſoners in the Tower at this preſent, which were put in thither when they were very young: if they ſhould bring an *Habeas Corpus*, they were impriſoned for State-matters, will your Lordſhip deliver them? No, in that the State doth not think it fit to ſend them back into their own Countries, you will eſteem ſo reverendly of the State for committing children, that you will believe that there is great reaſon of State ſo to do, or elſe they would not do it: many inconveniences may follow, if it ſhould be otherwiſe. It may be, divers men do ſuffer wrongfully in priſon, but therefore ſhall all priſoners be delivered? That were a great miſchief.

No doubt but the King's power is abſolutely over his coins; if then he ſhall command his coin ſhall be turned to braſs or leather, I confeſs it were inconvenient; but if the King would do it, the anſwer that I can make is, that he would not undo the Kingdom: but can your Lordſhip hinder it, as being an inconvenience, if he would do it? The Cinque Ports are free for traffick for all his ſubjects; but the King in his Cabinet underſtands there is danger of War to come upon this Kingdom, thereupon he ſhuts the Ports, that no man can go out; ſhall the Merchant ſay this is injuſtice in the King? And as in this, ſo in many other particulars this may appear, but I will not go too high: and therefore we are too wiſe, nay, we are too fooliſh, in undertaking to examine matters of State, to which we are not born. Now, my Lord, I come to our Book-Caſes, by which it appears what our King may do, and nothing can be ſaid againſt it, but he will not do it; the King may pardon all Traitors and Felons, and if he ſhould do it, may not the ſubjects ſay, If the King do this, the bad will overcome the good? But ſhall any ſay, The King cannot do this? No, we may only ſay, He will not do this.

The King may exempt men from the office of Sheriff, is not this inconvenient? And may it not be ſaid, he may exempt ten in a Shire, and then the burden of the Country ſhall reſt upon the meaner ſort of people? Can any man ſay more to this, than that he will not do it?

Inheritances are to be decided upon Trial, the King may exempt private men from being of a Jury; but if he exempt all men who ſhall try our cauſes? for it is to be preſumed, that he will not do it.

But to our caſe: By the Statute of *Magna Charta*, no man ſhall be put out of his Freehold, *&c.* But if the King will do it, muſt not the party that is ſo put out go to the King by petition? But you will ſay, It is a petition of right; and it may be theſe Gentlemen's is ſo; admit it be, yet when ſuch a petition comes to the King, muſt it not be anſwered with theſe words, *Soit droit fait al parte?* And when the King will give that Warrant for it, then they muſt have it done, and not before.

And this may anſwer a perpetual impriſonment, and God forbid that this ſhould be ſo; and now, my Lord, I will trouble you no longer, but I will go to precedents. Precedents I know prevail much, and rule in many caſes; and if the precedents they cite were not miſinterpreted, I ſhould think they had ſaid a great deal.

But, my Lord, I will anſwer their precedents with precedents; nay, I will ſhew your Lordſhip that the precedents which they have cited are no precedents for them.

And, my Lord, it is a dangerous thing for men in matters of weight to avouch precedents with confidence, when they make nothing for them: for, my Lord, precedents are now become almoſt proclamations, for they already run up and down the Town; and yet they know but part of them, and not all, and I think if they knew all, men would be more modeſt.

But, my Lord, I will now come to theſe precedents, where I may ſay they have not dealt freely with me, for they have ſhewed me many precedents more than they mentioned here, and it may be they have done the like unto your Lordſhip.

They alledged but eight precedents before your Lordſhip, but they have brought ſixteen unto me: for theſe eight mentioned here, I will take them in order as they were cited, and anſwer,

The firſt precedent they cited was in *Hen.* VIII. *Rot.* 9. of one *Harriſon:* we have the Record here to ſhew your Lordſhip, that he was committed for ſuſpicion of Felony, which was expreſſed in the Warrant; and then, my Lord, this is clear, if the King, or the Lords of the Council, will expreſs any thing within your Lordſhip's juriſdiction, there is good ground for your proceedings; but when there is nothing expreſſed, whether you will judge what the cauſe of the Warrant is, I will leave to your Lordſhip's judgment; but it appears this was the cauſe, and that he was delivered.

The next precedent was 22 *H.* VIII. *Rot.* 57. and it was *Parker*'s caſe; and it is true that his commitment appeared to be *per ſpeciale mandatum domini Regis*, but it was alſo propoſed to be *pro pace & ſuſpicione feloniæ*; and the ſignification of the command was given by Mr. *Peck* of *Clifford's-Inn:* but there the Warrant ſhews the cauſe of the commitment was for the peace and ſuſpicion of Felony, and therefore he was bailed.

The next was in 40 *Eliz. Wendon*'s caſe; but, my Lord, that commitment was out of the Star-Chamber by an ordinary courſe: then they cited 8 *Jac. Thomas Cæſar*'s caſe; he indeed was committed by *ſpeciale mandatum domini Regis*, and brought his *Habeas Corpus*, but the Roll ſaith *remittitur:* and is that a Warrant for them to ſay that he was delivered?

Then Sir *Thomas Vernon*'s caſe was cited; and, my Lord, when we looked into the Records, we found that he was committed for ſuſpicion of Treaſon; and he was tried for it and diſcharged.

The next precedent was Sir *Thomas Monſon*'s caſe; I wonder that they did cite that, for he was committed by the Lords of the Council indeed; but the ground of it was ſuſpicion of the death of Sir *Thomas Overbury*, and he was diſcharged again by the Lords of the Council. Certainly if they had known this, they would not have named this as a precedent.

The next was *Reynor*'s caſe; he, my Lord, was one of the Gun-Powder-Treaſon, and yet there was a Warrant to diſcharge him too. And therefore what theſe precedents are, I ſhall ſubmit to your Lordſhip: I muſt confeſs, when they are cited together, they make a great noiſe; but when they are examined ſeverally, they prove nothing.

My Lord, there is one more precedent that was cited here before your Lordſhip, and I hope that one ſhall be as none.

It was mentioned to be *Laurence Brown*'s caſe, 30 *Eliz.* I know not what it is, but it is like to be of the ſame value as the reſt; *Pro certis cauſis eos moventibus*, &c.

And thus, my Lord, I have gone through thoſe precedents that were alledged here before your Lordſhip; and now I will come to thoſe precedents that were brought to me, and not mentioned here.

The firſt was *John Browning*'s caſe, in 21 *H.* VIII. My Lord, theſe precedents came not to me before *Saturday* laſt, about candle-lighting; and yeſterday was no time fitting to ſearch out precedents, and how could I then ſearch for this?

The next was *William Rogers*'s caſe, of the ſame time. But the cauſe is expreſſed to be for ſuſpicion of Felony, which is a cauſe within the juriſdiction of this Court.

Newport's caſe was the like, in 4 & 5 *Phil. & Mar.* and ſo was *Thomas Laurence*'s caſe, 9 *Eliz.* and *Edw. Harcourt*'s caſe, 5 *Eliz.* which was for ſuſpicion of Felony. *Richard Beckwith*, and not *Bartwith*, as was cited, for they have miſtaken both names and matters, was committed *per ſpeciale mandatum domini Regis*; and the Record ſaith he was bailed. But it was by reaſon of a letter from the Lords of the Council.

The cauſe of *Peter Man*'s commitment in the 4 and 5 of *Philip* and *Mary*, appears to be for ſuſpicion of Felony and Robbery.

For *Reynor*'s caſe, it is the ſame with *Beckwith*, and were both for one thing.

In the 8 *Hen.* VII. one *Roger Cherry* was committed *per mandatum domini Regis*, and it was for a criminal caſe; and he was afterwards indicted, and acquitted and delivered.

And there is another precedent thereof, that ſaith, he was afterwards arraigned, condemned, and hanged; we have the Record of it.

And now, my Lord, I will ſhew ſome precedents on the other ſide, where men have been committed by the commandment of the King, and by the commandment of the Council, and have been delivered again by their directions: and of this kind there be two in the Tower, that as they were committed by Warrant, ſo by Warrants again for their bailing they were delivered; the offences were againſt the Foreſt, and for Murder.

In the 4th *Edw.* III. *M.* 4. *Edmund de Newport* in *Eſſex* was indicted for an offence committed by him in the Foreſt. And *M.* 7. *John Fox* was likewiſe indicted for an offence by him done in the Foreſt: and there be two Warrants to bail them.

M. 20. *John Cobb* was the like, and there was a letter from the King, *Quod ponatur in Ballium uſque ad proximam Aſſiſam.*

Theſe were offences within *Weſtminſter primo*, and there be ſeveral Warrants to bail them.

The Clerk of this Court hath many Records, by which it appeareth, that many have been committed by the command of the King and of the Queen, and of the Council, and brought their *Habeas Corpus*; and the ſucceſs was, that many of them were committed to the ſame priſons, and divers were committed to the Marſhal of this Court: the reaſon was, for that many of them were to appear here, their cauſes being triable here; and it would have been a great trouble to ſend them back ſo far to priſon as into the Countries, and therefore they were delivered to the Marſhal of the King's houſhold: again, many had their trials in this Court, and ſome ſuffered, and ſome were delivered by ſpecial command, as they were committed by ſpecial command.

The number of theſe of this nature are infinite that have been in our times; we have found ſome forty precedents of men committed out of the Chancery, and by the High-Commiſſion, for contempts, and ſome by the Barons of the Exchequer, and ſome in *London*, that have been brought hither by *Habeas Corpus*.

Of this I ſhall obſerve, that in the 11 *Jacobi*, there was a private conſtitution in *London*, made between the white Bakers, that they might live one by another, and the one not to invade the other's liberties; and for contempt againſt this ordinance, ſome were committed to priſon; as *Thomas Heaning*, and *Littlepage*: they had a *Habeas Corpus*, and the cauſe was ſhewn to be by reaſon of the ſaid Conſtitution, and thereupon the priſoners were ſent back to *London*, to abide the order of the Mayor. For, my Lord, this Court hath been ever careful not to examine the Decrees of the Chancery, or Court of Requeſts, but have only looked whether the cauſe returned be within the juriſdiction of this Court; nor have they called in queſtion the by-laws and conſtitutions of *London*, but they ſend them back to the Court of Juſtice that committeth them.

And hath this Court been ſo careful of theſe inferiour Courts to this which is the chief? And when the King, who is the Head of Juſtice, ſhall commit a man, ſhall not they be as careful to do the like Juſtice to him? But when the King ſaith to them, The commitment was by my Warrant and Commandment, will you queſtion this, and whether this commitment be good or no? I hope you will not.

And now, my Lord, touching ſome precedents which have been taken out of their own ſhewing, I ſhall make it appear, that as they have been committed by the King or Council, ſo they had Warrants alſo to diſcharge them: and they, my Lord, are two ancient Records; the firſt is 7 *H.* VII. *Rot.* 6. the other, *Rot.* 73. The firſt was *Thomas Brown*, he was committed to the *Marſhalſea*, *per mandatum domini Regis, & aliis certis de cauſis*: and afterwards the Records ſay, *Dominus Rex quoad* Chaſe *relaxavit mandatum ſuum*, and he was bailed, and the reſt lay by it.

My Lord, I will conclude; I could be infinite in this caſe in precedents, but enough is enough, your Lordſhip knoweth the weight of precedents; it is not enough to ſhew this was done, but alſo to ſhew the reaſon why it was done. I will trouble your Lordſhip no longer, but if any man ſhall doubt whether that or any part thereof be truly recited which hath been ſaid touching the Records or Statutes, I can ſay no more, but that the Statutes have been read, and the Records are ready ſorted out to be ſeen by your Lordſhip.

I ſhall conclude (what I ſhall ſay) in this caſe, to anſwer the fear rather than the juſt ground of them that ſay, this may be a cauſe of great danger, with the words of *Bracton*, who ſpake not to flatter the preſent age; *lib.* 1. *cap.* 8. in the end, ſpeaking of a writ for wrong done by the King to the Subject touching land, he hath theſe words: *Si judicium a Rege teſtatur (cum breve non currat contra ipſum) locus erat ſupplicationi quod factum ſuum corrigat & emendet, quod quidem ſi non fecerit, ſatis ſufficit ei ad pœnam quod dominum expectet ultorem, nemo quidem de factis ſuis præſumat diſputare, multo fortius contra factum ſuum venire.*

My Lord, I Engliſh it not, for I apply it not, any man may make uſe of it as he pleaſeth; and ſo I conclude both for the point of exception, and matter of the return, which I refer to your Lordſhip's judgment, whether all in the return but theſe words, *per ſpeciale mandatum domini Regis*, be not ſuperfluous. And for the matter, whether theſe Gentlemen be bailable or not bailable, I have ſhewed your Lordſhip, that by the practice of all ages they are not bailable, but have been remanded back.

And therefore I pray your Lordſhip, that theſe Gentlemen may be remitted, and left to go the right way for their delivery, which is by a petition to the King. Whether it be a Petition of right or of grace, I know not; it muſt be, I am ſure, to the King, from whom I do perſonally underſtand that theſe Gentlemen did never yet preſent any Petition to him that came to his knowledge.

L. C. Juſtice. Mr. Attorney, thus much we muſt ſay to you, you have taken a great deal of pains, you having had ſo ſhort a time to conſider of this caſe; it is a caſe of very great weight and expectation, and we do not intend that you ſhall expect long for our reſolution, for that theſe Gentlemen are in priſon, and deſire no doubt to know where they muſt truſt; I hope we ſhall reſolve according to the reaſon of former times, and according to our conſciences: but this I muſt tell you, as I did thoſe that argued, you muſt bring in your precedents; for though we have ſeen ſome of them, yet ſome of them we have not ſeen, therefore we deſire that your ſervants or yourſelves do attend, and bring unto us after dinner thoſe precedents you have mentioned on the King's part, for we intend to meet this afternoon, and you ſhall have our opinions to-morrow: and I muſt tell you on the other ſide, that this cauſe being of ſuch weight, Counſel ſhould be wary how they ſpeak any thing to inveigle the Court.

Touching ſuch precedents as you urged in ſome of them, we know there is ſomething urged which makes not for you, ſo you have omitted ſome material things to be ſhewn; I ſpeak it to this purpoſe, not to prejudice the cauſe, or to deliver my opinion, which becomes me not, but to ſhew, that Counſellors ſhould be careful: and this I dare ſay, there is matter in ſome of the precedents themſelves that leads to another caſe, if they were entirely cited.

The Term grows away, you ſhall not be long in expectation, we will meet this afternoon, and give you our opinions to-morrow morning.

Mr. *Noye*. We deſire that Mr. *Attorney* may bring the precedents of 34 *Elizabeth* with him.

Mr. *Attorney*. I will ſhew you any thing; but, my Lord, I ſhall be bold to claim the privilege of my place, as the King's Counſel; when the King's Attorney hath ſpoken, there ought to be no Arguments after that; but if you aſk to ſee any thing, you ſhall have it.

L. C. Juſtice. It is that we aim at, that truth and right may appear, and not to ſatisfy the one or the other part; but it is not deſired to make uſe of it by way of reply, but for ſatisfaction only.

Serj. *Bramſton*. My Lord, for the precedents I cited, I did think they ſhould have been brought and read in the Court, that your Lordſhip might ſee them.

L. C. Juſtice. You ſhall need no Apology, the Records and Precedents ſhall be brought to the Court, and read openly, for the Court will not wrong you, and you ſhall ſee the difference between them, and your relation of them; nor you muſt not wrong us with your written verities.

ON *Thurſday* the twenty-eighth of *November*, *Michaelis*, 3 *Caroli Regis*, Chief-Juſtice-*Hyde*, Juſtice *Doderidge*, Juſtice *Jones*, and Juſtice *Whitlock* on the Bench: Sir *John Corbet*, Sir *Walter Earl*, Sir *John Heveningham*, and Sir *Edmund Hampden* at the Bar.

L. C. Juſtice. I am ſure you here expect the reſolution of the whole Court, as accordingly yeſterday we told you you ſhould have.

This is a caſe of very great weight and great expectation, and it had been fit we ſhould have uſed more ſolemn arguments of it than now for the ſhortneſs of the time we can do; for you have been long in priſon, and it is fit you ſhould know whereunto you ſhould truſt: I am ſure you expect juſtice from hence, and God forbid we ſhould ſit here but to do Juſtice to all men according to our beſt ſkill and knowledge, for it is our oaths and duties ſo to do, and I am ſure there is nothing elſe expected of us. We are ſworn to maintain all Prerogatives of the King, that is one branch of our oath; and we are likewiſe ſworn to adminiſter Juſtice equally to all people.

We cannot, I tell you, deliver in ſolemn arguments, and give the judgments of every one of us touching this caſe, as the weight thereof requireth; but we have met together, and we have duly and ſeriouſly conſidered of it, and of all that which has been ſpoken of on either ſide, and we are grown to a reſolution, and my Brothers have enjoined me to deliver to you the reſolution of the whole Court; and therefore though it be delivered by my mouth, it is the reſolution of us all: I hope I ſhall not miſtake any thing of their intention in my delivery; but if I do, they ſit here by me, and I ſhall not take it ill if they right me.

Therefore I muſt tell you, there hath been many points learnedly argued at the Bar, which we ſhall not touch, or give our Reſolution upon, but bend ourſelves to the point in judgment here.

Theſe three Statutes, as for example, the Statute of *Magna Charta*, 25 *E.* III. and 36 *E.* III. and the Statute of *Weſtminſter primo*, and divers other Statutes that have been alledged, and particularly diſputed of, we all acknowledge and reſolve, that they are good Laws, and that they be in force: but the interpretation of them at this time belongs not to us, for we are driven to another point: and though the meaning of them belongs to the one way or the other, yet our judgment muſt be the ſame; for that which is now to be judged by us is this, Whether one that is committed by the King's authority, and no cauſe declared of his commitment, according as here it is upon this return, whether we ought to deliver him by bail, or to remand him back again? Wherein you muſt know this which your Counſel will tell you, we can take notice only of this return; and when the caſe appears to come to us no otherwiſe than by the return, we are not bound to examine the truth of the return, but the ſufficiency of it, for there is a great difference between the ſufficiency and the truth.

We cannot judge upon rumors nor reports, but upon that which is before us on record; and therefore the Return is examinable by us, whether it be ſufficient or not.

The exceptions which have been taken to this Return were two: the one for the form, the other for the ſubſtance.

For the form, whether it be formally returned or no, for it is not returned (as it is ſaid) poſitively and abſolutely, that they were committed by the King, but as it appears by a warrant from the Lords of the Council, and then there ſeems to be a contradiction in the Return.

For firſt it ſaith, they were committed by the King's command, and afterwards it alledgeth it to be by a warrant of the Lords of the Council, and ſo it is repugnant.

Now we conceive that this is a poſitive and an abſolute return, and ſo the reaſon is, that he firſt returns that they are detained by the ſpecial command of the King, and if he had ceaſed there it had been poſitive; now there follows, that this was ſignified to them by the Lords of the Council. This is returned, to aſcertain the Court that he returned the cauſe truly, and to ſhew us that we ſhould not doubt the verity of this return; and not to ſhew to us that he hath no knowledge of the cauſe but by the ſignification of the Lords of the Council: according to that caſe of the Biſhop of *Norwich*, touching the excommunication, he muſt teſtify his own knowledge, and not *continetur in Archivis:* ſo a Sheriff muſt not return *quod mandavi ball'*, *&c.* and he gives this anſwer, unleſs it be a Bailiff of a Liberty that hath return of Writs.

And ſo here if the Warden of the Fleet had returned, that the Lords of the Council had ſignified unto him that his priſoner was detained by the King's commandment, that had been ſufficient: but when he returns poſitively at the firſt, that it is done by the King's direction, he ſhews afterwards that which ſhould make it appear that he deals not falſely; which might have been omitted, but being mentioned that That is the ſcope of it, and not otherwiſe, the Return is good and poſitive.

Now then to the other objections, becauſe he ſpeaks nothing of the caption why they were taken, you know it is the uſual return of all Officers to anſwer the point in queſtion; there is not one word in the Writ that demands the cauſe why they were taken, but why they are detained: ſo that the point in the Writ is ſufficiently anſwered; for though ſometimes it is neceſſary that the cauſe of the caption ſhould be certified, yet ſometimes it is ſuperfluous: but in our caſe the cauſe of the detention is ſufficiently anſwered, which is the demand of the Writ, and therefore we reſolve that the form of this return is good. The next thing is the main point in Law, whether the ſubſtance or matter of the return be good or no, wherein the ſubſtance is this, he doth certify that they are detained in priſon by the ſpecial command of the King; and whether this be good in Law or no, that is the queſtion.

To this purpoſe, if you remember this point, I ſay you did not cite any Book or Caſe in print, but many precedents, which, I confeſs, are as ſtrong as any Book-Caſes; for Book-Caſes, I confeſs, are taken and ſelected out of the Records and Reſolutions of Judges, and that is it which is in our Books, though they be not ſo obvious for every eye, but are found out by pains and diligent ſearch, and being produced, are of the ſame and equal authority with our Book-Caſes; but this muſt be when Records are brought faithfully and entirely, ſo that the Court may judge of them.

Now the precedents, you urged them to be ſo many, and ſo fully to the point, that we may thereby ſee that it is good to hear what can be ſaid on both ſides, and for to hear all, and view the Records themſelves; and therefore we required you to bring the Records to us, and you did ſo, and you brought us more than you mentioned here; and we have peruſed them all, that thereby we might ſee whether the Court be faithfully dealt withal or no; for though Counſellors may urge a Book for their own advantage, yet it is the duty of the Court to ſee and diſtinguiſh of their allegations as the truth may appear.

This I told you yeſterday, when I told you your precedents warranted not ſo much as you urged them for; for if you remember, you urged ſome precedents to be, that where men were committed by the King, or by the Lords of the Council, and no cauſe expreſſed why they were committed, they were delivered.

This is in effect our caſe, if the precedents affirm that when a man is committed by the King's command, and no juſt cauſe is ſhewn, that upon ſuch a general return the party ſhall *ipſo facto* be delivered; for if the return be not amended, then he ſhall be diſcharged.

For altho' men come with prepared minds, yet the preparation of every man's heart ought to ſubmit to the truth, and by the precedents, you ſhall ſee if it be ſo as you have alledged; but this I dare affirm, that no one of the Records that you have cited, doth inforce what you have concluded out of them, no not one; and therefore as you have cited Records and Precedents, Precedents ſhall judge this caſe.

I will ſhew you how they differ from the Records: you have concluded, when the King hath committed one, and expreſſeth not the cauſe, the Court hath delivered the party; but you ſhall ſee the contrary concluded in every caſe that you have put: where the cauſe of the commitment hath been expreſſed, there the party hath been delivered by the Court, if the caſe ſo required; but where there hath been no cauſe expreſſed, they have ever been remanded; or if they have been delivered, they have been delivered by the King's direction, or by the Lords of the Council: If this fall now in proof, you ſee you have gathered fair concluſions out of the Records; and that you may ſee that this is ſo, I have brought the Records with me of your own propounding, and I will go through them from point to point, and then judge yourſelves of the caſe.

It is not material whether I call for them in that order as you produced them or no, and therefore I will take them as they are, firſt or laſt in the King's Reign. They are in number many, in the time of *Henry* VII. *Henry* VIII. Queen *Mary*, Queen *Elizabeth*, and King *James*'s time.

I will ſhew you Sir *Thomas Monſon*'s Caſe in 14 *Jacobi*, which was in all our memories.

I will begin with *Hill.* 8 *H.* VII. *R. Cherry*'s caſe; you vouched it to this purpoſe, That *Cherry* being committed by the Mayor of *Windſor*, was brought hither by a *Habeas Corpus*, and the Mayor returns that he was committed *per mandatum domini Regis*, and that thereupon he was delivered; but you ſhall find by the Record, that he was committed by the Mayor at the ſuit of the King for Felony, for which he was afterwards indicted, brought to a trial, and then diſcharged.

Vide this Record in Mr. *Selden*'s Argument in the Parliament, 3 & 4 *Caroli Regis*, and ſo all the reſt *poſtea*.

The next was 19 *H.* VII. *Urſwick*'s caſe; and you ſay he was brought hither by the Warden of the *Fleet*, who, as you ſaid, returned that he was committed *per mandatum domini Regis*, and you ſaid he was diſcharged, but he was bailed upon the Lord's Letter, and brought hither to record his return, for he was bound to appear here, and then he was diſcharged; but that was the cauſe of his bringing hither. *Vide* the Records as aforeſaid.

The next was *Hugh Pain*'s caſe, in 21 *H.* VII. and that you urged thus: You ſay that he was brought hither by a *Habeas Corpus* by the Warden of the *Fleet*, who returned that he was committed by the King's Council, and he was bailed: now we find that he was committed by them for ſuſpicion of felony; and that cauſe was declared, and he was bailed: ſo that you ſee there was a cauſe expreſſed. *Vide* the Records aforeſaid.

The next is 2 *H.* VIII. *Thomas Beckley* and *Robert Harriſon*'s caſe; theſe you ſaid were brogght in hither by *George* Earl of *Shrewſbury*, and *Thomas* Earl of *Surrey*; and the return was, that they were committed by the command of *Hen.* VII. and that they were bailed; but you ſhall find that they were committed for ſuſpicion of felony; and that *Harriſon* was committed by *Hen.* VII. but it was for Homicide upon the Sea, and ſo the cauſe is expreſſed, and afterwards he was bailed. The next was in 22 *H.* VIII. *John Parker*'s caſe: you urged it to this purpoſe, That he was brought hither by a *Habeas Corpus* by the Sheriffs of *London*, and they you ſaid returned, that he was committed *per ſpeciale mandatum domini Regis nunciatum*, *&c* by *Robert Peck*, *&c.* The cauſe why you urged this was two-fold; firſt, that he was committed by the King's command, and yet he was bailed; ſecondly, That he was committed *per mandatum domini Regis nunciat' per* ſuch a one: but you ſhall find by the Record that he was committed for the ſecurity of the peace, and for ſuſpicion of felony, and that was the cauſe for which he was bailed, for he is bailable by Law when ſuch a cauſe appears. *Vide* the Record as afore.

Go on to the next, and that is *Peter Man*'s caſe, in the 3 and 4 *Philip* and *Mary*; you urged that to this purpoſe, you ſay, that he was brought by the Keeper of the *Gate-Houſe*, and you ſay, that he returned, that he was committed by the command of the King and Queen's Council, and thereupon he was bailed; but you ſhall find that he was committed for ſuſpicion of felony and robbery, and thereupon he was bailed.

The next is in the 4 and 5 *Phil. & Mar. Edward Newport*'s caſe; you ſaid that the Conſtable of the *Tower* brought him hither, and returned that he was committed by the Council of the King and Queen, and that he was bailed: but you ſee by the Records, that he was committed for ſuſpicion of coining, which is bailable only in this Court, and therefore it was removed hither. Yet this I muſt tell you, that it is true, in one Record it appears not but as you have cited it; but you may ſee how it is ſupplied by another Record, and the cauſe, and he was delivered by a proclamation. *Vide* both Records in Mr. *Selden*'s Argument.

Doderidge. He could not be delivered by proclamation, unleſs it was for a criminal cauſe.

L. C. J. *Hyde.* Obſerve another thing in the Book, he is brought hither by the ſpecial command of the Council: ſo that although it appears not in the Record, yet if the King or Lords mean to have him tried for his life, he is brought hither. Then you cited *Robert Conſtable*'s caſe, 9 *Eliz.* and you ſaid he was brought hither by the Lieutenant of the *Tower*, who returned that he was committed by the Lords of the Council, and thereupon he was bailed; but you ſhall find that he came hither to plead his pardon, and he was pardoned. *Vide* the Record as aforeſaid.

Thomas Lawrence's caſe in 9 *Eliz.* is the ſame with *Conſtable*'s, for it appears that he was brought hither to plead his pardon, and he was pardoned, and that was the cauſe he was brought hither.

The next was in the 21 *Eliz. John Browning*'s caſe; it is true he was committed by the Lords of the Council, and he was brought by a *Habeas Corpus* to the Chamber hf Sir *Chriſtopher Wray*, Chief-Juſtice, and he was there bailed.

The next was 33 *Eliz. William Rogers*; and he, you ſaid, was brought hither by the Keeper of the *Gate-houſe*, who returned, that he was committed to him by the Lords of the Council, yet there was a cauſe expreſſed, and that was for ſuſpicion of coining of money.

The next was in 39 *Eliz. Laurence Broome*; you ſay that he was brought hither by the Keeper of the *Gate-houſe*, who returned, that he was committed for divers cauſes, moving the Lords of the Council, and thereupon he was delivered; but the Record is, that the return alſo was for ſuſpicion of Treaſon; and although the ſuſpicion of Treaſon appears not in one Record, yet there is another for it. Here you ſee the cauſe of his commitment, and that he was bailed, but it was by the King's command, *uſque Oct. Michaelis.* *Vide* the Record.

I blame not you that are of Counſel with theſe Gentlemen for urging this Record, for this cauſe is not expreſſed in your Record, but that he was committed by the command of the Council only; but he was committed for ſuſpicion of Felony with Sir *Thomas Smith.* *Vide* the Record.

The next is in 40 *Eliz. Edward Harcourt*'s caſe, and *Thomas Wenden*'s caſe; I bring them together, becauſe they are both in one year. In the 40 of *Eliz. Edward Harcourt*, you ſay, was committed to the *Gate-houſe* by the Lords of the Council; and the return was, that he was committed by them, *Certis de cauſis ipſos moventibus ignotis*, and he was bailed.

Here is another in the ſame time committed to the ſame priſon by the Lords in the Star-Chamber, it was *Thomas Wenden*'s caſe; and he, you ſay, was committed by them, *certis de cauſis*, (as the other was) and that he was bailed; but you ſhall find in the margin of the Roll, *Traditur in ball' ex aſſenſu Concilii dominæ Reginæ*; and that was the relation of the Queen's Attorney, ſo that you ſee how the precedent fits you.

The next are two more Commitments to the *Gate-houſe*, *Beckwith* and *Reyner*; they, you ſaid, were committed to the *Gatehouſe*, brought their *Habeas Corpus*, and the Keeper of the *Gatehouſe* returned, that they were committed by virtue of a Warrant from the Archbiſhop of *Canterbury*, *Henry* Earl of *Northampton*, Lord Warden of the Cinque Ports, and others of the Privy-Council; requiring the ſaid Keeper to receive the ſaid *Beckwith* and *Reyner* into his charge, until they

ſhould have further order from them in that behalf; and you ſay they were bailed.

Vide the Record in Mr. *Selden* aforeſaid.

Now you ſhall ſee the direction to bail him; he was bailed by the direction from the Lords of the Council, as appears by their letter. *Vide* as aforeſaid.

Now we come to *Cæſar*'s caſe, in 8 *Jacobi*; you urged that to this purpoſe: you ſay he was committed to the *Marſhalſea*, who upon a *Habeas Corpus* returned, that he was committed *per ſpeciale mandatum domini Regis*, and you ſay, becauſe the return was ſo general, the rule of the Court was, that it ſhould be amended, or elſe he ſhould be diſcharged. I will open to you what the reaſon of that rule was, for that notice was taken, that the Keeper of the priſon had uſed a falſe return, and had uſurped the name of the King; I know not how, but the commitment was not by the King's command; and that was the cauſe that he had a day given him to amend his return, but his body was remanded to priſon, as you ſhall ſee by the Record. *Vide* the Record, *&c.*

The laſt precedent that you uſed, was that of Sir *Thomas Monſon*; and that was ſo notorious, and ſo late, that I marvel that was offered at all, it made me jealous of all the reſt, that was ſo notorious; and now I have omitted none you brought me. *Vide* the Record.

By this Record you may ſee that he was committed by divers Lords of the Council; and it was for the ſuſpicion of the death of Sir *Tho. Overbury*; and it is notoriouſly known, that he was brought hither to plead his pardon.

I will not tell you that you read all theſe precedents, for you read none, but urged them here before us; but we required you to bring them to us, and they were brought to us, Mr. *Corbet* brought them all but one, and that Mr. *Noye* brought, it was in the 22 *Hen.* VIII. *Parker*'s caſe; and one Mr. *Holborn*, a man whoſe face I never ſaw before, nor is he now in mine eye, did yeſterday bring us one precedent to this purpoſe; and it was Sir *John Brocket*'s caſe in 1 *Jac.* he was committed to the *Gatehouſe*, and upon a *Habeas Corpus*, the Keeper returned that *Commiſs' fuit per Warrantum Dominorum de Privat' Concilio, cujus tenor ſequitur in hæc verba, viz.* To the Keeper of the *Gatehouſe*, *&c. Vide* Mr. *Selden*'s precedents; but ſee upon what ground he was bailed, it was a ſpecial command of the Lords of the Council. *Vide* the Record.

Theſe are all the Records and Precedents that you miniſtred unto us in your argument, and that were delivered unto us, for I have dealt faithfully with you; and now you have ſeen them in the caſes, I would have any man judge of the concluſion which you made the laſt day, that when a man is committed, and the caſe not known, but it is certified to be by the King's ſpecial commandment, and the *Habeas Corpus* is procured by yourſelves and ſpeeded by the King, that we can diſcharge or bail them.

Then the precedents are all againſt you every one of them, and what ſhall guide our judgments, ſince there is nothing alledged in this caſe but precedents? That if no cauſe of the commitment be expreſſed, it is to be preſumed to be for matter of State, which we cannot take notice of; you ſee we find none, no not one, that hath been delivered by bail in the like caſes, but by the hand of the King or his direction.

If we ſhould ceaſe here, you ſee you have ſhewn nothing to ſatisfy us, and we know that you that be of their Counſel, will ſatisfy your Clients therein.

But you ſhall ſee that we have taken a little pains in this caſe, and we will ſhew you ſome precedents on the other ſide; and I believe there be five hundred of this nature, that may be cited to this purpoſe. I ſhall go retrograde, and go backwards in citing the years of the precedents that I ſhall mention.

I will begin with 7 *H.* VIII. *Edward Page*, he was brought hither by the Steward of the *Marſhalſea*, who returned that he was committed *per mandatum domini Regis*, and he was remitted, ſo that he was not delivered upon this general return, but he was remanded.

The next was 12 *H.* VII. there you ſhall ſee a precedent where one was committed, his name was *Thomas Yew*, he was committed for felony, and alſo *per mandatum domini Regis*, and the King's Attorney came hither and releaſed the King's command, and thereupon he was bailed.

Mr. *Noye*. It is all one with *Parker*'s caſe.

L. C. Juſt. No; for here were two cauſes of the commitment, *Hobart* was then the King's Attorney, and he ſignified in open Court that he was diſcharged by the King's command, and *Poſtea traditur in bail' pro ſuſpicione feloniæ.*

The next was *Humphrey Broch*, 9 *H.* VII. *Rot.* 14. you ſhall find it much to that purpoſe as the other was before; he was impriſoned for an outlawry, and by the commandment of the King alſo, and after that the releaſe of the King's commandment was certified to the Chief-Juſtice, he was thereupon diſcharged. *Vide* the Record.

The next is 7 *H.* VII. *Thomas Brown*, *John Rawlings*, *Robert Sherman* and others, were committed *per mandatum domini Regis*, and for felony, outlawry, and other cauſes, as appears by the Records, and after the King releaſeth his commandment, and that the outlawry ſhould be reverſed, and for the felony he was bailed. *Vide* the Record.

So that you may ſee the offences mentioned in the Warrant for the commitment were triable here, and when the King releaſes his commandment they were bailed for the reſt, but they that were committed by the commandment of the King were releaſed by the King.

In 7. *H.* VII. the caſes of *William Bartholomew*, *Henry Carre*, *William Choſe*, and others, is to the ſame effect, by all which you may ſee, that when the King releaſeth his commandment, they were bailed for the reſt, and as they were committed by the King's commandment, ſo they were releaſed by the King's command.

Now here I ſhall trouble you with no more precedents, and you ſee your own what concluſion they produce. And as to thoſe ſtrong precedents alledged on the other ſide, we are not wiſer than they that went before us; and the common cuſtom of the law is, the Common Law of the land, and that hath been the continual common cuſtom of the law, to which we are to ſubmit, for we come not to change the law, but to ſubmit to it.

We have looked upon that precedent that was mentioned by Mr. Attorney; the reſolution of all the Judges of *England*, in 34 *Eliz.* We have conſidered of the time, and I think there were not before, nor have been ſince, more upright Judges than they were, *Wray* was one, and *Anderſon* another: in *Eaſter* Term this was certified under the hands of all the Judges of *England*, and Barons of the Exchequer in a duplicate, whereof the one was delivered to the Lord-Chancellor, and the other to the Lord-Treaſurer, to be delivered to the Queen. We have compared our copies, not taking them the one from the other, but bringing them: we have long had them by us together, and they all agree word for word; and that which Mr. Attorney ſaid, he had out of Judge *Anderſon*'s Book, and it is to this purpoſe, to omit other things, that if a man be committed by the commandment of the King, he is not to be delivered by a *Habeas Corpus* in this Court, for we know not the cauſe of the commitment. *Vide* this at the latter end of the firſt part of Mr. *Selden*'s argument, as aforeſaid.

But the queſtion now is, Whether we may deliver this Gentleman or not? You ſee what hath been the practice in all the Kings times heretofore, and your own Records; and this reſolution of all the Judges teacheth us, and what can we do but walk in the ſteps of our forefathers? If you aſk me which way you ſhould be delivered, we ſhall tell you, we muſt not counſel you.

Mr. Attorney hath told you that the King hath done it, and we truſt him in great matters, and he is bound by Law, and he bids us proceed by Law, as we are ſworn to do, and ſo is the King; and we make no doubt but the King, if you ſeek to him, he knowing the cauſe why you are impriſoned, he will have mercy; but we leave that. If in Juſtice we ought to deliver you, we would do it; but upon theſe grounds, and theſe Records, and the precedents and reſolutions, we cannot deliver you, but you muſt be remanded. Now if I have miſtaken any thing, I deſire to be righted by my Brethren, I have endeavoured to give the reſolutions of us all *.

They continued in cuſtody till the 29th of *January* following, when his Majeſty in Council order'd all the impriſon'd Gentlemen to be releas'd; and Writs being iſſued about this time for electing Members of Parliament, to meet *March* the 17th, thoſe Gentlemen who ſuffer'd for the Loan, were elected in many places. On the 17th of *March* the Houſe met, and Sir *John Finch* was choſen Speaker. On the 20th, the Houſe ſettled their Committees; and the 22d was ſpent in opening the Grievances, as *Billeting of Solaiers, Loans by Benevolence and Privy-Seal, and the impriſoning certain Gentlemen who refus'd to lend upon that Account, who afterwards bringing their* Habeas Corpus, *were notwithſtanding remanded to priſon*; nor did the Houſe incline to ſupply his Majeſty till theſe Grievances were redreſſed.

To which purpoſe Sir *Francis Seymour* ſpoke thus:

THIS is the great Council of the Kingdom, and here (if not here alone) his Majeſty may ſee as in a true glaſs the State of the Kingdom; we are called hither by his Majeſty's Writs to give him faithful counſel, ſuch as may ſtand with his honour; but this we muſt do without flattery: we are ſent hither by the Commons to diſcharge that truſt repoſed in us, by delivering up their juſt grievances, and this we muſt do without fear: let us not therefore be like *Cambyſes*'s Judges, who being demanded of their King whether it were not lawful for him to do what in itſelf was unlawful? They, rather to pleaſe the King, than to diſcharge their own conſciences, anſwered, That the *Perſian* Kings might do what they liſted. This baſe flattery tends to miſchief, being fitter for reproof than imitation; and as flattery, ſo fear taketh away the judgment: let us not then be poſſeſſed with fear or flattery, of corruptions the baſeſt. For my own part, I ſhall ſhun both theſe, and ſpeak my conſcience with as much duty to his Majeſty as any man, but not neglecting the Public, in which his Majeſty and the Commonwealth have an Intereſt: but how can we ſhew our affections, whilſt we retain our fears? or how can we think of giving of Subſidies, till we know whether we have any thing to give or no? For if his Majeſty be perſuaded by any to take from his ſubjects what he will, and where it pleaſeth him; I would gladly know what we have to give? It's true, it is ill with thoſe ſubjects that ſhall give laws to their Princes, and as ill with thoſe Princes which ſhall uſe force with thoſe laws; that this hath been done, appeareth by the billeting of Soldiers, a thing no way advantageous to his Majeſty's ſervice, but a burden to the Commonwealth; this alſo appeareth by the laſt *Levy of Money againſt an Act of Parliament*. Again, Mr. Speaker, what greater proof can there be of this, than *the impriſonment of divers Gentlemen for the Loan*, who if they had done the contrary for fear, their fault had been as great as theirs that were the projectors in it; and to countenance theſe proceedings, hath it not been preached (or rather prated) in our Pulpits, that all we have is the King's, *Jure Divino*, ſay theſe time-ſervers; they forſake their own function, and turn ignorant Stateſmen: we ſee how willing they will be to change a good Conſcience for a Biſhoprick; and (Mr. Speaker) we ſee how eaſy it is for a Prince, how juſt and good ſoever, to be abuſed, in regard he muſt ſee with other men's eyes, and hear with other men's ears. Let us not flatter his Majeſty, it is too apparent to all the World, the King and People ſuffer more now than ever; his Majeſty in his affairs abroad, and his People in their eſtates at home: but will you know the reaſon of all this? Let us look back to the actions of former Princes, and we ſhall find that thoſe Princes have been in greateſt want and extremity that exacted moſt of their ſubjects, and moſt unfortunate in the choice of their Miniſters, and to have failed moſt in their undertakings; happy is that Prince that hath thoſe that are faithful of his Council. That which his Majeſty wanted in the management of his affairs concerning *France* and *Spain*, I am clear, was his want of faithful Council to adviſe: the reaſon is plain, a Prince is ſtrongeſt by faithful and wiſe Council; I would I could truly ſay, ſuch have been employed abroad. I will confeſs,

* Mr. *Whitlock* in his *Memorials of the Engliſh Affairs*, Page 8. (Edit. 1732.) ſays, "Five of the impriſon'd Gentlemen, by *Habeas Corpus* were brought to the *King*'s-*Bench*; "and (by their Counſel aſſign'd) took exceptions to the Return, *For that it had not the cauſe of their Commitment, but of their Detainer in Priſon*, per ſpeciale mandatum Re- "gis, *which is no particular cauſe*; and the Law being moſt tender of the ſubjects liberty," *Noye*, *Selden*, *Bramſton*, *Calthrope* and others, who were of Counſel for the Priſoners, prayed they might be releaſed and diſcharged.

Heath, the King's Attorney, at another day argued in maintenance of the Return. *Hyde*, Chief-Juſtice, declared the opinion of the Court, *That the Return was poſitive and abſolute, by the King's ſpecial command, and the ſignification of it by the Lords of the Council is only to inform the Court: And that the* Habeas Corpus *is not to return the cauſe of the Impriſonment, but of the detention in Priſon; that the matter of this Return is ſufficient, and the Court is not to examine the truth of the Return, but muſt take it as it is.* So the Priſoners were remanded.

feſs, and ſtill ſhall from my heart, he is no good ſubject, nor well affected to his Majeſty and the State, that will not willingly and freely lay down his Life, when the end may be the ſervice of his Majeſty, and the good of the Common-weal. But on the contrary, when againſt a Parliament-Law, the ſubject ſhall have taken from him his goods againſt his will, and his liberty againſt the laws of the land; ſhall it be accounted want of duty in us to ſtand upon our privileges, hereditary to us, and confirmed by ſo many Acts of Parliament?

In doing this we ſhall but tread the ſteps of our forefathers, who ever preferred the publick Intereſt before their own right, nay, before their own lives; nor can it be any wrong to his Majeſty to ſtand upon them, ſo as thereby we may be the better enabled to do his Majeſty ſervice. But it will be a wrong to us and our poſterity, and our conſciences, if we willingly forego that which belongs unto us by the law of God, and of the Land, and this we ſhall do well to preſent to his Majeſty; we have no cauſe to doubt of his Majeſty's gracious acceptation.

Sir *Thomas Wentworth.*

THIS debate carries a double aſpect towards the Sovereign and the Subject; though both be innocent, both are injured and both to be cured. Surely, in the greateſt humility I ſpeak it, theſe illegal ways are puniſhment and marks of indignation, *the raiſing of Loans* ſtrengthened by commiſſion, with unheard-of inſtructions and oaths; the billeting of Soldiers by the Lieutenants, and Deputy-Lieutenants, have been as if they could have perſuaded Chriſtian Princes, yea Worlds, that the right of Empires had been to take away by ſtrong hands, and they have endeavoured, as far as poſſible for them, to do it. This hath not been done by the King (under the pleaſing ſhade of whoſe Crown I hope we ſhall ever gather the fruits of Juſtice), but by projectors, who have extended the prerogative of the King beyond the juſt ſymmetry, which maketh a ſweet harmony of the whole: they have brought the Crown into greater want than ever, by anticipating the Revenues; and can the ſhepherd be thus ſmitten, and the ſheep not ſcattered? They have introduced a Privy-Council, raviſhing at once the ſpheres of all ancient government, *impriſoning us without either bail or bond*; they have taken from us, what? What ſhall I ſay indeed, what have they left us? All means of ſupplying the King, and ingratiating ourſelves with him, taking up the root of all propriety, which if it be not ſeaſonably ſet again into the ground by his Majeſty' own hands, we ſhall have, inſtead of beauty, baldneſs. To the making of thoſe whole, I ſhall apply myſelf, and propound a remedy to all theſe diſeaſes. By one and the ſame thing have King and People been hurt, and by the ſame muſt they be cured; to vindicate, what, new things? No, our ancient vital liberties, by re-inforcing the ancient laws made by our anceſtors, by ſetting forth ſuch a character of them, as no licentious ſpirit ſhall dare to enter upon them. And ſhall we think this is a way to break a Parliament? No, our deſires are modeſt and juſt, I ſpeak truly, both for the Intereſt of the King and People; if we enjoy not theſe, it will be impoſſible for us to relieve him.

Therefore let us never fear they ſhall not be accepted by his goodneſs; wherefore I ſhall ſhortly deſcend to my motions, conſiſting of four parts; two of which have relation to our perſons, two to the propriety of goods. For our perſons; firſt, the freedom of them from impriſonment: ſecondly, from employment abroad, contrary to the ancient cuſtoms. For our goods, that no Levies be made, but by Parliament: ſecondly, no billetting of Soldiers. It is moſt neceſſary that theſe be reſolved, that the ſubject may be ſecured in both.

Sir *Benjamin Rudyard.*

THIS is the criſis of Parliaments; we ſhall know by this if Parliaments live or die, the King will be valued by the ſucceſs of us, the Counſels of this Houſe will have operations in all, 'tis fit we be wiſe; his Majeſty begins to us with affection, proclaiming, that he will rely upon his People's love. Preſervation is natural, we are not now on the *bene eſſe*, but on the *eſſe*; be ſure *England* is ours, and then prune it. Is it no ſmall matter that we have provoked two moſt potent Kings? We have united them, and have betrayed ourſelves more than our Enemies could. Men and Brethren, what ſhall we do? Is there no Balm in *Gilead?* If the King draw one way, and the Parliament another, we muſt all ſink. I reſpect no particular, I am not ſo wiſe to contemn what is determined by the major part; one day tells another, and one Parliament inſtructs another. I deſire this Houſe to avoid all conteſtations, the hearts of Kings are great, 'tis comely that Kings have the better of their ſubjects. Give the King leave to come off; I believe his Majeſty expects but the occaſion. 'Tis lawful, and our duty to adviſe his Majeſty, but the way is to take a right courſe to attain the right end; which I think may be thus: by truſting the King, and to breed a truſt in him; by giving him a large ſupply according to his wants, by proſtrating our grievances humbly at his feet, from thence they will have the beſt way to his heart, that is done in duty to his Majeſty. And to ſay all at once, let us all labour to get the King on our ſide, and this may be no hard matter, conſidering the near ſubſiſtence between the King and People.

Sir *Edward Coke.*

DUM tempus habemus, bonum operemur. I am abſolutely for giving a ſupply to his Majeſty; yet with ſome caution. To tell you of foreign dangers and inbred evils, I will not do it; the State is inclining to a conſumption, yet not incurable: I fear not foreign Enemies, God ſend us peace at home: for this diſeaſe I will propound remedies, I will ſeek nothing out of mine own head, but from my heart, and out of Acts of Parliament. I am not able to fly at all grievances, *but only at Loans.* Let us not flatter ourſelves; who will give Subſidies, if the King may impoſe what he will? and if, after Parliament, the King may inhaunce what he pleaſeth? I know the King will not do it, I know he is a religious King, free from perſonal vices; but he deals with other men's hands, and ſees with other men's eyes. Will any give a Subſidy that will be taxed after Parliament at pleaſure? The King cannot tax any by way of Loans: I differ from them, who would have this of Loans go amongſt Grievances, but I would have it go alone.

I'll begin with a noble Record, it chears me to think of it, 25 *E.* III. it is worthy to be written in letters of gold; *Loans againſt the will of the Subject, are againſt Reaſon, and the Franchiſes of the Land,* and they deſire reſtitution: What a word is that *Franchiſe?* The Lord may tax his Villein high or low, but it is againſt the Franchiſes of the Land, for Freemen to be taxed but by their conſent in Parliament. *Franchiſe* is a *French* word, and in *Latin* it is *Libertas.* In *Magna Chartâ* it is provided, that, *Nullus liber homo capiatur vel impriſonetur aut diſſeiſietur de libero tenemento ſuo,* &c. *niſi per legale judicium parium ſuorum vel per legem terræ*; which Charter hath been confirmed by good Kings above thirty times.

When theſe Gentlemen had ſpoken, Sir *John Cook,* Secretary of State, took up the matter for the King; and concluded for redreſs of Grievances, ſo that ſupplies take the predecency; and ſaid:

Mr. Secretary *Cook.*

I Had rather you would hear any than me; I will not anſwer what hath been already ſpoken; my intent is not to ſtir, but to quiet; not to provoke, but to appeaſe: my deſire is, that every one reſort to his own heart to reunite the King and his State, and to take away the ſcandal from us; every one ſpeaks from the abundance of his heart: I do conclude out of every one's concluſion, to give to the King, to redreſs grievances; all the difference is about the manner. We all are Inhabitants in one Houſe, the Commonwealth, let every one in ſomewhat amend his Houſe, ſomewhat is amiſs: but if all the Houſe be on fire, will we then think of mending what is amiſs? will you not rather quench the fire? the danger all apprehend. The way that is propounded, I ſeek not to decline, illegal courſes have been taken, it muſt be confeſſed, the redreſs muſt be by Laws and Puniſhment: but withal, add the Law of neceſſity; neceſſity hath no law, you muſt abilitate the State to do, what you do by petition require. It is wiſhed we begin with grievances; I deny not that we prepare them, but ſhall we offer them firſt? Will not this ſeem a condition with his Majeſty? Do we not deal with a wiſe King, jealous of his honour? All ſubſidies cannot advantage his Majeſty ſo much, as that his ſubjects do agree to ſupply him; this will amaze the Enemy more than ten Subſidies: begin therefore with the King, and not with ourſelves.

Sir *Robert Phillips.*

THIS day's debate makes me call to mind the cuſtom of the *Romans,* who had a ſolemn Feaſt once a year for their Slaves, at which time they had liberty (without exception) to ſpeak what they would, whereby to eaſe their afflicted minds; which being finiſhed, they ſeverally returned to their former ſervitude. This may, with ſome reſemblance and diſtinction, well ſet forth our preſent ſtate; where now, after the revolution of ſome time, and grievous ſufferings of many violent oppreſſions, we have (as thoſe Slaves had) a day of liberty of ſpeech; but ſhall not, I truſt, be herein Slaves, for we are free, we are not Bondmen, but Subjects: theſe, after their feaſts, were Slaves again; but 'tis our hope to return Freemen. I am glad to ſee this morning's work, to ſee ſuch a ſenſe of the grievances under which we groan. I ſee a concurrence of grief from all parts, to ſee the Subject wronged, and a fit way to ſee the Subject righted: I expected to ſee a diviſion, but I ſee an honourable conjunction, and I take it a good omen. It was wiſhed by one, that there were a forgetfulneſs of all; let him not proſper that wiſheth it not. No, there is no ſuch ways to perfect remedy, as to forget injuries; but not ſo to forget, as not to recover them. It was uſual in *Rome* to bury all injuries on purpoſe to recover them. It was ſaid by a Gentleman, that ever ſpeaks freely, *We muſt ſo govern ourſelves, as if this Parliament muſt be the Criſis of all Parliaments, and this is the laſt.* I hope well, and there will be no cauſe for the King, our Head, to except againſt us, or we againſt him. The dangers abroad are preſented to us; he is no *Engliſhman* that is not apprehenſive of them.

We have provoked two potent Kings (the one too near), who are too ſtrongly joined together; the dangers are not chimerical, but real, I acknowledge it, but it muſt be done in proportion of our dangers at home: I more fear the violation of publick Rights at home, than a foreign Enemy. Muſt it be our duties and direction to defend foreign dangers, and eſtabliſh ſecurity againſt them, and ſhall we not look at that which ſhall make us able and willing thereunto? We ſhall not omit to confide and truſt his Majeſty, otherwiſe our Counſels will be with fears, and that becomes not *Engliſhmen.* The unaccuſtomed violences (I have nothing but a good meaning) trench into all we have. To the four particulars already mentioned, wherein we ſuffer, one more may be added, leſt God forbear to hear me in the day of my trouble; our Religion is made vendible by Commiſſions: Alas! now a toleration is granted (little leſs), and men for pecuniary annual rates diſpenſed withal, whereby Papiſts, without fear of law, practiſe Idolatry, and ſcoff at Parliaments, at Laws, and all. It is well known, the people of this State are under no other ſubjection, than what they did voluntarily conſent unto, by the original contract between King and People; and as there are many Prerogatives and Privileges conferred on the King, ſo there are left to the Subject many neceſſary Liberties and Privileges, as appears by the common Laws and Acts of Parliament, notwithſtanding what theſe two *Sycophants (Sibthorp* and *Manwaring)* have prated in the Pulpit to the contrary. Was there ever yet King of *England* that directly violated the Subjects Liberty and Property, but their actions were ever complained of in Parliament, and no ſooner complained of than redreſſed? 21 *E.* III. there went out a Commiſſion to raiſe money in a ſtrange manner; the ſucceeding Parliament prayed redreſs, and, till *H.* VIII. we never heard of the ſaid Commiſſions again.

Another way was by Loan, a Worm that canker'd the Law, the Parliament did redreſs it, and that money was paid again. The next little Engine was *Benevolence*; what the force of that was, look into the Statute of *R.* III. which damned that particular way, and all other indirect ways.

Since the Right of the Subject is thus bulwark'd by the Law of the Kingdom, and Princes upon complaint have redreſſed them, I am confident we ſhall have the like cauſe of joy from his Majeſty.

I will here make a little digreſſion: The County *(Somerſetſhire)* I ſerve for, were pleaſed to command me to ſeek the removal from them of the greateſt burthen that ever people ſuffered. It was excellently ſaid, Commiſſionary Lieutenants do deprive us of all Liberty; if ever the like was ſeen of the Lieutenancy that now is, I will never be believed more: They tell the people they muſt pay ſo much upon warrant from a Deputy-Lieutenant, or be bound to the good behaviour, and ſent up to the Lords of the Council; it is the ſtrangeſt Engine to rend the liberty of the Subject that ever was: There is now a *Decemviri* in every County, and amongſt that *Decemviri,* there is ſome *Claudius Appius* that ſeek their own revenges. We complain of *Loans* and *Impoſitions,* but when Deputy-Lieutenants may ſend Warrants to impriſon our Perſons at pleaſure,

ſure, if we pay not what they ſent for, it concerns us to preſerve the Country in freedom, and to conſider of this kind of people. There is now *Neceſſity* brought in for an argument; all know that *Neceſſity* is an armed man, and that *Neceſſity* is an *evil Counſellor*, I would we had never known that Counſel; we are almoſt grown like the *Turks*, who ſend their *Janizaries*, who place the Halbert at the door, and there he is Maſter of the houſe. We have Soldiers billetted, and Warrants to collect money, which if they do not, the Soldiers muſt come and rifle. The *Romans* ſending one into *Spain*, found no greater complaint, than the diſcontent that did ariſe, from Soldiers placed amongſt them. I would you would look into *Forteſcue*, where he puts the Prince in mind, what miſery he ſaw, where Soldiers were put upon the people: But, faith he, no man is forced to take Soldiers but Inns, and they are to be paid by them. I deſire we reſort to his Majeſty for redreſs, and to reduce all into bounds.

The other way of Grievance is a Judgment in a legal courſe of proceeding; we have had three Judgments of late times, all exceeding one another in prejudice of the Subject: The firſt was, that which was judged in all formality, the *Poſtnati (Scots)* caſe, which People I honour; for we find many of them love us more than we do ourſelves: I do not complain of it, but only mention it.

The other Judgment was for Impoſitions, which was given in the Exchequer, and this Houſe twice afterwards damned that Judgment: How remiſs our eyes are upon that, I grieve to ſee.

There is a Judgment, if I may ſo call it, a fatal Judgment againſt the Liberty of the Subject, *Mich.* 3 *Car.* in Sir *John Heveningham*'s caſe, argued at the Bar, and pronounced but by one alone. I can live, although another without Title be put to live with me; nay, I can live, although I pay Exciſes and Impoſitions for more than I do: but to have my liberty, which is the ſoul of my life, taken from me by power, and to be pent up in a Gaol without remedy by Law, and this to be ſo adjudged to periſh in Gaol; O improvident Anceſtors! O unwiſe Foreſathers! to be ſo curious in providing for the quiet poſſeſſion of our Lands and Liberties of Parliament, and to neglect our Perſons and Bodies, and to let them die in priſon, and that *durante bene placito*, remedileſs. If this be Law, what do we talk of our Liberties? Why do we trouble ourſelves with the diſpute of Law, Franchiſes, Propriety of Goods? It is the *Summa totalis* of all miſeries; I will not ſay it was erroneous, but I hope we ſhall ſpeak our minds, when that Judgment comes here to be debated. What may a man call this? if not Liberty. Having paſſed in ſome confuſion in the faſhion of my delivery, I conclude: We will conſider two particulars, his Majeſty, and his People. His Majeſty calls to us, and craves our aſſiſtance to revive again his honour, and the honour of the Nation: The People ſend us, as we hope, with that direction, that we ſhall return to them with that Olive-branch, that aſſurance of being free from thoſe calamities, under which they can hardly breathe. Our ſins have brought on us thoſe miſeries, let us all bring our Portion to make up the wall: we come with loyal hearts; his Majeſty ſhall find, that it is we that are his faithful Counſellors; let all Sycophants be far removed from his Majeſty, ſince we cannot help his Majeſty without opening our grievances; let us diſcharge our duties therein: yet while we ſeek Liberty, we will not forget Subjection. All things a State can be capable of, either bleſſings or puniſhments, depend on this meeting: if any think the King may be ſupplied, and the Commonwealth preſerved without redreſs of grievances, he is deceived. The Kings of *England* were never more glorious than when they truſted their Subjects; let us make all haſte to do the Errand for which we came; let the Houſe conſider to prepare our Grievances fit for his Majeſty's view, not to make a Law to give us new Liberties, but declaratory, with reſpective Penalties; ſo that thoſe which violate them, if they would be vile, they ſhould fear infamy with men; and then we ſhall think of ſuch a Supply as never Prince received, and with our money we ſhall give him our hearts, and give him a new people rais'd from the dead: Then I hope this Parliament will been titled, The Parliament of Wonders, and God's Judgments diverted, and theſe beams of goodneſs ſhall give us life, and we ſhall go home to our own Countries, and leave our Poſterities as free as our Anceſtors left us.

But this day, as alſo the two next days Debate, produced no Reſolutions.

Monday, 24 *March*, Secretary *Cook* renewed the motion of Supplies for his Majeſty, yet ſo, that Grievances be likewiſe taken into conſideration.

Then he made a motion, That the ſame Committee may hear Propoſitions of general heads of Supply, and afterwards go to other buſineſſes of the day for Grievances. Others preferred the conſideration of Grievances, as a particular root that invaded the main Liberty of the Subject. It is the Law (ſaid they), that glorious fundamental Right, whereby we have power to give; we deſire but that his Majeſty may ſee us have that Right therein, which, next to God, we all deſire; and then we doubt not, but we ſhall give his Majeſty all ſupply we can. The time was, when it was uſual to deſire favours for ſowing of diſcords, as *Gondomar* did for *Raleigh*'s head. But the debates of this day came to no Reſolution.

The day following, being the 25th, Mr. Secretary *Cook* tendered the Houſe certain Propoſitions from the King, touching Supply; and told them, That his Majeſty, finding time precious, expects that they ſhould begin ſpeedily, leſt they ſpend that time in deliberation, which ſhould be ſpent in action; that he eſteems the Grievances of the Houſe his own, and ſtands not on Precedents in point of Honour. Therefore, to ſatisfy his Majeſty, let the ſame Committee take his Majeſty's Propoſitions into conſideration, and let both concur, whether to ſit on one in the forenoon, or the other in the afternoon, it is all one to his Majeſty.

Hereupon the Houſe turned themſelves into a Committee, and commanded *Edward Littleton*, Eſq; unto the Chair, and ordered the Committee to take into conſideration the Liberty of the Subject, in his Perſon, and in his Goods; and alſo to take into conſideration his Majeſty's Supply. In this Debate the Grievances were reduced to ſix heads, as to our Perſons.

1. Attendance at the Council-board.
2. Impriſonment.
3. Confinement.
4. Deſignation for foreign Imployment.
5. Martial Law.
6. Undue Proceedings in matter of Judicature.

The firſt matter debated, was the Subject's Liberty in his perſon; the particular inſtance was in the caſe of Sir *John Heveningham*, and thoſe other Gentlemen who were impriſoned about Loan-money, and thereupon had brought their *Habeas Corpus*, had their Caſe argued, and were nevertheleſs remanded to Priſon, and a Judgment, as it was then ſaid, was entered.

Then Sir *Edward Coke* ſpoke as follows.

IT is true, that the King's Prerogative is a part of the Law of this Kingdom, and a ſupreme part, for the Prerogative is highly tendered and reſpected of the Law; yet it hath bounds ſet unto it by the Laws of *England*. But ſome worthy Members of this Houſe have ſpoken of foreign States, which I conceive to be a foreign Speech, and not able to weaken the ſide I ſhall maintain.

That Mr. *Attorney* (Sir *Robert Heath*) may have ſomething to anſwer unto, I will ſpeak, without taking another day, to the body of the Cauſe, yet keeping ſomething in ſtore for another time. I have not my *Vade mecum* here, yet I will endeavour to recite my Authorities truly; I ſhall begin with an old Authority, for *Errorem ad ſua principia referre, eſt refellere.*

The ground of this error was the Statute of *Weſt.* 1. *cap.* 15. which ſaith, That thoſe are not repleviable, who are committed for the death of a man, or by the commandment of the King, or his Juſtices, or for the Foreſt (for ſo it was cited;) and *Stamford* 72. expounding hereof, the commandment of the King to be the commandment of the King's mouth, or of his Council: but it is clear that by *præceptum* is underſtood the commandment of the Juſtices of the *King*'s *Bench*, and *Common-Pleas*; and this is *contemporanea expoſitio, quæ eſt fortiſſima in lege.*

To this purpoſe *vide Weſtm.* 1. *cap.* 9. the Book of 2 *R.* II. *item*, *cap.* 20. *de maleſactoribus in parc.* the Book of 8 *Hen.* IV. 5. *item*, 25. 26. 29. *cap. ejuſdem ſtatuti*, whereby it may appear that the commandment here ſpoken of to be the commandment of the King, is his commandment by the Judges, *Præceptum Domini Regis in Curia, non in Camera.* So it is likewiſe taken 1 *R.* II. *cap.* 12. in a Statute made in the next King's Reign, and expreſly in *Dyer*, *fol.* 162. §. 50. & *fol.* 192. §. 24. Shall I further prove it by matter of Record? *Fac hoc & vives*; it is 18 *E.* III. *Rot.* 33 *coram Rege*, *John Bilſton*'s caſe; who being committed and detained in priſon by the commandment of the King, was diſcharged by *Habeas Corpus, eo quod Breve Domini Regis non fuit ſufficiens cauſa.*

All the Acts of Parliament in title of *Accuſation* are direct to the point, and alſo the 16 *Hen.* VI. *Brooke* and *Littleton*, 2. 8. *monſtrans de fait* 182. *per Cur.* The King cannot command a man to be arreſted in his preſence: the King can arreſt no man, becauſe there is no remedy againſt him, 1 *Hen.* VII. 4. likewiſe *prædict. ſtat. cap.* 18. the King's pleaſure is not binding without the aſſent of the Realm.

I never read any opinion againſt what I have ſaid, but that of *Stamford*, miſtaken (as you ſee) in the ground: yet I ſay not that a man may not be committed without preciſe ſhewing the cauſe in particular; for it is ſufficient if the cauſe in general be ſhewed, as for Treaſon, &c. 1. *E.* II. *ſtat. de fran gend. priſon. nullus habeat judicium*, &c. there the cauſe of impriſonment muſt be known, elſe the Statute will be of little force; the words thereof do plainly demonſtrate the intent of the Statute to be accordingly.

I will conclude with the higheſt authority, that is, 25 chap. of the *Acts* of the Apoſtles, the laſt verſe, where Saint *Paul* ſaith, *It is againſt reaſon to ſend a man to priſon without ſhewing a cauſe.*

Thus, Mr. *Attorney*, according to the rules of Phyſick, I have given you a Preparative, which doth precede a purge. I have much more in ſtore *.

Mr. *Creſſwell*'s Speech.

I Stand up to ſpeak ſomewhat concerning the point of the Subjects grievances by impriſonment of their perſons without any declaration of the cauſe, contrary unto, and in derogation of, the fundamental Laws and Liberties of this Kingdom.

I think I am one of the *Puiſnes* of our profeſſion, which are of the Members of this Houſe; but howſoever ſure I am in that reſpect of my own inabilities, I am the *Puiſne* of all the whole Houſe; therefore, according to the uſual courſe of Students in our profeſſion, I (as the *Puiſne*) ſpeak firſt in time, becauſe I can ſpeak leaſt in matter.

In purſuance of which courſe I ſhall rather put the caſe than argue it: and therefore I ſhall humbly deſire firſt of all, of this honourable Houſe in general, that the goodneſs of the cauſe may receive no prejudice by the weakneſs of my argument; and next of all, of my Maſters here of the ſame profeſſion in particular, that they by their learned judgments will ſupply the great defects I ſhall diſcover by declaring of my unlearned opinion.

Before I ſpeak of the queſtion, give me leave, as an entrance thereunto, to ſpeak firſt of the occaſion.

You ſhall know, *Juſtice* is the life and the heart's-blood of the Common-wealth; and if the Common-wealth bleed in the maſter-vein, all the balm in *Gilead* is but in vain to preſerve this our body of policy from ruin and deſtruction. Juſtice is both *Columna & Corona Reipublicæ*, ſhe is both the Column and the Pillar, the Crown and the Glory of the Common-wealth. This is made good in Scripture by the judgment of *Solomon*, the wiſeſt King that ever reigned on earth. For firſt, ſhe is the Pillar; for he ſaith, that by Juſtice the Throne ſhall be eſtabliſhed: Secondly, ſhe is the Crown; for he ſaith, that by Juſtice a Nation is exalted.

Our Laws, which are the rules of this Juſtice, they are the *ne plus ultra* to both the King and the Subject: and as they are the *Hercules* Pillar, ſo are they the Pillar to every *Hercules*, to every *Prince*, which he muſt not paſs.

Give me leave to reſemble her to *Nebuchadnezzar*'s tree: for ſhe is ſo great, that ſhe doth ſhade not only the Palace of the King, and the Houſe of the Nobles, but doth alſo ſhelter the cottage of the pooreſt beggar.

* I riſe not to make an argument in this point, the greateſt that ever was in this place, or elſewhere. This Liberty, which all men, as well Lawyers as others, believe, as I hope, hath been violated, tho' not without complaint: but except in this late courſe, I am confident, was never adjudged before. The *Habeas Corpus* was brought, the cauſe was returned by command of the King, intimated by the Lords of the Council; Argument was made; ſeven Acts of Parliament were mentioned, and all were paſſed over, and only commended; and upon that a Declaration of Judgment was given, and ſo adjudged; *That upon any commitment by the King or the Council, no enlargement can be.* I ever obſerved, in any great cauſe, ſolemn arguments uſed to be made. We ſee his Majeſty and his Council are both intereſted in this. I do deſire that ſome of the King's Counſel may ſpeak what they can to ſatisfy us of this great power. MSS. Pymmii apud virum honoratum Thomam Hales Baronettum. See *Selden*'s Life in his Works, Vol. I. p. 12.

Where-

Wherefore, if either now the blasts of indignation, or the unresistable violator of laws, Necessity, hath so bruised any of the branches of this tree, that either our persons, or goods, or possessions have not the same shelter as before; yet let us not therefore neglect the root of this great tree, but rather with all our possible endeavour and unfeigned duty, both apply fresh and fertile mould unto it, and also water it even with our own tears, that so these bruised branches may be recover'd, and the whole tree again prosper and flourish. For this I have learned from an ancient Father of the Church, that though *preces Regum sunt armatæ*, yet *arma subditorum* are but only *preces & lachrymæ*.

I know well that *Cor Regis inscrutabile*; and that Kings, although they are but men before God, yet are they Gods before men. And therefore to my gracious and dread Sovereign, (whose virtues are true qualities ingenerate both in his judgment and nature) let my arm be cut off, nay, let my soul not live that day, that I shall dare to lift up my arm to touch that forbidden fruit, those flowers of his princely Crown and Diadem.

But yet in our *Eden*, in this garden of the Commonwealth, as there are the *flowers of the Sun*, which are so glorious that they are to be handled only by royal Majesty; so are there also some daisies and wholesome herbs, which every common hand that lives and labours in this garden may pick and gather up, and take comfort and repose in them. Amongst all which this *oculus diei*, this *bona libertas* is one, and the chief one.

Thus much in all humbleness I presume to speak for the occasion. I will now descend to the question: wherein I hold, (with all dutiful submission to better Judgments) that these Acts of power in imprisoning and confining of his Majesty's Subjects in such manner, without any declaration of the cause, are against the fundamental Laws and liberties of this Kingdom.

And for these reasons thus briefly drawn, I conclude,

1. The first, from the great favour which the Law doth give unto, and the great care which it hath ever taken of the Liberty and Safety of this Kingdom.

I should not need to take the question in pieces, nor handle it in parts dividedly, but as one entire; because I hold no other difference between imprisonment and confinement than only this, that one hath a less and straiter, the other a greater and larger prison. And this word confinement not being to be found in any one case of our Law, if therefore it is become the language of State, it is too difficult for me to define.

To proceed therefore in maintenance of my first reason; I find our Law doth so much favour the Subject's Liberty of his person, that the body of a man was not liable to be arrested or imprisoned for any other cause at the Common-Law, but for force, and things done against the peace. For the Common-Law (being the preserver of the land) so abhorreth force, that those that commit it she accounts her capital enemies, and therefore did subject their bodies to imprisonment. But by the Statute of *Marlebridge*, *Cap.* 24. which was made 35 *Hen* III. who was the eighth King from the Conquest, because Bailiffs would not render accounts to their Lords, it was enacted, that their bodies should be attached: And afterwards by the Statute 23 *Ed.* III. 17. who was the eleventh King after the Conquest, because men made no conscience to pay their debts; it was enacted that their bodies should likewise be attached. But before those statutes no man's body was subject to be taken or imprisoned otherwise than as aforesaid. Whereby it is evident, how much the Common-Law favoured the Liberty of the Subject, and protected his body from imprisonment.

I will inforce the reason further by a rule in Law, and some cases in Law upon that rule.

The rule is this, That *Corporalis injuria non recipit æstimationem è futuro*: So as if the question be not for a wrong done to the person, the Law will not compel him to sustain it, and afterwards accept a remedy; for the Law holds no damage a sufficient recompence for a wrong which is corporal.

The cases in Law to prove this, shall be these.

If one menace me in my goods, or that he will burn the evidence of my land, which he hath in his custody, unless I make unto him a bond; there I cannot avoid the bond, by pleading of this menace. But if he restrains my person, or threatens me with battery, or with burning my house, which is a protection for my person, or with burning an instrument of manumission, which is an evidence of my enfranchisement; upon these menaces or dares, I shall avoid the bond by plea.

So if a Trespasser drives my beast over another man's ground, and I pursue to rescue it, there I am a Trespasser to him on whose ground I am. But if a man assault my person, and I for my safety fly over into another man's ground, there I am no Trespasser to him, for *Quod quis in tuitione sui corporis fecerit, jure id feciſſe existimatur*.

Nay, which is more, the Common-Law did favour the Liberty not only of Freemen, but even of the persons of Bondmen, and Villeins, who have no propriety either in Lands or Goods, as Freemen have; and therefore by the Law, the Lord could not maim his Villein; nay, if the Lord commanded another to beat his Villein, and he did it, the Villein should have his action of battery against him for it.

If the Lord made a lease for years to his Villein, if he did plead with his Villein, if he tendered his Villein to be Champion for him in a Writ of Right; any of those Acts, and many other, which I omit, were in Law enfranchisements, and made these Villeins Freemen. Nay, in a suit brought against one, if he by Attorney will plead that he is a Villein, the Law is so careful of Freedom, that it disallows this Plea by Attorney, but he must do it *propria persona*, because it binds his posterity and blood to the Villein's also. And thus much in the general for my first reason.

2. My next reason is drawn by an argument *à majori ad minus*; I frame it thus: If the King have no absolute power over our lands or goods, then *à fortiori* not over our persons, to imprison them without declaring the cause, for our persons are much more worth than either lands or goods; which is proved by what I have said already, and *Christ* himself makes it clear, where he saith, *An non est corpus supra vestimentum?* Is not the body of more worth than the raiment? Where the *Canonists* say, that *vestimentum* comprehendeth all outward things which are not in the same degree with that which is corporal. And our Law maketh it also plain; for if a Villein purchaseth frank-land, this makes it Villein-land according to the nature of his person; but it holds not *è converso*, frank-land shall not free the person. Now that the King hath no absolute power either over our lands or goods, I will only at this time but put a case or two: for without proof of the premisses, my conclusion would not follow.

First for land: The King cannot by his Letters-Patent make the son of an Alien heir to his father, nor to any other, for he cannot disinherit the right heir, saith the book, nor do no prejudice to the Lord of his Escheat. The King by his Prerogative shall pay no toll for things bought in fairs and markets; but a custom for paying toll to go over the soil and freeholds of another shall bind the King, for this toucheth the inheritance of the Subject; and therefore the King shall not have so much as a way over his lands without paying; and if not a way, then certainly not the land itself.

Next for goods: If a man hath a jewel in gage for ten pound, *&c.* and is attainted for Treason, the King shall not have this jewel, if he pays not the ten pound. So if Cattle be distreined, and the owner of them afterwards be attainted, yet the King shall not have them until he have satisfied that for which they were distreined. And if in these cases, where the owners of the goods are such capital offenders, the King cannot have them; much less shall he have them when the owner is innocent, and no offender.

Nay, I may well say that almost every leaf and page of all the volumes of our Common-Law prove this right of propriety, this distinction of *meum* and *tuum*, as well between King and Subject, as one Subject and another: and therefore my conclusion follows, That if the prerogative extend not neither to lands nor to goods, then *à fortiori* not to the person, which is more worth than either lands or goods, as I said. And yet I agree, that by the very law of nature, service of the person of the subject is due to his Sovereign; but this must be in such things which are not against the law of nature: but to have the body imprisoned without any cause declared, and so to become in bondage, I am sure is contrary unto, and against the law of nature, and therefore not to be inforced by the Sovereign upon his Subjects.

3. My next reason is drawn *ab inutili & incommodo*. For the Statute *de frangentibus prisonam*, made 1 *E.* II. is, *quod nullus qui prisonam fregerit, subeat judicium vitæ vel membrorum pro fractione prisonæ tantum, nisi causa pro qua captus imprisonetur tale judicium requirat*. Whence this conclusion is clearly gathered, That if a man be committed to prison without declaring what cause, and then if either Malefactor do break the prison, or the Gaoler suffer him to escape, albeit the prisoner so escaping had committed *Crimen læsæ majestatis*, yet neither the Gaoler nor any other that procured his escape, by the Law suffer any corporal punishment for setting him at large; which, if admitted, might prove in consequence a matter of great danger to the Commonwealth.

4. My next reason is drawn *ab Regis honore*, from that great honour the Law doth attribute unto sovereign Majesty: and therefore the rule of law is, that *Solum Rex hoc non potest facere, quod non potest injuste agere*. And therefore if a subject hath the donation, and the King the presentation to a Church, whereunto the King presents without the subject's nomination, here the *quare impedit* lies against the Incumbent, and the King is in law no disturber.

And *Hussey*, Chief-Justice, in 1 *Hen.* VII. *fol.* 4. saith, that Sir *John Markham* told King *Edw.* IV. he could not arrest a man either for Treason or Felony, as a subject might, because that if the King did wrong, the party could not have his action against him.

What is the reason that an action of false imprisonment lies against the Sheriff, if he doth not return the King's Writ, by which he hath taken the body of the subject, but this, because the Writ doth *breviter enarrare causam captionis*, (which if it doth not, it shall abate, and is void in law) and being returned, the party when he appears may know what to answer, and the Court upon what to judge? And if the King's Writ under his Great Seal cannot imprison the subject, unless it contains the cause, shall then the King's warrant otherwise do it without containing the cause; that his Judges upon return thereof may likewise judge of the same, either to remain, or judge the party imprisoned?

I should argue this point more closely upon the Statute of *Magna Charta* 29. *quod nullus liber homo imprisonetur*; the Statute of *West.* 1. *cap.* 15. for letting persons to bail; and the judgments lately given in the *King's-Bench*: but the latter of these Statutes having been by that honourable Gentleman Sir *Edward Coke* (to whom the professors of the law both in this and all succeeding ages, are, and will be much bound) already expounded unto us, and that also fortified by those many cotemporary expositions and judgments by him learnedly cited; and there being many learned Lawyers here, whose time I will not waste, who were present; and some of them perhaps of Counsel in the late cause adjudged in the *King's-Bench*, where you (to whose person I now speak) do well know I was absent, being then of Counsel in a cause in another Court, and my practice being in the Country, far remote from the Treasure of Antiquity, and Records conducing to the clearing of this point; therefore the narrowness of my understanding commends unto me sober ignorance, rather than presumptuous knowledge, and also commands me no further to trouble your patience.

But I will conclude with that which I find reported by Sir *John Davis*, who was the King's Serjeant, and so, by the duty of his place, would no doubt maintain to his uttermost the prerogatives of the King his royal Master; and yet it was by him thus said in those Reports of his upon the case of Tanistry Customs, *p.* 29. That the Kings of *England* always have had a monarchy-royal, and not a monarchy-seignoral: where, under the first (saith he), "the subjects are freemen, and have propriety in their "goods, and free-hold, and inheritance in their lands; but under the latter they are as Villeins and Slaves, and have propriety in nothing. And "therefore (saith he) when a Royal Monarch makes a new Conquest, yet "if he receives any of his Nation's ancient Inhabitants into his protection, they and their heirs after them shall enjoy their lands and liberties "according to the law." And there he voucheth this precedent and judgment following, given before *William* the *Conqueror* himself, *viz.*

"That one *Sherborn* a *Saxon*, at the time of the Conquest being owner "of a castle and lands in *Norfolk*, the Conqueror gave the same to one "*Warren* a *Norman*; and *Sherborn* dying, the heir claiming the same by "descent according to the law, it was before the Conqueror himself ad-

" judged for the heir, and that the gift thereof by the Conqueror was void."

If then it were thus in the Conqueror's time, and by his own ſentence and judgment, and hath ſo continued in all the ſucceſſions of our Kings ever ſince, what doubt need we have, but that his moſt excellent Majeſty, upon our humble petition proſtrated at his feet, (which, as was well ſaid, is the beſt paſſage to his heart) will vouchſafe unto us our ancient liberties and birth-rights, with a thorough reformation of this and other juſt grievances? And ſo I humbly crave pardon of this honourable Houſe, that I have made a ſhort leſſon long.

Upon this and other arguments made in this caſe of the *Habeas Corpus*, the Houſe referred the whole buſineſs to a Committee, to examine all the proceedings: concerning which, Mr. *Selden* afterwards made report to the Houſe, that Mr. *Waterhouſe*, a Clerk in the Crown-Office, being examined before the Committee, did confeſs, that by direction from Sir *Robert Heath*, the King's Attorney-General, he did write the draught of a judgment in the caſe before-mentioned, which was delivered to Mr. Attorney. And Mr. *Keeling* being examined before the Committee did confeſs, that after *Mich.* term laſt, the Attorney-General wiſhed him to make a ſpecial entry of the *Habeas Corpus:* to which he anſwered, he knew no ſpecial entry in thoſe caſes, but only a *Remittitur:* but ſaid to Mr. Attorney, that if he pleaſed to draw one, and the Court after aſſented to it, he would then enter it. The Attorney did accordingly make a draught, and the Copy thereof Mr. *Keeling* produced to the Committee. And further ſaid, that he carried this draught to the Judges, but they would not aſſent to a ſpecial entry: nevertheleſs, the Attorney-General divers times ſent to him, and told him there was no remedy, but he muſt enter it. Yet a week before the Parliament met, the Attorney-General called for the draught again, which accordingly he gave unto him, and never heard of it more.

Sir *Robert Philips*, upon this report, gave his opinion, " That this in-
" tended judgment in the *Habeas Corpus*, was a draught made by ſome man
" that deſired to ſtrike us from all our liberties: but the Judges juſtly
" refuſed it. But if the Judges did intend it, we ſit not here (ſaid he)
" to anſwer the truſt we are ſent for, if we preſent not this matter to his
" Majeſty. Let this buſineſs be further ſearched into, and ſee how this
" judgment lies againſt us, and what the Judges do ſay concerning
" the ſame."

March 27. The Houſe proceeded in further debate of the liberty of the ſubject. When

Mr. *Hackwell* reſumed the debate of the matter concerning the *Habeas Corpus*.

" The late judgment (ſaid he) which lies in bar, is only an award,
" and no judgment; and in the Lord Chief-Juſtice's argument, there was
" no word ſpoken, that the King might commit or detain without cauſe.

" For the King to commit a man, is *indignum Rege:* Mercy and Ho-
" nour flow immediately from the King, Judgment and Juſtice are his too,
" but they flow from his Miniſters; the Sword is carried before him,
" but the Sceptre is in his hands. Theſe are true emblems of a good King.

" The Law admits not the King's power of detaining in priſon at plea-
" ſure. In ancient times priſons were but *pro cuſtodia, carceres non ad pœ-*
" *nam, ſed ad cuſtodiam.* Admit the King may commit a man, yet to de-
" tain him as long as he pleaſeth is dangerous, and then a man ſhall be
" puniſhed before his offence: Impriſonment is a maceration of the body,
" and horror to the mind; it is *vita pejor morte.*"

Then the Houſe commanded that caſe in the Lord Chief-Juſtice *Anderſon*'s Book, all of his own hand-writing, to be openly read. The words of the Report were theſe:

" Divers perſons fueront committes a ſeveral temps a ſeveral priſons,
" ſur pleaſure ſans bon cauſe parte de queux eſtiant ameſnes en banck le
" Roy. Et parte en ſe Commune banck fueront accordant a la ley de la
" terre miſe a large & diſcharge de le impriſonment, pur que aucuns grants
" fueront oſtendus & procure un commandment a les Judges que ils ne fera
" iſſent apres. Ceo nient meens les Judges ne furceaſe mes per adviſe
" enter eux ils feſoient certain Articles le tenour de queux enſue, & deli-
" ver eux al ſeigneurs Chauncelor & Treaſurer & eux ſubſcribe avec
" toute lour maines, les Articles ſont come enſuont."

[We her Majeſty's Juſtices of both Benches, and Barons of the Exchequer, deſire your Lordſhips, that by ſome good means ſome order may be taken, that her Highneſs's Subjects may not be committed or detain'd in priſon by commandment of any Nobleman or Counſellor againſt the laws of the Realm; either elſe help us to have acceſs to her Majeſty, to the end to become ſuitors to her for the ſame; for divers have been impriſoned for ſuing ordinary actions and ſuits at the Common Law, until they have been conſtrained to leave the ſame againſt their wills, and put the ſame to order, albeit judgment and execution have been had therein, to their great loſſes and griefs: for the aid of which perſons, her Majeſty's Writs have ſundry times been directed to ſundry perſons, having the cuſtody of ſuch perſons unlawfully impriſoned, upon which Writs, no good or lawful cauſe of impriſonment hath been returned or certified. Whereupon, according to the laws, they have been diſcharged of their impriſonment; ſome of which perſons ſo delivered, have been again committed to priſon in ſecret places, and not to any common or ordinary priſon, or lawful Officer or Sheriff, or other lawfully authorized, to have or keep a Gaol; ſo that upon complaint made for their delivery, the Queen's Courts cannot tell to whom to direct her Majeſty's Writs; and by this means Juſtice cannot be done. And moreover, divers Officers and Serjeants of *London* have been many times committed to priſon for lawful executing of her Majeſty's Writs, ſued forth of her Majeſty's Courts at *Weſtminſter*; and thereby her Majeſty's Subjects and Officers are ſo terrified, that they dare not ſue or execute her Majeſty's Laws, her Writs and Commandments: divers others have been ſent for by Purſivants, and brought to *London* from their dwellings, and by unlawful impriſonment have been conſtrained, not only to withdraw their lawful ſuits, but have alſo been compelled to pay the Purſivants, ſo bringing ſuch perſons, great ſums of money. All which, upon complaint the Judges are bound by office and oath to relieve and help, by and according to her Majeſty's laws. And when it pleaſeth your Lordſhips to will divers of us to ſet down in what caſes a priſoner, ſent to cuſtody by her Majeſty or her Council, are to be detained in priſon, and not to be delivered by her Majeſty's Court or Judges; we think, that if any perſon be committed by her Majeſty's command, from her perſon, or by order from the Council-board; and if any one or two of her Council commit one for High-Treaſon, ſuch perſons ſo in the caſes before committed, may not be delivered by any of her Courts, without due trial by the law, and judgment of acquittal had: Nevertheleſs the Judges may award the Queen's Writ to bring the bodies of ſuch priſoners before them; and if upon return thereof, the cauſes of their commitment be certified to the Judges as it ought to be; then the Judges in the caſes before, ought not to deliver him; but to remand him to the place from whence he came, which cannot be conveniently done, unleſs notice of the cauſe in general, or elſe in ſpecial, be given to the Keeper or Gaoler that ſhall have the cuſtody of ſuch priſoner. All the Judges and Barons did ſubſcribe their names to theſe Articles, *Ter. Paſchæ* 34 *Eliz.* and delivered one to the Lord-Chancellor, and another to the Lord-Treaſurer: after which time there did follow more quietneſs than before, in the cauſe before-mentioned.]

After the reading of this Report, Sir *Edward Coke* ſaid, That of my own knowledge this Book was witten with my Lord *Anderſon*'s own hand, it is no flying report of a young Student. I was Solicitor then, and Treaſurer *Burleigh* was as much againſt commitment as any of this Kingdom; it was the *White Staves* that made this ſtir. Let us draw towards a concluſion: the queſtion is, Whether a Freeman can be impriſoned by the King, without ſetting down the cauſe? I leave it as bare as *Æſop*'s Crow, they that argue againſt it, *Humores moti & non remoti corpus deſtruunt.* It is a maxim, the Common Law has admeaſured the King's Prerogative, that in no caſe it can prejudice the inheritance of the ſubjects; had the Law given the Prerogative to that which is taken, it would have ſet ſome time to it, elſe mark what would follow. I ſhall have an Eſtate of Inheritance for life, or for years in my land, or propriety in my goods, and I ſhall be a tenant at will for my liberty; I ſhall have propriety in my own houſe, and not liberty in my perſon, *Perſpicua vera non ſunt probanda.* The King hath diſtributed his Judicial Power to Courts of Juſtice, and to Miniſters of Juſtice; it is too low for ſo great a Monarch as the King is, to commit men to priſon; and it is againſt law, that men ſhould be committed, and no cauſe ſhewed. I would not ſpeak this, but that I hope my gracious King will hear of it; yet it is not I *Edward Coke* that ſpeaks it, but the Records that ſpeak it; we have a national appropriate Law to this Nation, *diviſi ab orbe Britannis.*

Mr. *Selden.*

I Was ſent hither, and truſted with the lives and liberties of them that ſent me. Since I came, I took here an oath to defend the King's prerogatives and rights. I profeſs, tho' once I was of Counſel, and then I ſpoke for my fee, for the Gentlemen in their *Habeas Corpus*; yet now I ſpeak according to my knowledge and conſcience.

The queſtion is, whether any ſubject or freeman, that is committed to priſon, and the cauſe not ſhewn in the Warrant, he ought to be bailed or delivered? I think, confidently it belongs to every ſubject that is not a Villein that he ought to be bailed, or delivered.

I ſhall ſpeak in this courſe. 1. I will ſhew the reaſons. 2. Acts of Parliament. 3. Precedents. 4. Anſwer objections.

I. Reaſons drawn from three heads:

1. From remedies provided by the Common Law againſt impriſonment. For that precious thing of liberty there are divers remedies, by which it appears, if no known cauſe be of further detainment, he is to be delivered. I will not mention the action of falſe impriſonment, but the Writ *de odio & atia*, which is not taken away, for that it is in *Magna Charta*. That Writ was ſent to know, if the party impriſoned were committed for any cauſe of malice and hatred, and this was to be enquired of in Jury. For the Writ *de homine replegiando*, if one be impriſoned under the Sheriff, he muſt be delivered, if he be not detained for a cauſe for which he is not repleviſable. For the *Habeas Corpus*, the Keeper is to bring the body *ad ſubjiciendum & recipiendum.* If there be no cauſe, how can the Court conſider of the cauſe? For appeal, by the old law in the time of *Hen.* I. one impriſoned might have his appeal, as appears by *Bracton*, *c.* 25. *lib. de corona.* *Fleta*, *c.* 42.

2. The ſecond reaſon is from the conſideration of Freemen and Villeins. All admit we are *liberi homines*; but do but conſider the difference of Villeins and Freemen, and I know no difference in their perſons, but only the one cannot be impriſoned, as the other may. Whoever can ſay I can impriſon him, I will ſay he is my Villein. It is the ſole diſtinction of Freemen, that they cannot be impriſoned at pleaſure.

In old time none but *Jews* and Villeins could be impriſoned, and confined. The *Jews* were as demeſne Villeins of the King; he could ſend to them to lend money, and if they did not, he impriſoned them.

3. From matter of puniſhment. When any thing is declared by any new Statute to be an offence, it goes, That he ſhall be fined and impriſoned. To what end were this in any Act of Parliament, if impriſonment was at the King's will?

II. For Acts of Parliament, *Magna Charta*, *c.* 19. In that Act when it was firſt made, it was *nec eum in carcere mittimus*, 17 *Joh.* that Statute was made, and then it had thoſe words. The courſe then was to ſend down all Acts of Parliament and Charters to the Abbeys to be enrolled. *Matthew Paris*, 345. & 342. recites that Charter of 17 *John.*

They object in *Magna Charta*, there is *lex terræ*, and by the law one may be impriſoned.

Lex terræ is the proceſs of law, for the law impriſons no man at all, but it is meant the proceſs of law, 5 *Edw.* III. Upon ſome occaſion it was enacted, That none be attached contrary to the great Charter and the law of the land. 25 *Edw.* III. divers were committed to the Tower, and no man knew wherefore, whereupon was 25 *Edw.* III. made, 28 *Edw.* III. *c.* 3. 36 *Edw.* III. *n.* 9. is againſt impriſonment, *per ſpeciale mandatum.*

III. For Precedents, 18 *Edw.* III. *rot.* 33 *Hen.* I. *Hen.* VIII. *rot.* 9. 12 *Jac. rot.* 153.

IV. Objections againſt it. *Firſt*, Againſt the reaſon; a man may be committed for a point of State that may not be known: I underſtand not matters of State; I expected not the objection in a Court of Juſtice; and it may be a word for any King to try the courage of his Judges, and to ſuppoſe there is a cauſe of State, when perhaps there is no cauſe appears to them. It is as if they ſent him back to priſon, they knew not wherefore; which cannot be in a Court of Juſtice, where they are ſworn to do juſtice.

Secondly,

Secondly, As to the Acts of Parliament, the Judges gave no anſwer, but only commended them; but the Attorney anſwered them with one blow to ſtrike them all; that they are to be conſidered for common and ordinary cauſes, that happen in *Weſtminſter-hall* only. But do but conſider *Magna Charta*, which reflects upon the King; *nec ſuper eum ibimus*. By the Law, if I bring an Appeal of Murder againſt a Nobleman, which is my ſuit, he ſhall not be tried by his Peers; but if he be indicted for that murder, which is the King's ſuit, he ſhall; which ſhews, that that which is in *Magna Charta* is meant of the King, though it be not in the third Perſon.

Third Objection is againſt the Statute of *Weſtminſter* 1. *c.* 15. But the King's command is the command of the King by his Juſtices; and alſo the word, Repleviſable, never ſignifies bailable; bailable, is in a Court of Record, by the King's Juſtices: but repleviſable, is by the Sheriff. The Statute is to the Sheriff, and it ſhews the particular cauſes, and concludes that the Sheriff ſhall loſe his bailiwick. The Sheriff could never replevy one for Murder, or matters of the Foreſt: but in the *King's-Bench* for Murder, or matters of the Foreſt they may, 3. *aſſiſ.* 19. 21 *Edw.* IV. 25. 22 *Hen.* VI. 48. *Newton*. If any man be taken by our command, or by the command of the King, if the Sheriff take the party, he muſt come to us, we will grant a *Superſedeas*.

Fourthly, They object againſt the precedents cited; they are all of this kind, they were impriſoned *per mandatum domini Regis*, or *Concilii*, without cauſe, or the cauſe is expreſſed. When the cauſe is expreſſed, and is within the cognizance of the Court, there they bailed them; but when it is for Felony or Treaſon, it may be done beyond the ſeas, and then the Court has no cognizance of them. When no cauſe is ſet, yet bailment is alledged; then they anſwer divers were ſo bailed, but the cauſe appears by Paper-Books; but I never ſaw theſe Books to be Records, and Judges of Record made their judgment in Records, and the cauſe only appears by Record.

For the Reſolution cited 34 *Eliz.* all precedents were read, Acts of Parliament indeed were paſſed over, and yet that was not read. As we have that liberty here, ſo I dare ſay, no Prince in *Chriſtendom* doth aſſume this power to impriſon any without any cauſe. I find no ſteps or *veſtigium* of any ſuch power *.

Saturday, *March* 29, 1628. Mr. Sollicitor ſpake as followeth:

My care when I ſpake laſt was to give ſatisfaction that the Judges did not err in their late Reſolutions; but if they did, it was *cum patribus*: the Judges knew nothing of the cauſe of the Gentlemen's impriſonment; if they had known the cauſe of their Impriſonment in private, they would have appealed to his Majeſty for his Grace. For to reiterate all the authorities I will not, I have ſomething to ſay in the point, to put into the ſcale, which might have been then ſaid, had it not been for the unhappy difference that might have been between the two Courts in *Weſtminſter-hall*, the *King's-Bench* and the *Chancery Court*.

In 13 *Jac.* divers were committed for diſobedience to the Decree of the Court of Chancery, as namely *Roſſwell* and others, and it was reſolved, That the Judges could not deliver ſuch; and at the ſame time ſome were committed by Warrant from the King and the Lords of the Council, and this came in Queſtion, *Mich.* 13 *Jac.* and ſo continued divers Terms. There was then recourſe had to thoſe arguments, and I have a report here of that time what the Judges did then, part whereof I will read.

It was reſolved by † *Coke*, *Crook*, *Doderidge* and *Houghton*, that the return was good, and that the cauſe need not to be diſcloſed, being *per mandatum Concilii*, as *Arcana Regni* (and the report further ſaith, that in 34 *Eliz.* it was reſolved accordingly), and by *Coke* 'twas ſaid, That if the Privy-Council commit one, he is not bailable by any Court of Juſtice, and *Stamford*'s opinion is ſo, *fol.* 72. See what opinion the Judge had of the reſolution in 34 *Eliz.* and of *Stamford*.

To this Sir *Edward Coke* replied: This report moves not me at all; that report is not yet twenty-one years old, but under age, being in 13 *Jac.* In truth, when I read *Stamford*, I was of his opinion at the firſt, but ſince, looking into thoſe Records before-mentioned, I was of another mind ‡. He brings in an ill time 13 *Jac.* when there was claſhing between the Court of *King's-Bench* and *Chancery*, as alſo there were then many of the Traitors that were of the Powder-Treaſon, committed *per mandatum Concilii*.

Upon *Monday*, *April* 1, the debate being re-aſſumed, Sir *Robert Philips* moved, That conſidering the Houſe was now ready for the Queſtion, they might hear the reſolution read of all the Judges in 34 *Eliz.* about this matter.

Then Sir *Edward Coke* ſtood up and ſaid, The Glaſs of Time runs out, and ſomething caſt upon us hath retarded us; when I ſpake againſt the Loans and this matter, I expected blows, and ſomewhat was ſpoken, though not to the matter.

Concerning that (that hath been objected) I did when I was a Judge, I will ſay ſomewhat. Indeed a motion was made, but no argument or debate, or reſolution upon advice; I will never palliate with this Houſe, there is no Judge that hath an upright heart to God, and a clear heart to the world, but he hath ſome Warrant for every thing that he doth. I confeſs when I read *Stamford* then, and had it in my hands, I was of that opinion at the Council-Table; but when I perceived that ſome Members of this Houſe were taken away, even in the face of this Houſe, and ſent to priſon, and when I was not far off from that place myſelf, I went to my book, and would not be quiet till I had ſatisfied myſelf. *Stamford* at the firſt was my guide, but my guide had deceived me, therefore I ſwerved from it: I have now better guides, Acts of Parliament and other precedents, theſe are now my guides. I deſire to be free from the imputation that hath been laid upon me.

As for the copy of the intended Judgment, I fear, had it not been for this Parliament, it had been entered ere this time; a Parliament brings Judges and all other men into good order: if any Clerk had drawn this draught, he would have done it by a precedent, and there can be no precedent found that warrants it, and therefore I believe that ſome other did it.

This draught of the judgment, ſhould it be entered, will ſting us to death, *quia nulla cauſa fuit oſtenta, ideo ne fuit baileabile*, and that it appears to be ſo by the Records. I perſuade myſelf Mr. Attorney drew it; I had a copy of my Lord *Anderſon*'s report of the Judges reſolution, 34 *Eliz.* long ago; but I durſt not vouch it (and it was ſo in that copy) for that it was Apocrypha, and did not anſwer his gravity that made it, and yet it was cited in the King's-Bench, *That all the Judges of* England *ruled it ſo*.

Then the Houſe of Commons came to the following Reſolutions.

Reſolved upon the queſtion, *Nemine contradicente*,

I. That no Freeman ought to be detained or kept in priſon, or otherwiſe reſtrained by the command of the King or Privy-Council, or any other, unleſs ſome cauſe of the commitment, detainer or reſtraint be expreſſed, for which by Law he ought to be committed, detained or reſtrained.

II. That the Writ of *Habeas Corpus* may not be denied, but ought to be granted to every man that is committed or detained in priſon, or otherwiſe reſtrained, though it be by the command of the King, the Privy-Council, or any other, he praying the ſame.

III. That if a Freeman be committed or detained in priſon, or otherwiſe reſtrained by the command of the King, the Privy-Council, or any other, no cauſe of ſuch commitment, detainer, or reſtraint being expreſſed, for which by Law he ought to be committed, detained, or reſtrained, and the ſame be returned upon an *Habeas Corpus*, granted for the ſaid party; then he ought to be delivered or bailed.

And then taking into conſideration the Property of the Subject in his goods, they came to this Reſolution, to which there was not a negative; *viz.*

That it is the antient and indubitable Right of every Freeman, that he hath a full and abſolute property in his goods and eſtate; that no Tax, Taillage, Loan, Benevolence, or other like charge ought to be commanded, or levied by the King, or any of his Miniſters, without common conſent by Act of Parliament.

The Commons having ſhewed their Care of the Subjects in the Liberty of their Perſons, and Propriety in their Goods, did now prepare to tranſmit their reſolutions to the Lords for their concurrence; and ſeveral Members were appointed to manage a conference with the Lords concerning the ſame; and *Monday*, *April* the 7th, the conference was held, and opened by Sir *Dudley Diggs*.

A Conference *deſired by the Lords, and had by a Committee of both Houſes, concerning the Rights and Privileges of the Subjects.*

Sir *Dudley Diggs*.

My Lords,

I Shall, I hope, auſpiciouſly begin this conference this day, with an obſervation out of an Holy Story, in the days of good King *Joſiah*, (2 *Chron.* 34.) when the land was purged of Idolatry, and the great men went about to repair the Houſe of God; while money was ſought for, there was found a Book of the Law which had been neglected, and afterwards being preſented to the good King, procured the bleſſing, which your Lordſhip may read in the Scriptures. (2 *Kings* 22.)

My good Lords, I am confident your Lordſhips will as chearfully join with the Commons, in acknowledgement of God's great bleſſing in our good King *Joſiah*, as the Knights, Citizens, and Burgeſſes of the Houſe of Commons, by me their unworthieſt ſervant, do thankfully remember your moſt religious and truly honourable invitation of them to the late petition, for cleanſing this land from Popiſh abominations; which I may truly call a neceſſary and a happy repairing of the Houſe of God. And, to go on with the parallel, whilſt we the Commons, out of our good affections, were ſeeking for money, we found, I cannot ſay a book of the Law, but many, and thoſe fundamental points thereof neglected and broken, which hath occaſioned our deſire of this conference: wherein I am firſt commanded to ſhew to your Lordſhips in general, that the Laws of *England* are grounded on reaſon, more ancient than books, conſiſting much in unwritten cuſtoms, yet ſo full of juſtice and true equity, that your moſt honourable Predeceſſors and Anceſtors many times propugned them with a *nolumus mutari*; and ſo ancient, that from the *Saxon* days, notwithſtanding the injuries and ruins of time, they have continued in moſt parts the ſame, as may appear in old remaining monuments of the Laws of *Ethelbert*, the firſt Chriſtian King of *Kent*, *Ina* the King of the *Weſt-Saxons*, *Offa* of the *Mercians*, and of *Alfred* the great Monarch, who united the *Saxon Heptarchy*, whoſe Laws are yet to be ſeen, publiſhed, as ſome think, by Parliament, as he ſays to that end, *Ut qui ſub uno rege, ſub una lege regerentur*. And though the book of *Litchfield*, ſpeaking of the troubleſome times of the *Danes*, ſays that then *Jus ſopitum erat in regno, leges & conſuetudines ſopitæ ſunt*, and *prava voluntas, vis, & violentia magis regnabant quam judicia vel juſtitia*; yet, by the bleſſing of God, a good King, *Edward*, commonly called St. *Edward*, did awaken thoſe Laws, and as the old words are, *Excitatas reparavit, reparatas decoravit, decoratas confirmavit*. Which *confirmavit* ſhews, that good King *Edward* did not give thoſe Laws, which *William* the Conqueror, and all his Succeſſors, ſince that time have ſworn unto.

And here, my Lords, by many caſes frequent in our modern Laws, ſtrongly concurring with thoſe of the ancient *Saxon* Kings, I might, if time were not precious, demonſtrate that our Laws and Cuſtoms were the ſame.

* *Die Veneris*, *Mar.* 28. I riſe to make a Motion. Yeſterday a learned Argument was made by Mr. Sollicitor, and 21 *Edw.* I. was cited by him, which makes clearly for the Subject, alſo for that *ſalus populi*. I am ſure that *libertas populi eſt ſalus populi*. And *Feſtus* himſelf that ſent *Paul* to *Agrippa* was a Lawyer of the Empire; and to ſend a Priſoner without ſignifying the Crimes laid againſt him, ſeem'd unreaſonable to *Feſtus* to do. By the Law of the Empire none were to be committed above thirty days, and the Gaoler is under a penalty to certify the cauſe of the Priſoner's commitment: and if the Gaoler be ſlack, he is to be fined. When they ſpeak here of the Judgment given in the *King's-Bench*, they ſay the Precedents were miſ-recited. Let a Sub-committee ſearch into thoſe Judgments and Precedents. I heard here a *quouſque*, and there is nothing but a *remittitur*. The Courſe of the Officer is to enter *quouſque*, &c. and that is till they be delivered by Law, and is all the Judgment that can be. *Ex MSS. Pymmii.* See *Selden*'s Life in his Works.

† *Coke* was then a Judge, and in Favour at Court.

‡ *Coke* of one mind, when a Judge, and in favour; of another, when out of Court, and diſcontented.

I will

I will only intreat your Lordſhips Leave to tell you, that as we have now, even in thoſe *Saxon* times they had their Courts-Baron and Courts-Leet, and Sheriffs-Courts, by which, as *Tacitus* ſays of the *Germans* their Anceſtors, *Jura reddebant per pagos & vicos*; and, I do believe, as we have now, they had their Parliaments, where new Laws were made *cum conſenſu prælatorum, magnatum & totius communitatis*; or, as another writes, *cum conſilio prælatorum, nobilium, & ſapientium laicorum.* I will add nothing out of *Glanvile* that wrote in the time of *H.* II. or *Bracton* that wrote in the days of *H.* III. only give me leave to cite that of *Forteſcue*, the learned Chancellor to *H.* VI. who writing of this kingdom, ſays, *Regnum illud in omnibus nationum, & Regum temporibus, eiſdem quibus nunc regitur legibus & conſuetudinibus, regebatur.* But, my good Lords, as the Poet ſaid of Fame, I may ſay of our Common-Law;

Ingrediturque ſolo caput inter nubila condit.

Wherefore the cloudy part being mine, I will make haſte to open way for your Lordſhips to hear more certain arguments, and ſuch as go on more ſure grounds.

Be pleaſed then to know, that it is an undoubted and fundamental point of this ſo ancient Common-Law of *England*, that the Subject hath a true property in his Goods and Poſſeſſions, which doth preſerve, as ſacred, that *meum & tuum*, that is the nurſe of induſtry, and mother of courage, and without which, there can be no juſtice, of which *meum & tuum* is the proper object. But the undoubted birthright of free Subjects, hath lately not a little been invaded and prejudiced by preſſures, the more grievous, becauſe they have been purſued by impriſonment, contrary to the Franchiſes of this land; and when, according to the Laws and Statutes of this Realm, redreſs hath been ſought for in a legal way, by demanding *Habeas Corpus* from the Judges, and a diſcharge or trial according to the Law of the land, ſucceſs hath failed; that now inforceth the Commons, in this preſent Parliament aſſembled, to examine by Acts of Parliament, precedents and reaſons, the truth of the *Engliſh* Subjects Liberty, which I ſhall leave to learned Gentlemen, whoſe weighty arguments, I hope, will leave no place in your Lordſhips memories, for the errours and infirmities of your humbleſt ſervant, that doth thankfully acknowledge the great favour of your honourable and patient attention.

Mr. Littleton's *Argument, made by the command of the Houſe of Commons out of Acts of Parliament, and Authorities of Law, expounding the ſame, at the firſt Conference with the Lords, concerning the Liberty of the perſon of every Freeman* *.

My Lords,

UPON the occaſions delivered by the Gentleman that laſt ſpake, your Lordſhips have heard the Commons have taken into their ſerious conſideration the matter of perſonal Liberty, and after long debate thereof on divers days, as well by ſolemn arguments, as ſingle propoſitions of doubts and anſwers, to the end no ſcruple might remain in any man's breaſt unſatisfied, they have upon a full ſearch, and clear underſtanding of all things pertinent to the queſtion, unanimouſly declared; That no Freeman ought to be committed or detained in priſon by the command of the King or Privy-Council, or any other, unleſs ſome cauſe of the commitment, detainer, or reſtraint be expreſſed, for which by Law he ought to be committed, detained, or reſtrained. And they have ſent me, with other of their Members, to repreſent unto your Lordſhips the true grounds of ſuch their reſolution, and have charged me particularly, leaving the reaſons of Law and precedents, for others, to give your Lordſhips ſatisfaction, that this Liberty is eſtabliſhed and confirmed by the whole State, the King, the Lords Spiritual and Temporal, and Commons, by ſeveral Acts of Parliament; the authority whereof is ſo great, that it can receive no anſwer, ſave by interpretation or repeal by future Statutes. And thoſe that I ſhall mind your Lordſhips of, are ſo direct in point, that they can bear no other expoſition at all, and ſure I am they are ſtill in force.

The firſt of them is the Grand Charter of the Liberties of *England*, firſt granted in the ſeventeenth year of King *John*, and renewed in the ninth year of *Henry* the third, and ſince confirmed in Parliament above thirty times. The words are theſe, ch. 29. *Nullus liber homo capiatur, vel impriſonetur, aut diſſeiſietur de libero tenemento ſuo, vel libertatibus, vel liberis conſuetudinibus ſuis, aut utlageretur, aut exuletur, aut aliquo modo deſtruatur, nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium ſuorum, vel per legem terræ.*

Theſe words, *nullus liber homo*, &c. are expreſs enough, yet it is remarkable that *Matthew Paris*, an Author of ſpecial credit, doth obſerve, *fol.* 432. that the Charter of 9 *Hen.* III. was the very ſame as that of 17 King *John*, *in nullo diſſimilis* are his words; and that of King *John* he ſetteth down *verbatim*, *fol.* 342. and there the words are directly *Nec eum in Carcerum mittemus:* and ſuch a corruption as is now in the print, might eaſily happen 'twixt 9 *Hen.* III. and 28 *Edw.* I. when this Charter was firſt exemplified, but certainly there is ſufficient left in that which is extant to decide this queſtion. For the words are, that no Freeman ſhall be taken or impriſoned, but by the lawful judgment of his Peers; which is by a Jury of Peers, ordinary Jurors for others, who are their Peers, or by the Law of the land: which words, Law of the Land, muſt of neceſſity be underſtood in this Nation, to be by due proceſs of the law, and not the law of the land generally, or otherwiſe it would comprehend Bond-men (whom we call Villeins) who are excluded by the word *Liber*; for the general law of the land doth allow their Lords to impriſon them at their pleaſure without cauſe, wherein they only differ from the Freemen in reſpect of their perſons, who cannot be impriſoned without a cauſe. And that this is the true underſtanding of theſe words, *Per legem terræ*, will more plainly appear by divers other Statutes that I ſhall uſe, which do expound the law accordingly. And though the words of this grand Charter be ſpoken in the third perſon, yet they are not to be underſtood of ſuits betwixt party and party, at leaſt not of them alone, but even of the King's ſuits againſt his ſubjects, as will appear by the occaſion of getting of that Charter, which was by reaſon of the differences betwixt thoſe Kings and their people, and therefore properly to be applied unto their power over them, and not to ordinary queſtions betwixt ſubject and ſubject.

Secondly, The words *per legale judicium parium ſuorum*, immediately preceding the other of *per legem terræ*, are meant of Trials at the King's ſuit, and not at the proſecution of a ſubject. And therefore, if a Peer of the Realm be arraigned, at the ſuit of the King, upon an Indictment of murder, he ſhall be tried by his Peers, that is Nobles; but if he be appealed of murder by a ſubject, his Trial ſhall be by an ordinary Jury of twelve Freeholders, as appeareth in 10 *Edw.* IV. 6. 33 *Hen.* VIII. *Brooke* Title, *Trials* 142. *Stan. Cor. li.* 3. *ca.* 1. *fol.* 152. and in 10 *Edw.* IV. 6. it is ſaid, ſuch is the meaning of *Magna Charta*, for the ſame reaſon; therefore as *per judicium parium ſuorum* extends to the King's ſuit, ſo ſhall theſe words *per legem terræ*.

And in 8 *Ed.* II. *rot. parliament. numb.* 7. there is a petition that a Writ under the Privy-Seal went to the Guardians of the great Seals, to cauſe lands to be ſeized into the King's hands, by force of which there went a Writ out of the Chancery to the Eſcheator, to ſeize, againſt the form of the grand Charter, that the King nor his Miniſters ſhall out no man of his Freehold without reaſonable judgment, and the party was reſtored to his land; which ſhewed the Statute did extend to the King.

There was no invaſion upon this perſonal liberty, till the time of King *Edw.* III. which was ſoon reſented by the ſubject; for in 5 *Edw.* III. *cap.* 9. it is ordained in theſe words: It is enacted that no man from henceforth ſhall be attached by any accuſation, nor fore-judged of life or limb, nor his lands, tenements, goods, nor chattels ſeized into the King's hands, againſt the form of the great Charter, and the law of the land. 25 *Edw.* III. *cap.* 4. it is more full, and doth expound the words of the grand Charter, and is thus; Whereas it is contained in the grand Charter of the Franchiſes of *England*, that no Freeman ſhall be impriſoned, nor put out of his Freehold, nor free cuſtom, unleſs it be by the law of the land; it is awarded, aſſented, and eſtabliſhed, that from hence none ſhall be taken by petition or ſuggeſtion, made to our Lord the King, or to his Council, unleſs it be by Indictment, or preſentment of his good and lawful people of the ſame neighbourhood; which ſuch deeds ſhall be done in due manner, or by proceſs made by Writ original at the Common Law, nor that none be outed of his Franchiſes, nor of his Freehold, unleſs he be duly brought in to anſwer, and fore-judged of the ſame by the courſe of the law; and if any thing be done againſt the ſame, it ſhall be redreſſed and holden for nought.

Out of this Statute I obſerve, that what in *Magna Charta*, and the preamble of the Statute is termed *by the Law of the Land*, is in the body of the Act expounded to be by proceſs made by the Writ original at the Common Law, which is a plain interpretation of the words (law of the land) in the grand Charter. And I note that this law was made upon the commitment of divers to the Tower, no man yet knoweth for what.

28 *Edw.* III. *cap.* 3. it is more direct, this liberty being followed with freſh ſuit by the ſubject, where the words are not many, but very full and ſignificant; that no man of what ſtate or condition ſoever he be, ſhall be put out of his lands or tenements, nor taken, nor impriſoned, nor diſinherited, nor put to death, without he be brought in to anſwer by due proceſs of law.

Here your Lordſhips ſee the uſual words, the law of the land, are rendered by due proceſs of the law.

36 *Edw.* III. *rot. parliament. numero* 9. Amongſt the petitions of the Commons, one of them being tranſlated into *Engliſh* out of *French*, is thus; firſt, that the great Charter, and the Charter of the Foreſt, and other Statutes made in his time, and the time of his Progenitors, for the profit of him, and his Commonalty, be well and firmly kept; and put in due execution, without putting diſturbance, or making arreſt contrary to them by ſpecial command, or in other manner.

The anſwer to the petition, which makes it an Act of Parliament, is, 'Our Lord the King, by the aſſent of the Prelates, Dukes, Earls, Barons, and the Commonalty, hath ordained and eſtabliſhed, that the 'ſaid Charters and Statutes be held, and put in execution, according to 'the ſaid petition.' It is obſervable, that the Statutes were to be put in execution according to the ſaid petition, which is, that no arreſt ſhould be made contrary to the Statutes, by ſpecial command. This concludes the queſtion, and is of as great force as if it were printed, for the Parliament-Roll is the true Warrant of an Act, and many are omitted out of the Books, that are extant in the Roll.

36 *Edw.* III. *Rot. Parliamenti, num.* 22. explaineth it further; for there the petition is, Whereas it is contained in the grand Charter and other Statutes, that no man be taken or impriſoned by ſpecial command without Indictment, or other due proceſs to be made by the law, and oftentimes it hath been, and yet is, many are hindred, taken and impriſoned without Indictment, or other proceſs made by the law upon them, as well of things done out of the Foreſt of the King, as for other things; that it would therefore pleaſe our ſaid Lord to command thoſe to be delivered, which are ſo taken by ſpecial command, againſt the form of the Charter and Statutes as aforeſaid.

The Anſwer is,

The King is pleaſed, that if any man find himſelf grieved, that he come and make his complaint, and right ſhall be done unto him. 37 *Edw.* III. *cap.* 18. agreeth in ſubſtance with them: it ſaith, though it be contained in the great Charter, that no man be taken nor impriſoned, nor put out of his Freehold without proceſs of the law; nevertheleſs divers people make falſe ſuggeſtions to the King himſelf, as well for malice as otherwiſe, whereat the King is often grieved, and divers of the Realm put in damage, againſt the form of the ſame Charter; wherefore it is ordained, that all they which make ſuch ſuggeſtions, ſhall be ſent with the ſame ſuggeſtions to the Chancellor, Treaſurer, and his grand Council, and that they there find ſurety to purſue their ſuggeſtions, and incur the ſame pain that the other ſhould have had, if he were attainted, in caſe that the ſuggeſtion be found evil; and that then proceſs of law be made againſt them without being taken or impriſoned, againſt the form of the ſaid Charter, and other Statutes. Here the law of the land in the grand Charter is explained to be without proceſs of law.

42 *Edw.* III. *cap.* 13. At the requeſt of the Commons by their petition put forth in this Parliament, to eſchew miſchief and damage done to divers

* This Argument of Mr. *Littleton* is printed in *Cottoni Poſthuma*; as if made by Sir *Robert Cotton*, Bart. But whoever conſults the Hiſtorians of thoſe times, will find, that *Digges*, *Littleton*, *Selden* and *Coke*, were the four Lawyers appointed by the Houſe of Commons to manage that memorable Conference.

of

of his Commons by falſe Accuſers, which oftentimes have made their Accuſations, more for Revenge and ſingular Benefit, than for the Profit of the King, or of his People; of which accuſed Perſons ſome have been taken and cauſed to come before the King's Council by Writ, and otherwiſe upon grievous Pains againſt the Law; it is aſſented and accorded for the good Governance of the Commons, that no Man be put to anſwer without Preſentment before Juſtices or Matter of Record, or by due Proceſs and Writ original, according to the old Law of the Land: and if any thing from hence be done to the contrary, it ſhall be void in the Law, and holden for Error.

But this is better in the Parliament Roll, where the Petition and Anſwer, which makes the Act, are ſet down at large, 42 *Edw.* III. *Rot. Parliamenti, numero* 12.

The Petition.

"*Item*, Becauſe that many of your Commons are hurt and deſtroyed "by falſe Accuſers, who make their Accuſations more for their Revenge "and particular Gain, than for the Profit of the King, or of his People: "And thoſe that are accuſed by them, ſome are taken, and others are "made to come before the King's Council by Writ, or other Command-"ment of the King, upon grievous Pains contrary to the Law: That it "would pleaſe our Lord the King, and his good Council, for the juſt "Government of his People, to ordain, that if hereafter any Accuſer "propoſe any Matter for the Profit of the King, that the ſame Matter be "ſent to the Juſtices of the one Bench or of the other, or the Aſſizes, to "be enquired and determined according to the Law; and if it concern "the Accuſer or Party, that he take his Suit at the Common Law; and "that no Man be put to anſwer without Preſentment before the Juſtices "or Matter of Record, and by due Proceſs and original Writ, according "to the ancient Law of the Land. And if any thing henceforward be "done to the contrary, that it be void in Law, and held for Error."

Here by due Proceſs and original Writ, according to the ancient Law of the Land, is meant the ſame thing, as *per legem terræ*, in *Magna Charta*; and the Abuſe was, they were put to anſwer by the Commandment of the King.

The King's Anſwer is thus:

"Becauſe that this Article is an Article of the grand Charter, the King "willeth that this be done, as the Petition doth demand." By this appeareth that *per legem terræ*, in *Magna Charta*, is meant by due Proceſs of the Law.

Thus your Lordſhips have heard Acts of Parliament in the Point. But the Statute of *Weſtminſt.* 1. *cap.* 15. is urged to diſprove this Opinion, where it is expreſly ſaid, that a Man is not repleviable, who is committed by the Command of the King; therefore the Command of the King, without any Cauſe ſhewed, is ſufficient to commit a Man to Priſon. And becauſe the Strength of the Argument may appear, and the Anſwer be better underſtood, I will read the Words of the Statute, which are thus:

[And foraſmuch as Sheriffs and others, which have taken and kept in Priſon Perſons detected for Felony, and oftentimes have let out by Replevin ſuch as were not repleviable, and have kept in Priſon ſuch as were repleviable, becauſe they would gain of the one Party, and grieve the other; and foraſmuch as before this time it was not certainly determined what Perſons were repleviable, and what not, but only thoſe that were taken for the Death of a Man, or by the Commandment of the King, or of his Juſtices, or for the Foreſt; it is provided, and by the King commanded, that ſuch Priſoners as were before outlawed, and they which have abjured the Realm, Provers, and ſuch as be taken with the Manner, and thoſe which have broken the King's Priſon, Thieves openly defamed and known, and ſuch as be appealed by Approvers; ſo long as the Approvers are living, if they be not of good Name, and ſuch as be taken for burning of Houſes felonioufly done, or for falſe Money, or for counterfeiting the King's Seal, or Perſons excommunicate taken at the Requeſt of the Biſhop, or for manifeſt Offences, or for treaſon touching the King himſelf, ſhall be in no wiſe repleviable by the common Writ, or without Writ.]

But ſuch as be indicted of Larceny by Inqueſts taken before Sheriffs or Bailiffs by their Office, or of light Suſpicion, or of petty Larceny, that amounteth not above the Value of Twelve-pence, if they were not guilty of ſome other Larceny aforetime, or guilty of Receipt of Felons, or of Commandment, or of Force, or of Aid of Felony done, or guilty of ſome other Treſpaſs, for which one ought not to loſe either Life or Member: And a Man appealed by an Approver, after the Death of the Approver; if he be no common Thief or defamed, ſhall from henceforth be let out by ſufficient Surety, whereof the Sheriff will be anſwerable, and that without giving aught of their Goods. And if the Sheriff, or any other, let any go at large, by Surety, that are not repleviable, if he be Sheriff or Conſtable, or any other Bailiff, or ſuch as hath a Fee, which hath keeping of Priſons, and thereof be attainted, he ſhall loſe his Office and Fee for ever. And if the Under-Sheriff, Conſtable or Bailiff, or ſuch as hath Fee for keeping of Priſons, do it contrary to the Will of his Lord, or any other Bailiff being not of Fee, they ſhall have three Years Impriſonment, and make a Fine at the King's Pleaſure; and if any Man with-hold Priſoners repleviable, after that they have offered ſufficient Surety, he ſhall pay a grievous Amercement to the King; and if he take any Reward for the Deliverance of ſuch, he ſhall pay double to the Priſoner, and alſo ſhall pay a grievous Amercement to the King.

The Anſwer.

It muſt be acknowledged, that a Man taken by the Commandment of the King is not repleviable, for ſo are the expreſs Words of this Statute: But this maketh nothing againſt the Declaration of the Houſe of Commons; for they ſay not, the Sheriff may replevy ſuch a one by Sureties, *ſcilicet manucapteres*, but that he is bailable by the King's Court of Juſtice: For the better apprehending whereof, it is to be known, that there is a Difference between repleviable, which is always by the Sheriff upon Pledges or Sureties given, and bailable, which is by a Court of Record, where the Priſoner is delivered to his Bail, and they are his Goalers, and may impriſon him, and ſhall ſuffer for him Body for Body, as appeareth 33 & 36 *Edw.* III. *titulo Mainprize* 12 & 13. where the Difference betwixt Bail and Mainprize is expreſsly taken.

[And if the Words of the Statute themſelves be obſerved, it will appear plainly, that it extends to the Sheriff and other inferior Officers, and doth not bind the Hands of the Judges.]

The Preamble, which is the Key that openeth the Entrance into the Meaning of the Makers of the Law, is, "For as much as Sheriffs and "others have taken and kept in Priſon Perſons detected of Felony." Out of theſe Words I obſerve that it nominateth Sheriffs, and then if the Judges ſhould be included, they muſt be comprehended under that general Word, *others*; which doth not extend to thoſe of an higher Rank, but to inferiors, for the beſt by all Courſes is firſt to be named. And therefore if a Man bring a Writ of Cuſtoms and Services, and name Rents and other things, the general ſhall not include Homage, which is a perſonal Service, and of an higher Nature, but it ſhall extend to ordinary annual Service, 31 *Edw.* I. *Droit* 67. So the Statute of 13 *Eliz. cap.* 10. which beginneth with Colleges, Deans and Chapters, Parſons, Vicars, and concludes with theſe Words, "and others having ſpiritual Promotions," ſhall not comprehend Biſhops that are of an higher Degree, as appeareth in the Archbiſhop of *Canterbury*'s Caſe, reported by Sir *Edward Coke*, *lib.* 2. *fol.* 46. *B.*

And thus much is explained in the very Statute towards the End, when it doth enumerate thoſe who were meant by the Word, *others*, namely, Under-Sheriffs, Conſtables, Bailiffs, *&c.*

Again, the Words are, *Sheriffs and others which have taken and kept in Priſon.* Now every Man knoweth, Judges do neither arreſt, nor keep Men in Priſon; that is the Office of Sheriffs and other inferior Miniſters. Therefore this Statute meant ſuch only, and not Judges.

The Words are further, that they let out by Replevin ſuch as are not repleviable, that is the proper Language for a Sheriff; nay, more expreſs afterward in the Body of the Statute, that ſuch as are there mentioned, ſhall in nowiſe be repleviable by the common Writ, which is *de homine replegiando*, and is directed to the Sheriff, nor without Writ, which is by the Sheriff *ex officio*. But that which receives no Anſwer is this, that the Command of the Juſtices, who derive their Authority from the Crown, is there equal as to this Purpoſe with the Command of the King. And therefore by all reaſonable Conſtruction, it muſt needs relate to Officers that are ſubordinate to both, as Sheriffs, Under-Sheriffs, Bailiffs, Conſtables, and the like. And it were a harſh Expoſition to ſay, that the Juſtices might not diſcharge their own Command, and yet that reaſon would conclude as much; and that this was meant of the Sheriff and other Miniſters of Juſtice, appears by the Recital, 27 *Edw.* I. *cap.* 3. and likewiſe by *Fleta*, a Manuſcript, ſo called, becauſe the Author lay in the *Fleet* when he made the Book: For he, *lib.* 2. *cap.* 52. in his Chapter of Turns, and the Views of the Hundred Courts in the Country, ſetteth down the Articles of the Charges that are there to be inquired of; amongſt which, one of them is *de replegiabilibus injuſte detentis & irreplegiabilibus dimiſſis*; which cannot be meant of not bailing by the Juſtices; for what have the inferior Courts in the Country to do with the Acts of the Juſtices?

And to make that more plain, he ſetteth down in that Chapter, that concerneth Sheriffs only, the very Statute of *Weſtminſter* 1. which he tranſlates *verbatim* out of the *French* into the *Latin*; ſave that he renders taken by the Command of the Juſtices, thus, *per judicium Juſticiariorum*; and his Preface to the Statute plainly ſheweth, that he underſtood it of Replevin by Sheriffs; for he ſaith, *Qui debent per plegios dimitti, qui non declarat hoc Statutum*; and *per plegios* is before the Sheriff.

But for direct Authority, It is the Opinion of *Newton*, Chief Juſtice, 22 *Hen.* VI. 46. where his Words are theſe: "It cannot be intended "that the Sheriff did ſuffer him to go at large by Mainprize; for where "one is taken by the Writ of the King, or the Commandment of the "King, he is irrepleviable; but in ſuch Caſe his Friends may come to "the Juſtices from him if he be arreſted, and purchaſe a *Superſedeas*." This Judge concludes, that the Sheriff cannot deliver him that is taken by the Command of the King, for that he is irrepleviable, which is the very Word of the Statute: But, ſaith he, his Friends may come to the Juſtices, and purchaſe a *Superſedeas*. So he declares the very Queſtion, that the Sheriff had no Power, but the Juſtices had Power to deliver him that is committed by the King's Command, and both the antient and modern Practice manifeſt as much: For he that is taken for the Death of a Man, or for the Foreſt, is not repleviable by the Sheriff, yet they are ordinarily bailed by the Juſtices, and were by the King's Writs directed to the Sheriffs in the Times of *Edw.* I. and II. as appears in the cloſe Rolls, which could not be done if they were not bailable. And it is every Day's Experience, that the Juſtices of the *King's-Bench* do bail for Murder, and for Offences done in the Foreſt, which they could not do, if the Word *irrepleviable*, in *Weſtmin.* 1. were meant of the Juſtices, as well as of the Sheriffs.

For Authorities that have been offered to prove the contrary, they are in Number three. The firſt is 21 *Edw.* III. *Rot.* 2. which alſo is in the Book of Pleas in Parliament at the Tower, upon an Action there brought, *fol.* 44. It is not an Act of Parliament, but a Reſolution in Parliament upon an Action there brought, which was uſual in thoſe Times: And the Caſe is, that *Stephen Rabez*, the Sheriff of the Counties of *Leiceſter* and *Warwick*, was queſtioned, for that he had let at large by Surety, amongſt others, one *William*, the Son of *Walter le Peſons*, againſt the Will and Command of the King, whereas the King had commanded him by Letters under the Privy-Seal, that he ſhould do no Favour to any Man that was committed by the Earl of *Warwick*, as that Man was; whereunto the Sheriff anſwered, that he did it at the Requeſt of ſome of the King's Houſhold upon their Letters; and becauſe the Sheriff did acknowledge the Receipt of the King's Letters, thereupon he was committed to Priſon according to the Form of the Statute.

To this I anſwer, the Sheriff was juſtly puniſhed, for that he is expreſsly bound by the Statute of *Weſtminſt.* 1. which was agreed from the Beginning; but this is no Proof, that the Judges had no Power to bail this Man.

The next Authority is 33 *Hen.* VI. in the Court of Common Pleas, *fol.* 28. *b.* 29. where *Robert Poynings*, Eſq. was brought to the Bar upon a *Capias*, and was returned, that he was committed *per Duos de Concilio*, (I believe it is miſprinted for *Dnos de Concilio*, i. e. *Dominos de Concilio*, which is ſtrongeſt againſt what I maintain) *pro diverſis cauſis regem tangentib.* And he made an Attorney there in an Action, whence it's inferred, that the Return was good, and the Party could not be delivered.

To this the Anſwer is plain. 1. No Opinion is delivered in that Book, one way or other, upon the Return, neither is there any Teſtimony whether

he were delivered, or bailed, or not. 2. It appears expreſsly, that he was brought thither to be charged in an Action of debt, at another Man's ſuit, no deſire of his own to be delivered, or bailed; and then if he were remanded, it is no way material to the queſtion in hand. But that which is moſt relied upon, is the opinion of *Stamf.* in his Book of Pleas of the Crown, *lib.* 2. *cap.* 18 *fol.* 72, 73. in his Chapter of Mainprize, where he reciteth the Statute of *Weſtm.* 1. *cap.* 15. and then ſaith thus: "By this Statute it appears, that in four caſes at the Common Law a Man was not repleviable; to-wit, thoſe that were taken for the death of a man, by the command of the King, or his Juſtices, or for the Foreſt;" thus far he is moſt right. Then he goeth on, and ſaith, "As to the command of the King, that is underſtood by the command of his own mouth, or his Council, which is incorporated unto him, and ſpake with his mouth, or otherwiſe every Writ or *Capias* to take a man, which is the King's command, would be as much; and as to the command of the Juſtices, that is meant their abſolute commandment, for if it be by their ordinary commandment, he is repleviable by the Sheriff, if it be not in ſome of the caſes prohibited by the Statute."

The anſwer that I give unto this is, that *Stamford* had ſaid nothing whether a man may be committed without cauſe by the King's command, or whether the Judges ought not to bail him in ſuch caſe, only that ſuch a one is not repleviable; which is agreed, for that belongs to the Sheriff. And becauſe no man ſhould think he meant any ſuch thing, he concludes the whole ſentence touching the command of the King and the Juſtices, that one committed by the ordinary command of the Juſtice, is repleviable by the Sheriff; or at leaſt it appears not that he meant that a man committed by the King, or by the Privy-Council without cauſe, ſhould not be bailable by the Juſtices, and he hath given no opinion in this caſe; what he would have ſaid, if he had been aſked the queſtion, cannot be known, neither doth it appear, that, by any thing that he hath ſaid, he meant any ſuch thing as would be inferred out of him. And now, my Lords, I have performed the commands of the Commons, and as I conceive ſhall clear the declaration of perſonal liberty, an ancient and undoubted truth, fortified with ſeven Acts of Parliament, and not oppoſed by any Statute or Authority of Law whatſoever. *See* Littleton's *Precedents after Mr.* Selden's.

Mr. Selden's *Argument.*

My Lords,

YOUR Lordſhips have heard from the Gentleman that laſt ſpake, a great part of the grounds upon which the Houſe of Commons, upon mature deliberation, proceeded to that clear reſolution touching the right of the liberty of their perſons. The many Acts of Parliament, which are the written Laws of the Land, and are expreſsly in the point, have been read and opened, and ſuch objections as have been by ſome made to them, and ſome objections alſo made out of another Act of Parliament, have been cleared and anſwered. It may ſeem now perhaps (my Lords) that little remains needful to be further added, for the inforcement and maintenance of ſo fundamental and eſtabliſhed a right and liberty belonging to every Freeman of the Kingdom. But in the examination of queſtions of Law of Right, beſides the Laws or Acts of Parliament, that ought chiefly to direct and regulate every man's judgment, whatſoever hath been put in practice to the contrary, there are commonly uſed alſo former Judgments, or Precedents, and indeed have been ſo uſed ſometimes, that the weight of reaſon, of Law, and of Acts of Parliament, hath been laid by, and reſolutions have been made, and that in this very point, only upon the interpretation and apprehenſion of precedents. Precedents, my Lords, are good *media*, or proofs of illuſtration or confirmation where they agree with the expreſs Law; but they can never be proof enough to overthrow any one Law, much leſs ſeven ſeveral Acts of Parliament, as the number of them is for the point. The Houſe of Commons therefore taking into conſideration, that in this queſtion, being of ſo high a nature, that never any exceeded it in any Court of Juſtice whatſoever, all the ſeveral ways of juſt examination of the truth ſhould be uſed, have alſo moſt carefully informed themſelves of all former judgments and precedents concerning this great point either way, and have been no leſs careful of the due preſervation of his Majeſty's juſt Prerogative than of their own Rights. The precedents here are of two kinds, either merely matter of Record, or elſe the former reſolutions of the Judges, after ſolemn debate in the point.

This point that concerns precedents, the Houſe of Commons have commanded me to preſent to your Lordſhips, which I ſhall as briefly as I may, ſo I do it faithfully and perſpicuouſly. To that end, my Lords, before I come to the particulars of any of thoſe precedents, I ſhall firſt remember to your Lordſhips, that which will ſeem as a general key for the opening and true apprehenſion of all them of Record, without which key, no man, unleſs he be vers'd in the entries and courſe of the King's-Bench, can poſſibly underſtand them.

In all caſes, my Lords, where any Right or Liberty belongs to the Subjects by any poſitive Law written or unwritten, if there were not alſo a remedy by Law, for the enjoying or regaining this Right or Liberty, when it is violated or taken from him, the poſitive Law were moſt vain, and to no purpoſe; and it were to no purpoſe for any man to have any Right in any land or other inheritance if there were not a known remedy, that is, an Action or Writ, by which, in ſome Court of ordinary Juſtice, he might recover it. And in this caſe of Right of Liberty of Perſon, if there were not a remedy in the Law for regaining it, when it is reſtrained, it were of no purpoſe to ſpeak of Laws, that ordain it ſhould not be reſtrained. Therefore in this caſe alſo, I ſhall firſt ſhew you the remedy that every Freeman is to uſe for the regaining of his Liberty, when he is againſt Law impriſoned, that ſo upon the legal courſe and form to be held in uſing that remedy, the precedents or judgments upon it, for all Judgments of Record riſe out of this remedy, may be eaſily underſtood. There are in Law divers remedies for inlarging of a Freeman impriſoned, as the Writs of *Odio & atia*, and of *Homine replegiando*, beſides the common or moſt known Writs of *Habeas Corpus*, or *Corpus cum cauſa*, as it is alſo called.

The firſt two Writs are to be directed to the Sheriff of the County, and lie in ſome particular caſes, with which it would be untimely for me to trouble your Lordſhips, becauſe they concern not that which is committed to my charge. But that Writ of *Habeas Corpus*, or *Corpus cum cauſa*, is the higheſt remedy in Law, for any man that is impriſoned, and the only remedy for him that is impriſoned by the ſpecial command of the King, or the Lords of the Privy-Council, without ſhewing cauſe of the commitment: neither is there in the Law any ſuch thing, nor was there ever mention of any ſuch thing in the Laws of this land, as a Petition of Right to be uſed in ſuch caſes for Liberty of the Perſon, nor is there any legal courſe for inlargement to be taken in ſuch caſes; howſoever the contrary hath upon no ground or colour of Law been pretended. Now, my Lords, if any man be ſo impriſoned by any ſuch command, or otherwiſe, in any priſon whatſoever through *England*, and deſire by himſelf, or any other in his behalf, this Writ of *Habeas Corpus* for the purpoſe in the Court of King's-Bench, the Writ is to be granted to him, and ought not to be denied him, no otherwiſe than another ordinary original Writ in the Chancery, or other common proceſs of Law may be denied; which amongſt other things the Houſe reſolved alſo, upon mature deliberation, and I was commanded to let your Lordſhips know ſo much. This Writ is directed to the Keeper of the priſon, in whoſe cuſtody the priſoner remains, commanding him that after a certain day, he bring in the body of the priſoner, *ad ſubjiciend. & recipiend. juxta quod curia conſideraverit, &c. una cum cauſa captionis & detentionis*; and oftentimes *una cum cauſa detentionis* only, *captionis* being omitted.

The keeper of the priſon thereupon returns by what Warrant he detains the priſoner, and with his return filed to his Writ, brings the Priſoner to the Bar at the time appointed; when the return is thus made, the Court judgeth of the ſufficiency or inſufficiency of it, only out of the body of it, without having reſpect unto any other thing whatſoever; that is, they ſuppoſe the return to be true whatſoever it be: if it be falſe, the priſoner may have his action on the Caſe againſt the Goaler that brought him. Now, my Lords, when the priſoner comes thus to the Bar, if he deſire to be bailed, and that the Court upon the view of the return think him in Law to be bailable, then he is always firſt taken from the Keeper of the priſon that brings him, and committed to the Marſhal of the King's-Bench, and afterwards bailed, and the entry perpetually is *Committitur Mariſcallo & poſtea traditur in Ball'*; for the Court never bails any man, until he firſt becomes their own priſoner, and be *in Cuſtodia Mariſcall'* of that Court. But if upon the return of the *Habeas Corpus*, it appear to the Court, that the priſoner ought not to be bailed, nor diſcharged from the priſon whence he is brought, then he is remanded or ſent back again, there to continue, until by courſe of Law he may be delivered; and the entry in this caſe is *Remittitur quouſque ſecundum legem deliberatus fuerit*, or *Remittitur quouſque, &c.* which is all one, and the higheſt award or judgment that ever was or can be given upon an *Habeas Corpus*. But if the Judges doubt only whether in Law they ought to take him from the priſon whence he came, or give a day to the Sheriff to amend his Writ, as often they do, then they remand him only during the time of their doubt, or until the Sheriff hath amended his return, and the entry upon that is *Remittitur* only, or *Remittitur priſonæ præd.* without any more. And ſo *remittitur* generally is of far leſs moment in the award upon the *Habeas Corpus*, than *remittitur quouſque, &c.* howſoever the vulgar opinions raiſed out of the late Judgment be to the contrary. All theſe things are of moſt known and conſtant uſe in the Court of King's-Bench, as it cannot be doubted but your Lordſhips will eaſily know from the grave and learned my Lords the Judges.

Theſe two courſes, the one of the entry of *Comittitur Mariſcall. & poſtea traditur in Ballium*, and the other *remittitur quouſque, &c. & remittitur* generally, or *remittitur priſonæ præd.* together with the nature of the *Habeas Corpus*, thus ſtated; it will be eaſier for me to open, and your Lordſhips to obſerve, whatſoever ſhall occur to the purpoſe in the precedents of Record, to which I ſhall come now in the particular. But before I come to the precedents, I am to let you know the reſolutions of the Houſe of Commons touching the enlargement of a man committed by the command of the King, or the Privy-Council, or any other, without cauſe ſhewed of ſuch commitment: it is thus; That if a Freeman be committed or detained in priſon, or otherwiſe reſtrained by the command of the King, the Privy-Council, or any other, and no cauſe of ſuch commitment, detainer, or reſtraint be expreſſed, for which by Law he ought to be committed, detained or reſtrained; and the ſame be returned upon an *Habeas Corpus* granted for the party, then he ought to be delivered and bailed.

This reſolution, as it is grounded upon the Acts of Parliament already ſhewn, and the reaſon of the Law of the Land, which is committed to the charge of another, and anon alſo to be opened to you, is ſtrengthened alſo by many Precedents of Record.

But the Precedents of Record that concern this point are of two kinds, for the Houſe of Commons hath informed itſelf of ſuch as concern it either way. The firſt, ſuch as ſhew expreſsly, that Perſons committed by the command of the King, or of the Privy-Council, without other cauſe ſhewed, have been enlarged upon bail when they prayed it; whence it appears clearly, that by the Law, they are bailable, and ſo by *Habeas Corpus* to be ſet at liberty: for tho' they ought not to have been committed without a cauſe ſhewed of the commitment, yet it is true that the reverend Judges of this Land did pay ſuch reſpect to ſuch commitments, by the command of the King, or of the Lords of the Council, (as alſo to the commitment ſometimes of inferior perſons) that upon the *Habeas Corpus*, they rarely uſed abſolutely to diſcharge the perſons inſtantly, but only to enlarge them upon bail; which ſufficiently ſecures and preſerves the Liberty of the Subject, according to the Laws that your Lordſhips have already heard, nor in any of the caſes is there any difference made between ſuch commitments by the Lords of the Council, that are incorporated with him. The ſecond kind of precedents of Record are, ſuch as have been pretended to prove the Law to be contrary, and that perſons ſo committed ought not to be ſet at liberty upon bail, and are in the nature of objections out of Record.

I ſhall deliver them ſummarily to your Lordſhips with all faith, and alſo true copies of them; out of which it ſhall appear clearly to your Lordſhips, that of thoſe of the firſt kind, there are no leſs than twelve, moſt full and directly in the point, to prove that perſons ſo committed are to be delivered upon bail: and amongſt thoſe of the other kind, there is not ſo much as one, not one, that proves at all any thing to the contrary. I ſhall firſt, my Lords, go through them of the firſt kind, and ſo obſerve them to your Lordſhips, that ſuch ſcruples as have been made upon them by ſome that have

have excepted againſt them, ſhall be cleared alſo according as I ſhall open them ſeverally.

The firſt of the firſt kind is of *Ed.* IIId's time, it is in *Paſchæ* 18 *Ed.* III. *Rot.* 33. The caſe was thus:

King *Ed.* III. had committed by Writ, and that under his great Seal (as moſt of the King's commands in thoſe times were) one *John de Bildeſton*, a Clergyman, to the priſon of the Tower, without any cauſe ſhewed of the commitment. The Lieutenant of the Tower is commanded to bring him to the King's-Bench, where he is committed to the Marſhal; but the Court aſks of the Lieutenant, if there were any cauſe to keep this *Bildeſton* in priſon, beſides that commitment of the King; he anſwered no: whereupon the Roll ſays, *quia videtur cur. bre. præd. ſufficient. non eſſe cauſam præd. Johan. de Bildeſton in priſona Dom. Regis hic detinend. idem Johannes admittitur per manucaptionem Willielmi de Wakefield*, and ſome others, where the Judgment of the point is fully declared in the very point.

The ſecond, in the firſt kind of precedents of Record, is in the time of *H.* VIII. one *John Parker*'s Caſe, who was committed to the Sheriff of *London*, *pro ſecuritate pacis*, at the ſuit of one *Brinton*, *ac pro ſuſpicione feloniæ* committed by him in *Glouceſterſhire*, *ac per mandatum Dom. Rs.* he is committed to the Marſhal of the King's-Bench, *& poſtea iſto eodem termino traditur in Ball'*. Here were other cauſes of the commitment, but plainly one was by the command of the King, ſignified to the Sheriffs of *London*, of which they took notice; but ſome have interpreted this, as if the commitment had been for ſuſpicion of felony by the command of the King, in which caſe it is agreed of all hands, that the priſoner is bailable; but no man can think ſo of this precedent, that obſerves the context, and underſtands the Grammar of it, wherein moſt plainly *ac per mandatum dom. Regis* hath no reference to any other cauſe whatſoever, but is a ſingle cauſe enumerated in the return by itſelf, as the Record clearly ſheweth; it is in 22 *H.* VIII. *Rot.* 37.

The third is of the ſame King's time, it is 35 *H.* VIII. *Rot.* 33. *John Binck*'s Caſe; he was committed by the Lords of the Council *pro ſuſpicione feloniæ ac pro aliis cauſis illos moventibus, qui committitur Mariſcallo et immediate ex gratia curiæ ſpeciale traditur in Ball'*. They committed him for ſuſpicion of felony, and other cauſes them thereunto moving, wherein there might be matter of State, or whatſoever elſe can be ſuppoſed, and plainly the cauſe of their commitment is not expreſſed; yet the Court bailed him without having regard to theſe unknown cauſes that moved the Lords of the Council. But it has indeed ſome difference from either of thoſe other two that precede, and from the other nine alſo that follow; for it is agreed, that if a cauſe be expreſſed in the return, inſomuch that the Court can know why he is committed, that then he may be bailed, but not if they know not the cauſe. Now if a man is committed for a cauſe expreſſed, *et pro aliis cauſis Dominos de Concilio moventibus*; certainly the Court can no more know in ſuch a caſe what the cauſe is than any other.

The fourth of theſe is in the time of Queen *Mary*, it is *Paſch.* 2 & 3. *P. & Mar. Rot.* 58. *Overton*'s caſe: *Richard Overton* was returned upon an *Habeas Corpus*, directed to the Sheriffs of *London*, to have been committed and detained *per mandatum prænobilium Dominorum honorabilis Concilii Dominorum Regis et Reginæ, qui committitur Marr. & immedia tetraditur in Ball'*. In anſwer to this precedent, or by way of objection to the force of it, it hath been ſaid, that this *Overton* at this time ſtood indicted of High-Treaſon. It is true, he was ſo indicted, but that appears in another Roll, that hath no reference to the Return, as the Return hath no reference to that Roll; yet they that object this againſt the force of this precedent, ſay, that becauſe he was indicted of Treaſon, therefore though he was committed by the command of the Lords of the Council, without cauſe ſhewed, yet he was bailable for the Treaſon, and upon that was here bailed: than which objection nothing is more contrary, either to law or common reaſon. It is moſt contrary to Law, for that clearly every Return is to be adjudged by the Court out of the body of itſelf, and not by any other collateral or foreign Record whatſoever. Therefore the matter of the Indictment here, cannot in Law be cauſe of bailing of the priſoner; and ſo it is adverſe to all common reaſon, that if the objection be admitted, it muſt of neceſſity follow, that whoſoever ſhall be committed by the King, or Privy-Council, without cauſe ſhewed, and be not indicted of Treaſon, or ſome other Offence, may not be enlarged, by reaſon of ſuppoſition of matter of State. But that whoſoever is ſo committed, and withal ſtands ſo indicted, though in another Record, may be enlarged, whatſoever the matter of State be for which he was committed. The abſurdity of which aſſertion needs not a word for further confutation, as if any of the Gentlemen in the laſt judgment, ought to have been the ſooner delivered, if he had been alſo indicted of Treaſon; if ſo, Traytors and Felons have the higheſt privilege in perſonal liberty, and that above all other ſubjects of the Kingdom.

The fifth of this kind is of Queen *Mary*'s time alſo, it is *Paſch.* 4 & 5 *P. & Mar. Rot.* 45. the Caſe of *Edward Newport:* He was brought into the King's-Bench by *Habeas Corpus* out of the Tower of *London*, *Cum cauſa, viz. quod commiſſus fuit per mandatum Concilii Dominæ Reginæ, qui committitur Marr. & immediate traditur in Ballium.*

To this the like anſwer has been made, as to that other caſe of *Overton*'s next before cited; they ſay that in another Roll of another Term of the ſame year, it appears he was in queſtion for ſuſpicion of coining, and it is true he was ſo; but the return, and his commitment mentioned in it, have no reference to any ſuch offence, nor hath the bailment of him relation to any thing, but to the abſolute commitment by the Privy-Council: So that the anſwer to the like objection made againſt *Overton*'s caſe, ſatisfies this alſo.

The ſixth of theſe is of Queen *Elizabeth*'s time, *Mich.* 9 *El. Rot.* 35. the caſe of *Tho. Laurence*; this *Laurence* came in by *Habeas Corpus*, returned by the Sheriffs of *London*, to be detained in priſon *per mandat. Concilii Dominæ Reginæ, qui committitur Marr. & ſuper hoc traditur in Ballium.*

An objection hath been invented againſt this alſo; it hath been ſaid, that this man was pardoned, and indeed it appears ſo in the margin of the Roll, where the word *pardonatur* is entered: but clearly his enlargement by bail was upon the body of the return only, unto which that note of pardon in the margin of the Roll hath no relation at all; and can any man think, that a man pardoned (for what offence ſoever it be) might not as well be committed for ſome *Arcanum*, or matter of State, as one that is not pardoned, or out of his innocency wants no pardon?

The ſeventh of theſe is in the ſame year, and of *Eaſter*-Term following: it is *P.* 9. *Rot.* 68. *Rob. Conſtable*'s caſe: He was brought by *Habeas Corpus* out of the Tower; and in the return it appeareth he was committed there, *per mandatum privati Concilii Dominæ Reginæ, qui committitur Marr. & poſtea iſto eodem ter' traditur in Ball'*. The like objection hath been made to this, as that before of *Laurence*, but the ſelf-ſame anſwer clearly ſatisfies for them both.

The eighth is of the ſame Queen's time, in *Paſch* 20 *El. Rot.* 72. *John Browning*'s caſe. This *Browning* came by *Habeas Corpus* out of the Tower, whither he had been committed, and was returned to have been committed, *per privat. Concil. Dominæ Reginæ, qui committitur Marr. & poſtea iſto eodem termino traditur in Ball.* To this it hath been ſaid, that it was done at the Chief-Juſtice *Wray*'s Chamber, and not in the Court: and thus the authority of the precedent hath been leſſened or ſlighted. If it had been done at his Chamber, it would have proved at leaſt this much, that Sir *Chriſtopher Wray*, then Chief-Juſtice of the King's-Bench, being a grave, learned, and upright Judge, knowing the law to be ſo, did bail this *Browning*, and enlarge him, and even ſo far the precedent were of value enough; but it is plain, that though the *Habeas Corpus* were returnable, as indeed it appears in the Record itſelf, at his Chamber in *Serjeants-Inn*, yet he only committed him to the King's-Bench preſently, and referred the conſideration of enlarging him to the Court, who afterward did it: For the Record ſays, *Et poſtea iſto eodem termino traditur in Ball.* which cannot be of an enlargement at the Chief-Juſtice's Chamber.

The ninth of this firſt kind is *Hill.* 40 *El. Rot.* 62. *Edward Harecourt*'s caſe; he was impriſoned in the *Gatehouſe*, and that *per Dominos de privato Concilio Dominæ Reginæ pro certis cauſis eos moventibus & ei ignotis:* and upon his *Habeas Corpus* was returned to be therefore only detained, *Qui committitur Marr. & poſtea iſto eodem termino traditur in Ball.* To this never any Colour of anſwer hath been yet offered.

The tenth is *Cateſbie*'s caſe in the Vacation after *Hill.* Term, 43 *El. Rot. Robert Cateſbie* was committed to the *Fleet per warrantum diverſor. prænobilium viror. de privato concilio Dominæ Reginæ*; he was brought before Juſtice *Fenner*, one of the then Juſtices of the King's-Bench by *Habeas Corpus* at *Wincheſter-houſe, Southwark*; *Et commiſſ. fuit Marr. per præfat. Edwardum Fenner, & ſtatim traditur in Ball.*

The eleventh is *Rich. Beckwith*'s caſe, which was in *Hil.* twelfth of King *James*, *Rot.* 153. He was returned upon his *Habeas Corpus* to have been committed to the *Gatehouſe* by divers Lords of the Privy-Council; *Qui committitur Marr. & poſtea iſto eodem termino traditur in Ball.*

To this it hath been ſaid by ſome, that *Beckwith* was bailed upon a letter, written by the Lords of the Council to that purpoſe to the Judges; but it appears not that there was ever any letter written to them to that purpoſe: which though it had been, would have proved nothing againſt the authority of the Record; for it was never heard of, that Judges were to be directed in point of Law by letters from the Lords of the Council, although it cannot be doubted, but that by ſuch letters ſometimes they have been moved to bail men, that would or did not aſk their enlargement without ſuch letters, as in ſome examples I ſhall ſhew your Lordſhips among the precedents of the ſecond kind.

The twelfth and laſt of theſe is that of Sir *Tho. Monſon*'s caſe; it is *Mich.* 14 *Jac. Rot.* 147. He was committed to the Tower *per warrantum à diverſis Dominis de privato Concilio Domini Regis locum tenenti directum*; and he was returned by the Lieutenant to be therefore detained in priſon, *qui committitur Marr. & ſuper traditur hoc in Ball.*

To this it hath been anſwered, that every body knows by common fame, that this Gentleman was committed for ſuſpicion of the death of Sir *Tho. Overbury*, and that he was therefore bailable: a moſt ſtrange interpretation, as if the body of the Return and the Warrant of the Privy-Council ſhould be underſtood, and adjudged out of fame only. Was there not as much a fame, why the Gentlemen, that were remanded in the laſt judgment, were committed, and might not the ſelf-ſame reaſon have ſerved to enlarge them, their offence (if any were) being I think much leſs than that for which this Gentleman was ſuſpected?

And thus I have faithfully opened the number of twelve precedents, moſt expreſs in the very point in queſtion, and cleared the objections that have been made againſt them.

And of ſuch precedents of Record as are of the firſt kind, which prove plainly the practice of former ages, and judgment of the Court of King's Bench, in the very point, on the behalf of the Subject, my Lords, hitherto.

I come next to thoſe of the ſecond kind, or ſuch as are pretended, that perſons ſo committed are not to be enlarged by the Judges upon the *Habeas Corpus* brought, but to remain in priſon ſtill at the command of the King or the Privy-Council.

Theſe are of two natures; the firſt of theſe are, where ſome aſſent of the King or the Privy-Council appears upon the enlargement of a priſoner ſo committed; as if, that becauſe ſuch aſſent appears, the enlargement could not have been without ſuch aſſent.

The ſecond of this kind, are thoſe which have been urged as expreſs teſtimonies of the Judges denying bail; and in ſuch caſes, I ſhall open theſe alſo to your Lordſhips: which being done, it will moſt clearly appear, that there is nothing at all in any of theſe, that makes any thing at all againſt the Reſolution of the Houſe of Commons, touching this point; nay, it is ſo far from their making any thing againſt it, that ſome of them add good weight alſo to the proof of that reſolution.

For thoſe of the firſt nature of this ſecond kind of precedents, they begun in the time of *H.* VII. *Tho. Brugge*, and divers others were impriſoned in the King's-Bench *ad mandatum Dom. Regis*, they never ſought remedy by *Habeas Corpus*, or otherwiſe, for aught appears: But the Roll ſays, that *Dominus Rex relaxavit mandatum*, and ſo they were bailed. But can any man think, that this is an Argument either in Law or common reaſon, that therefore they could not have been bailed without ſuch aſſent? It is common in caſes of common perſons, that one being in priſon for ſurety of the peace or the like, at the ſuit of another, is bailed upon the releaſe of the party plaintiff; can it follow, that therefore he could not have been bailed without ſuch releaſe? Nothing is more plain than the contrary. It were the ſame thing to ſay, that if it ap-

appear, that if a plaintiff be non-suit, therefore unleſs he had been non-ſuit, he could not have been barr'd in the ſuit. The caſe laſt cited is *Mich.* 7 *H.* VII. *rot.* 6.

The very like is in the ſame year, *Hill.* 7 *H.* VII. *Rot.* 13. The caſe of *Will. Bartholomew*, *Will. Chaſe*, and divers others, and the ſelf-ſame anſwer, that is given to the other, clears this.

So in the ſame year, *Paſch.* 7 *H.* VII. *Rot.* 18. *John Beomond*'s caſe is the ſame in ſubſtance with thoſe other two, and the ſelf-ſame anſwer alſo ſatisfies, that clears them.

The next caſe is, *Mich.* 22 *H.* VII. *Rot.* 8. *Tho' Yew*'s caſe; he was committed *ad ſec. pacis*, for the ſecurity of the peace, at the ſuit of one *Freeman*, and beſides, *ad mandatum Dom. Regis*. And firſt, *Freeman relaxavit ſec. pacis*, and then Sir *James Hobbard*, the then King's Attorney-General, *relaxavit mandatum Dom. Regis*; and hereupon he is bailed. The releaſe of the King's Attorney no more proves that he could not have been enlarged without ſuch releaſe or aſſent, than that he could not have been bailed without releaſe of ſurety of the peace by *Freeman*.

The very like is in *Hill.* 9 *H.* VII *Rot.* 14. The caſe of *Humphry Broche*, which proves no more here than the reſt of this kind already cited.

Then for this point alſo, *Broome*'s caſe of Queen *Elizabeth*'s time, is *Trin.* 39 *El. Rot.* 128. *Laurence Broome* was committed to the Gatehouſe *per mandatum Dom. Concilii Dominæ Reginæ*, and being returned ſo upon the *Habeas Corpus*, is firſt committed to the Marſhalſea as the courſe is, and then bailed by the Court; which indeed is an expreſs precedent, that might perhaps well have been added to the number of the firſt twelve: which ſo plainly ſhews the practice of enlarging priſoners in this caſe, by judgment of the Court upon the *Habeas Corpus*. But it is true, that in the Scrolls of that year, where the bails are entered, but not in the Record of the *Habeas Corpus*, there was a note, that this *Broome* was bailed *per mandatum privati Concilii*; but plainly this is not any kind of Argument, that therefore in law he might not have been otherwiſe bailed.

The ſelf-ſame is to be ſaid of another of this kind, in *Mich.* 40 *El. Rot.* 37. *Wenden*'s caſe. *Tho. Wenden* was committed to the Gatehouſe by the Queen and the Lords of the Council *pro certis cauſis* generally; he is brought by *Habeas Corpus* in tothe King's-Bench, and bailed by the Court. But it is ſaid, that in the Scrolls of that year, it appears that his enlargement was *per conſenſum Dom. privati Concilii*; and it is true that the Queen's Attorney did tell the Court, that the Lords of the Council did aſſent to it. Follows it therefore, that it could not have been without ſuch aſſent?

Next is *Hill.* 43 *El. Rot.* 89. when divers Gentlemen of ſpecial Quality were impriſoned by the command of the Privy-Council; the Queen being graciouſly pleaſed to enlarge them, ſends a commandment to the Judges of the King's-Bench, that they ſhould take ſuch a courſe, for delivering them upon bail as they ſhould think fit: and they did ſo, and enlarged them upon Writs of *Habeas Corpus*. Follows it therefore, that this might not have been done by Law, if the parties themſelves had deſired it?

So in *Trin.* 1 *Jac. rot.* 30. Sir *John Brocket* being committed to the Gatehouſe, is returned to ſtand committed *per mandatum privati Concilii*, and he is inlarged *virtute warranti a Concilio prædicto*. But the ſame anſwer that ſatisfies for the reſt before cited, ſerves for this alſo.

The laſt of theſe, is *Reyner*'s caſe, in *Mich.* 12 *Jac. rot.* 119. He was committed to the Gatehouſe by the Lords of the Council, and being brought into the King's-Bench by *Habeas Corpus*, is inlarged upon bail; but this they ſay was upon a letter written from one of the Lords of the Council to the Judges. It is true, that ſuch a letter was written, but the anſwer to the former precedents of this nature, are ſufficient to clear this alſo.

And in all theſe obſerve,

1. That it appears not, that the party ever deſired to be inlarged by the Court, or was denied it.

2. Letters either from the King or Council cannot alter the law in any caſe: ſo that hitherto nothing hath been brought on the contrary part, that hath any force or colour of reaſon in it.

We come now, my Lords, to thoſe precedents of the other nature cited againſt the liberty of the ſubject: that is, ſuch as have been uſed to miſlike the perſons ſo committed may not be inlarged by the Court.

They are in number eight, but there is not one of them that proves any ſuch thing, as your Lordſhips will plainly ſee upon opening them.

The firſt four of them are exactly in the ſame words, ſaving that the names of the perſons and the priſons differ; I ſhall therefore recite them all one after another, and then clear them together.

The firſt is *Richard Everard*'s caſe, *Hill.* 7 *Hen.* VII. *rot.* 18. He and others were committed to the *Marſhalſea* of the Houſhold, *per mandatum domini Regis*, and ſo returned upon a *Habeas Corpus* into the King's-Bench; whereupon the entry is only *Qui committitur Marr. &c.*

The ſecond is *Hill.* 8 *Hen.* VII. *Richard Cherry*'s caſe; he was committed to the Mayor of *Windſor*, *per mandatum domini Regis*, and ſo returned upon a *Habeas Corpus*; and the entry is only, *Qui committitur Marr. &c.*

The third is *Hill.* 9 *Hen.* VII. *rot.* 14. *Chriſtopher Burton*'s caſe, who was committed to the *Marſhalſea* of the Houſhold, *per mandatum domini Regis*, and ſo returned upon his *Habeas Corpus*; and the entry is likewiſe, *Qui committitur Marr. &c.*

The fourth is *George Urſwick*'s caſe, *Paſ.* 19. *Hen.* VII. *rot.* 19. He was committed to the Sheriffs of *London*, *per mandatum domini Regis*, and returned ſo upon his *Habeas Corpus*, *Qui committitur Marr. &c.*

Theſe four have been uſed principally, as expreſs precedents, to prove that a priſoner ſo committed cannot be enlarged; and perhaps at the firſt ſight, to men that know not, and obſerve not the courſe and entries of the Court of King's-Bench, they may be apprehended to prove as much: but in truth they rather prove the contrary, at leaſt there is no colour in them of any ſuch matter as they have been uſed for. To which purpoſe I beſeech your Lordſhips to call to your memories, that which I firſt obſerved to you touching the courſe of that Court. Where a priſoner is brought in by *Habeas Corpus*, he is (if he be not to be remanded) firſt committed to the Marſhal of the Court, and then bailed as his caſe requires. This is ſo certain, as it can never be otherwiſe. Now theſe men being thus committed by the expreſs command of the King, are firſt, you ſee, taken from the priſons whither they were firſt committed; wherein you may obſerve, my Lords, that if a general ſuſpicion of matter of State were of force in ſuch a caſe, it might be as needful in point of State, to have the priſoner remain in the priſon, where the King by ſuch an abſolute command committed him, as to have him at all committed. When they have taken them from the priſons where before they were, they commit them to the Marſhal of their own Court, which is but the firſt ſtep to bailing them. Now it appears not indeed that they were bailed, for then *Traditur in Ball.* had followed, but nothing at all appears that they were denied it; perhaps they never aſked it, perhaps they could not find ſuch as were ſufficient to bail them. And in truth, whenſoever any man is but removed from any priſon in *England* (though it be for debt or treſpaſs only) into that Court, the entry is but in the ſelf-ſame ſyllables as in theſe four caſes.

And in truth if theſe proceedings did prove, that any of the priſoners named in them were not bailable, or had been thought by the Court not to have been bailable; it will neceſſarily follow, that no man living that is ordinarily removed from any priſon into the King's Bench; or that is there upon any ordinary action of debt, or action of treſpaſs, could be bailed; for every man that is brought thither, and not remanded, and every man that is arreſted but for a debt or treſpaſs, and was returned into that Court, is likewiſe committed to the Marſhal of that Court, and by the ſelf-ſame entry, and not otherwiſe; yet theſe four have been much ſtood on, and have ſtrangely miſled the judgment of ſome that did not, or would not ſeem to underſtand the courſe of that Court.

The fifth of this nature is *Edward Page*'s caſe; it is *Tr.* 7 *Hen.* VIII. This might have been well reckoned with the former four, had not the miſentry of the Clerk only made it vary from them. *Edward Page* was committed to the *Marſhalſea* of the Houſhold, and that *per mandatum domini Regis*, and returned to be therefore detained, and the entry, is *Qui committitur Marr. Hoſpitii Dom. Regis.* This word *Marr.* is written in the Margin of the roll; this hath been uſed to prove, that the Judges remanded this priſoner; if they had done ſo, the remanding had been only while they adviſed, and not any ſuch award which is given when they adjudge him not bailable. But in truth the word *Committitur* ſhews, that there was not any remanding of him, nor doth that Court ever commit any man to the *Marſhalſea* of the Houſhold: and beſides, the word *Marr.* for *Mareſcallo* in the margin, ſhews plainly that he was committed to the Marſhal of the King's-Bench, and not remanded to the *Marſhalſea* of the Houſhold; for ſuch entry of that word in the margin, is perpetually in caſes of that nature, when they commit a man to their own priſon, and ſo give him the firſt ſtep to bailment, which he may have if he aſk it, and can find bail. And doubtleſs theſe words of *Hoſpitii præd.* were added by the error of the Clerk, for want of diſtinction in his underſtanding, from the *Marr.* of the King's-Bench, to the Marſhal of the Houſhold.

The ſixth of theſe is *Thomas Cæſar*'s caſe; it is 8 *Jac. rot.* 99. This *Cæſar* was committed to the *Marſhalſea* of the Houſhold, *per mandatum domini Regis*, and returned to be therefore detained, and indeed a *remittitur* is in the roll, but not a *remittitur quouſque*, but only that kind of *remittitur* which is only uſed while the Court adviſes. And in truth this is ſo far from proving any thing againſt the reſolution of the Houſe of Commons, that it appears that the opinion of the reverend Judges of that time was, that the return was inſufficient, and that if it were not amended, the priſoner ſhall be diſcharged. For in the Book of Rules in the Court of *Mich.* Term (when *Cæſar*'s caſe was in queſtion), they expreſsly ordered, that if the Steward's Marſhal did not amend their return, the priſoner ſhould be abſolutely diſcharged: the words of the rule are, *Niſi Seneſcallus & Mareſcal. Hoſpitii domini Regis ſufficienter returnaverint breve de Habeas Corpus Thomæ Cæſar dier. mercur. prox. poſt quindenam ſcilicet Martin. def. exonerabitur.* And this is alſo the force of that precedent, but yet there hath been an interpretation upon this rule. It hath been ſaid that the Judges gave this rule, becauſe the truth was, that the return was falſe, and that it was well known, that the priſoner was not committed by the immediate command of the King, but by the command of the Lord-Chamberlain, and thence (as it was ſaid) they made this rule; but this kind of interpretation is the firſt that ever was ſuppoſed, that Judges ſhould take notice of the truth or falſhood of the return, otherwiſe than the body of the return could inform them. And the rule itſelf ſpeaks plainly of the ſufficiency only, and not of the truth or falſhood of it.

The ſeventh of theſe, is the caſe of *James Deſmaiſtres*, *Edward Emerſon*, and ſome others that were Brewers, and were committed to the *Marſhalſea* of the Houſhold, *per mandatum domini Regis*, and ſo returned upon *Habeas Corpus:* and it is true, that the roll ſhews that they were remanded, but the remanding was only upon adviſement. And indeed the grave and upright Judges of that time were ſo careful, leſt upon the entry of the remanding, any ſuch miſtake might be, as might perhaps miſlead poſterity in ſo great a point, that they would expreſsly have this word (*immediatè*) added to the *Remittitur*, that ſo all men that ſhould meet with the roll might ſee, that it was done for the preſent only, and not upon any debate of the queſtion. And beſides, that there is no *quouſque* to it, which is uſually added, when the higheſt award upon debate or reſolution of this kind is given by them.

The eighth of theſe is, the caſe of *Saltonſtall*; it is *Hill.* 12 *Jac.* Sir *Samuel Saltonſtall* was committed to the *Fleet*, *per mandatum domini Regis*; and beſides, by the Court of *Chancery*, for diſobeying an order of that Court, and is returned upon his *Habeas Corpus*, to be therefore detained. And it is true that a *Remittitur* is entred in the roll, but it is only a *remittitur priſonæ prædict'*, without *quouſque ſecundum legem deliberatus fuerit:* and in truth it appears on the Record, that the Court gave the Warden of the *Fleet* three ſeveral days at ſeveral times to amend his return, and in the interim *remittitur priſonæ præd'*. Certainly if the Court had thought that the return had been good, they would not have given ſo many ſeveral days to have amended it; for if that *mandatum domini Regis* had been ſufficient in the caſe, why need it to have been amended?

The ninth and laſt of theſe is, *Tr.* 13 *Jac. rot.* 71. the caſe of the ſame Sir *Samuel Saltonſtall:* he is returned by the Warden of the *Fleet*, as in the caſe before, and generally, *remittitur* is in the roll, which proves nothing at all, that therefore the Court thought he might not by law be inlarged; and beſides, in both caſes he ſtood committed alſo for diſobeying an order in the *Chancery*.

Theſe are all that have been pretended to the contrary in this great point, and upon the view of them thus opened to your Lordſhips, it is plain

that there is not one, not ſo much as one at all, that proveth any ſuch thing, as that perſons committed by the command of the King, or the Lords of the Council without cauſe ſhewed, might not be enlarged; but indeed the moſt of them expreſsly prove rather the contrary.

Now, my Lords, having thus gone through the precedents of Record, that concern the point of either ſide, before I come to the other kind of precedents, which are the ſolemn reſolutions of Judges in former times, I ſhall (as I am commanded alſo by the Houſe of Commons) repreſent unto your Lordſhips ſomewhat elſe they have thought very conſiderable; with which they met, whilſt they were in a moſt careful enquiry of whatſoever concerned them in this great queſtion.

It is, my Lords, a draught of an entry of a judgment in that great caſe lately adjudged in the Court of *King's-Bench*, when divers Gentlemen impriſoned *per ſpeciale mandatum domini Regis*, were by the award and order of the Court, after ſolemn debate, ſent back to priſon, becauſe it was expreſsly ſaid, they could not in Juſtice deliver them, tho' they prayed to be bailed. The caſe is famous, and well known to your Lordſhips, therefore I need not further to mention it: as yet indeed there is no judgment entered upon the roll, but there is room enough for any kind of judgment to be entered. But, my Lords, there is a form of a judgment, a moſt unuſual one; ſuch a one as never was in any ſuch caſe before (for indeed there was never before any caſe ſo adjudged), and thus drawn on by a chief Clerk of that Court (by direction of Mr. Attorney-General), as the Houſe was informed by the Clerk, in which the reaſon of the judgment, and remanding of thoſe Gentlemen, is expreſſed in ſuch ſort, as if it ſhould be declared upon Record for ever, that the laws were, that no man could ever be inlarged from impriſonment that ſtood committed by ſuch an abſolute command.

The draught is only in Sir *John Heveningham*'s caſe, being one of the Gentlemen that was remanded, and it was made for a form for all the reſt. The words of it are after the uſual entry of a *Curia adviſare vult* for a time; That *viſis retur. prædict. nec non diverſis antiquis recordis in Curia hic remanent. conſimiles caſus continentibus, maturaq; deliberatione, inde prius habita, eo quod nulla ſpecialis cauſa captionis ſive detentionis præd. Johannis exprimitur, ſed generaliter quod detentus eſt in priſona præd'. per ſpeciale mandatum domini Regis, ideo præd'. Johannes remittitur præfat. cuſtodi Marr. Hoſpitii præd ſalvo cuſtodiend. quouſq; &c.* that is, *quouſque ſecundum legem deliberatus fuerit.* And if that Court, that is the higheſt for ordinary Juſtice, cannot deliver him *ſecundum legem*; what law is there, I beſeech you, my Lords, that can be ſought for in any other inferior Court to deliver him? Now, my Lords, becauſe this draught, if it were entered in the roll, (as it was prepared for no other purpoſe) would be as great a declaration, contrary to the many Acts of Parliament already cited, contrary to all precedents of former times, and to all reaſon of law; to the utter ſubverſion of the higheſt liberty and right belonging to every Freeman of this Kingdom, and for that eſpecially alſo it ſuppoſes, that divers ancient records had been looked into by the Court in like caſes, by which records their judgments were directed; whereas in truth, there is not any one record at all extant that with any colour (not ſo much indeed as with any colour) warrants the judgment: therefore the Houſe of Commons thought fit alſo, that I ſhould, with the reſt that hath been ſaid, ſhew this draught alſo to your Lordſhips.

I come now to the other kind of precedents, that is, ſolemn reſolutions of Judges, which being not of record, remain only in authentick copies: but of this kind there is but one in this caſe, that is the reſolution of all the Judges in the time of Queen *Elizabeth*. It was in the 34th of her reign, when divers perſons had been committed by abſolute command, and delivered by the Juſtices of the one Bench or the other; whereupon it was deſired, that the Judges would declare in what caſes perſons committed by ſuch command were to be inlarged, which hath been variouſly cited, and variouſly apprehended.

The Houſe of Commons, therefore, deſiring with all care to inform themſelves as fully of the truth of it as poſſibly they might, got into their hands from a Member of their Houſe, a Book of ſelected caſes, collected by a reverend and learned Chief-Juſtice of the Common-Pleas, that was one of them that gave the reſolution, which is entered at large in that Book: I mean the Lord Chief-Juſtice *Anderſon*, it is written in the Book with his own hand, as the reſt of the Book is, and howſoever it hath been cited, and was cited in that great judgment upon the *Habeas Corpus* in the *King's-Bench*, as if it had been, that upon ſuch commitments the Judges might not bail the priſoners; yet it is moſt plain, that in the reſolution itſelf no ſuch thing is contained, but rather expreſſed the contrary. I ſhall better repreſent it to your Lordſhips by reading it, than by opening it.

Then it was read here. [*See* ante 147, 148.]

If this reſolution doth reſolve any thing, it doth indeed upon the enquiry reſolve fully the contrary to that which hath been pretended, and enough for the maintenance of the ancient and fundamental point of liberty of the perſon, to be regained by *Habeas Corpus* when any is impriſoned. And I the rather thought it fit now to read it to your Lordſhips, that it might be at large heard; becauſe in the great judgment in the *King's-Bench*, though it was cited at the bar, as againſt this point of perſonal liberty, as alſo at the Bench, yet though every thing elſe of record that was uſed, were at large read openly, this was not read either at Bar or Bench: for indeed if it had, every hearer would eaſily have known the force of it to have been indeed contrary to the judgment.

My Lords, having thus gone through the charge committed to me by the Houſe of Commons, and having thus mentioned to your Lordſhips, and opened the many precedents of records, and that draught of the judgment in this like caſe, as alſo this reſolution; I ſhall now (as I had leave and direction given me, leſt your Lordſhips ſhould be put to much trouble and expence of time in finding or getting Copies at large of thoſe things which I have cited) offer alſo to your Lordſhips authentick Copies of them all, and ſo leave them, and whatſoever elſe I have ſaid, to your Lordſhips further conſideration.

The true Copy of the Precedents of Record.

Inter Record. Dom. Regis Caroli in Theſauro Recept. Scaccarii ſui ſub cuſtodia Dom. Theſaurar. & Camerar. ibidem remanen. viz. Placita coram Domino Rege apud Weſtmonaſt. de Ter' Paſche anno Regi Edwardi III. poſt conqueſt. Angliæ 18. inter alia ſic continetur ut ſequitur.

Rot. 33. *Adhuc de termino Paſch.*

Dominus Rex mandavit dilecto & fideli ſuo Roberto de Dalton Conſtabular' Turris ſuæ London vel ejus locum tenent' bre. ſuum in hæc verba: Edwardus Dei gratia Rex Angliæ, Franciæ, & Dominus Hiberniæ dilecto et fideli ſuo Roberto de Dalton Conſtabular' Turris ſuæ London vel ejus locum tenent. ſalutem. Mandamus quod Johannem Bildeſton capellan' quem vic. noſtr. London ad mandatum noſtrum apud pred. Turrim vobis liberavit ab eiſdem recipiatis & in priſona noſtra Turris London pred. ſalvo cuſtodir' fac' quouſque aliud ſuper hoc duxerimus demandand. teſte meipſo apud Turrim noſtram London 30 die Martii Anno regni noſtri Angliæ 16. Regni vero noſtri Franciæ 30. Et modo ſcilt. in Craſt. Aſcen. Dom. anno Regis nunc 8. coram Domino Rege apud Weſtminſt. venit Johannes de Wynwick locum tenens pred. Conſtabular. & adduxit coram Juſticiar' hic in Cur. pred. Johannem de Bildeſton quem ille a prefat. Vicecomit. virtute brevis pred. recepit. &c. Et dicit quod ipſe a Domino Rege habuit mandat. ducend. & liberand. corpus ipſius Johannis de Bildeſton prefat. Juſticiar. hic, &c. Et queſitum eſt de pred. Johanne de Wynwick ſi quam aliam detentionis prefat. Johannis de Bildeſton habeat Cauſam. Qui dicit quod non niſi bre. pred. tantum. Et quia videtur cur. bre. pred. ſufficien. non eſſe predict. Johannis de Bildeſton priſon. Marr' Regis hic retinen. &c. Idem Johannes dimittitur per manus Willielm. de Wakefield rectoris Eccle. de Willingham, Johannis de Wynwick in Com. Kanc. Johannis de Norton in Com. Norff. Nicolai de Blandefford in Com. Middl. & Rogeri de Bromley in Com. Stafford, qui eum manuceperunt habend. eum coram Domino Rege in Octabis Sancti Trin. ubicunque &c. viz. Corpus pro corpore &c. Ad quas Octabis Sanct. Trin. coram Domino Rege apud Weſtm. ven. pred. per manus pred' Et ſuper hoc mandavit Juſticiar. ſuis hic quoddam bre. ſuum Clauſ. in hæc verba, Edwardus Dei gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ, dilectis & fidel. ſuis Willielmo Scot, & ſociis ſuis juſticiar' ad placita coram nobis tenend. aſſignat. ſaltem cum nuper mandaverimus dilecto & fideli noſtro Roberto de Dalton Conſtabular' Turris noſtræ London vel ejus locum tenen. quod Johannem de Bildeſton Capellanum capt. & detent. in priſona Turris pred. per preceptum noſtrum pro ſuſpicione contrafactionis magni Sigilli noſtri cum Attachiat. & aliis cauſis caption. & detentionem pred. tangent. ſalvo & ſecur' duci fac' coram nobis in Craſt. Aſcen. Dom. ubicunque tunc fuiſſemus in Anglia priſonæ Mareſcall. noſtr. coram nobis liberand. in eadem quouſque per quendam informatorem eſſemus plenius informat. cuſtod. & tuta inde informatione pred. ulterius pred. ſuper hoc fieri fecerimus quod fore viderimus faciend. ſecundum legem, & conſuetudinem Regni noſtri Angliæ, nos in caſu quod dictus Informator non ven. coram nobis ad informand. nos plenius ſuper premiſſ. volentes eadem Johannem ea de cauſa Juſticiar' deferre in hac parte vobis mandamus quod ſi pred. Informator in Quinden. Sanct. Trin. prox. futur. vel circa non venit ſuper hoc plenius informat. tunc advent. ejuſdem informator is minime expectat. eidem Johanni ſuper hoc fieri fac. Juſtic. complement. prout fore videritis faciend. ſecundum legem & conſuetudinem Regni noſtri Angliæ, teſte meipſo apud Weſtminſt. 12 Maii Anno Regni noſtri Angliæ 18. Regni vero noſtri Franc' quinto. Quo quidem bre. reſpect. fact. eſt proclamatio quod ſiquis dictum regem ſuper premiſſ. informare vel erga ipſum Johannem proſequi voluerit, quod veniat. Et ſuper hoc venit pred. W. de Wakefield, Nicholas de Wandſworth, Johannes Brynwyn, Johannes de Longham, Johannes de Norton, & Rogerus de Bromley omnes de Com' Midd' & man' pred. Johannem de Bildeſton habend. eum coram Domino Rege de die in diem uſque ad prefat' quinden. Sanct. Trin. ubicunque, &c. Ad quem diem Anno 18. coram Domino Rege apud Weſtminſt. venit pred. Johannes de Bildeſton per manus pred. & iterata facta eſt proclam. in forma qua ſuperius, &c. et nullus venit ad dictum Regem informand' &c. per quod conceſſ. eſt quod pred. Johannes de Bildeſton eat inde ſine die ſalva ſemper actione Dom. Regis ſi qua, &c.

De Ter' Sanct. Hillar' Anno 22 *H.* VIII. *& per cont. Rot. ejuſdem Rotul.* 38.

Johannes Parker per Ricardum Choppin, &. W. Daunſey Vic' London virtute brevis Dom. Regis de Latitat, pro pace verſus ipſum Johannem Parker ad ſect. Johannis Bruton eis inde direct. & coram Rege duct. cum cauſa, viz. quod idem Johannes Parker capt. fuit in civitate pred. pro ſecu' pacis pred. & pro ſuſpicione feloniæ per ipſum apud Croweall in Com. Gloceſt. perpetrat. per nomen Johannis Parker de Thornbury in Com. Gloceſt. Corſer, alias dict. Johan. Charbs de eodem Com' Surgeon, ac per mandatum Dom. Regis nunciat' per Robertum Peck gen' de Cliffords-Inn, qui committitur Marr' &c. & poſtea iſte eodem termino traditur in Ballium Thomæ Atkins de Thornbury pred. Weaver, & Willi. Nole de eadem villa & Dom. uſque a die Paſche in unum men. Weaver ubicunque &c. Et quod idem Johannis Parker citra eundem diem perſonaliter comparuit coram Juſticiar' Dom. Regis ad prox. general. Gaol deliberation' in Com. Gloceſt. prox. tenend. ad ſubjiciend. & recipiend. ea omnia, & ſingula quæ prefat. Juſticiar' de eo tunc ordinare contigerint, &c. viz. Corpus pro corpore &c. Ad quem diem pred. Johannis Parker licet ipſi 4. placit. ſolemniter exact. ad comparend. non ven. ideo caperet eum pler' Trin. ad quem diem ex Octab. Trin. poſtea Trin. 24 H. VIII. ex Craſt. quinden. Paſche. Ad quem diem bre. & vic' return' quod ad Huſt. tent. apud London. die lune prox' poſt feſt. Sancte Scholaſtice Anno Regis H. VIII. 25. Johannes Parker, & W. Nole utl' fuer. prout patet per bre. Regis de Ter' Paſche Anno 25. Rs. pred.

De Ter. Sanct. Mich. anno 35 *H.* VIII. *& per cont. ejuſdem Rot.* 33.

Johannem Bincks per Ro. Baker Ar. Seneſcall. Cur. Marr. & Radum Hapton Mar' ejuſdem Cur. virtute brevis Dom. Regis de Habeas Corpus ad

ſubjiciend. & recipiend. &c. eis inde direct. coram Domino Rege duct' cum cauſa, viz. quod ante adventum brevis pred. Johannes Byncks captus fuit per mandatum privati Concilii Dom. Regis pro ſuſpicione feloniæ, & pro aliis cauſis illos movent. & duc' ad Gaol. Marr. & ibidem detent. virtute Gaol' pred. qui committitur Marr. &c. Et immediate ex gra' cur. ſpecial' pred. Johannes Byncks de Magna Marlow in Com. Buck. Weaver traditur in Ball. Thomæ Bignam de London Gent. & Johanni Woodward de Marlow pred. Taylor, uſque in craſt. Sanct. Martin. ubicunque &c. utque pleg. corpus pro corpore, &c. Ad quem diem comperuit & Robertus Drury Ar' & Johannes Boſſe gen. Domino Juſticiar' Dom. Regis ad pacem in Com. Buck. virtute brevis Dom. Regis eis direct. Domino Regi certificaverunt quod nullum indictamentum de aliquibus feloniis & tranſg. verſus ipſum Johannem Byncks coram eis ad preſens reſident. Et ulterius de fama et geſtu ipſius Johannis Byncks per ſacram. proborum & legalium homin. Com. Buck. diligenter inquiri fecerunt, & nihil aliud preter bonum de eo coram eis eſt compertum. Ideo conceſſ. eſt quod pred. Jo. Byncks de premiſſis eat inde ſine die deliberatur per proclamationem & Jur. prout moris eſt.

De Ter. Paſ. Anno 2 *&* 3 *Ph. & Mar. Rot.* 58.

Ricardus Overton nuper de London gen. per Tho. Leigh, & Johannem Machell vic' London virtute brevis Dom. Regis & Reginæ de Habeas Corpus ad ſtand. rect. &c. eis inde direct. coram Willielmo Portman mil' capital. Juſticiar. &c. duct. cum cauſa, viz. quod pred. Ricardus Overton 9. die Octobr. ult. preter commiſſ. fuit priſon. de Newgate, & ibidem in eadem priſona ſub cuſtod. dict. Vic. detent. ad mandatum pernobilium duorum honorabilis concil. pred. Regis & Reginæ qui committit. Marr. &c. et immediate traditur in Ball. Willielmo Overton de London gen. & Johanni Tayler de parochia Sanct. Martini apud Ludgate London merc. uſque Octab. Trin. viz. uterque manucaptor. pred. corpus pro corpore & poſtea Tr. 2. El. Reginæ; corpus Overton & pleg. ſuos Octabis Michael. ad quem diem ex menſ. Paſch. ad quem diem vic. ret. quod ad Huſt. ſuum tent. Guildhall Civitatis London die Lunæ poſt feſtum Sanct. Gregor. Epi. pred. W. Overton utl' eſt & per bre. Paſ. Anno ſuprad.

De Ter. Sanct. Mich. Anno 2 *&* 3 *P. & Mar. Rot.* 16. *habet Chart. allocat. Trin.* 2 *&* 3 *Phil. & M.*

Ricardus Overton nuper de Lond. gen. capt. Octab. Hill. pro quibuſdam altis prodic. unde indictat. eſt, ad quem diem Paſc. ad quem diem ex Cr. Animarum.

De Termino Paſch. 4 *&* 5 *P. & Mar. & per cont. ejuſdem Rot.* 45.

Edwardus Newport gen. per Robertum Oxenbridge mil' Conſtabular' Turris pred. virtute bre. Dominor. Regis & Reginæ de Habeas Corpus ad ſubjiciend. &c. ei inde direct. ad Barr. coram Domino Rege & Regina duct. cum cauſa, viz. quod ipſe ſibi commiſſ. fuit per mandat. concilii Dominæ Reginæ, qui committitur Marr. & immediate traditur in Ball. prout, &c. Et poſtea ſine die per proclamation. virtute brevis de geſtu & fama prout, &c. Rot. 17. ejuſdem anni.

De Ter. Mich. Anno 4 *&* 5 *P. & Mar. per Cont. ejuſdem Rotul.* 17.

Memorand. quod 14. die Octobr. Anno 4 & 5 Phil. & Mar. Edwardus Newport de Hanley in Com. Wigorn. ac capt. fuit per Uxbridge in Com. pred. pro ſuſpicione contra factionis quarundem pec. auri vocat. *French crowns*, per ipſum & alibi in Com. Wigor. fier. ſuppoſit. & ea de cauſa per mandatum Concil' Dominor. Regis & Reginæ commiſſ. ad Barr. tunc duct. fuit, qui committitur Marr. &c. et ſuper hoc idem Edwardus Newport traditur in Ball. Thomæ Charge de Latton in Com. Eſſex gener' Edwardo Hales de Parochia Sancti Olavi, London, gen. Johanni Baker, Clerico Ordinar. London, Johanni Gill de Parochia Sanct. Tho. Apoſtoli London, Clothworker, & Richardo Parks de Brownſgrave in Com. Wigorn. Yeoman, uſque Octabis Hill. ubicunque &c. viz. quilibt. pleg. proced. ſub pœna 100 l. & pred. Edwardus ſub pœna 200 l. quas, &c. Ad quem diem comperuit & committitur Conſtabular. Turris London per mandatum Concil. Dom. Regis & Reginæ ibid. ſalvo cuſtodiend. quouſque, &c. Et poſtea Paſ. 4 & 5 P. & M. traditur in Ball. prout patet per Scivect. finium iſtius ter. & poſtea M. 5 & 6 P. & M. exonerat. per cur. eo quod tam per Sacram. 12. probor. & legalium hominum de pred. Com. Midd. coram Dom. Rege & Domina Regina hic in cur. mea parte jurat. & onerat. quam per Sacrament. 12. probor. legal homin. de pred. Com. Wigor. coram Edwardo Saunders, & Johanne Whiddon mil. & aliis Juſticiar' dictor' Dom. Regis & Reginæ ad pacem ac de diverſis feloniis tranſgreſſ. & aliis malefact. in eodem com' perpetrat. audiend. & terminand. aſſignat. virtute brevis dictor. Dominor. Regis & Reginæ eis inde direct. in ea parte jurat. & onerat. ad inquirend. de geſtu & fama ipſius Edwardi compert. exiſtit quod idem Edwardus eſt de bonis geſtu & fama, ideo proclamatio eſt inde facta prout moris eſt ſecund. legem & conſuetudinem Reg. Angliæ, &c. conceſſ. eſt, quod pred. Edwardus eat inde ſine die.

De Ter. Paſ. 9. *El. Rot.* 35.

Tho. Lawrence per Chriſtopher' Drap. Majorem civitatis London' Ambroſium Nicholas & Ricu' Lambert vic. ejuſdem civitatis virtute brevis Dom. Reginæ de Habeas Corpus, &c. eis inde direct. & coram Domina Regina dict. cum cauſa, viz. quod 7 die Novembr. Anno regni Dom. El. nunc Reginæ Angliæ 8. pred. Thomas Lawrence indicto brevi nominat. captus fuit in civitate pred. & in priſona Dom. Reginæ ſub cuſtod. pred. coram vic. detent. per mandatum Concil' Dom. Reginæ qui committitur Marr. &c. & ſuper hoc tradit. in Ball' prout patet per Scivect. finium iſtius ter.

De Ter. Paſch. 9 *El. Rot.* 68.

Robertus Conſtable Ar' per Franciſcum Jobſon mil' locum tenend. Turris London virtute brevis Dom. Reginæ de Habeas Corpus ei inde direct. & coram Domina Regina dict. cum cauſa, viz. quod idem Robertus Conſtable prefat. Franciſco Jobſon commiſſus fuit per mandatum privat. Concil' Dom. Reginæ ſalvo cuſtodiend. qui committitur Marr. &c. et poſtea iſto eodem Ter. traditur in Ball. prout patet inter Scivect. finium iſtius Ter.

Ter Paſ. Anno 20 *El. & per cont. ejuſdem Rot.* 72.

Johannes Browning per Owen Hopton mil' locum tenen' Turris Dominæ Reginæ London virtute brevis Habeas Corpus ad ſubjiciend. ei inde direct. & coram dilecto & fideli Ch. Wray mil. capit. Juſticiar. Dom. Reginæ ad placita coram nobis tenend. aſſignat. apud hoſpitium ſuum in Serjeants-Inn Fleet-ſtreet London' die lunæ, viz. 12 die Maii duct. cum cauſa viz. quod pred. Johannes Browning commiſſus fuit eidem locum tenend. per mandatum privati concil' Reginæ ſalvo cuſtodiend. &c. qui com. Marr. &c. & poſtea iſto eodem Ter. traditur in Ball' prout pat. per Scivect. finium iſtius Ter.

De Ter. Sanct. Hillar. Anno 40 *El. Reginæ & per cont. ejuſdem Rot.* 62.

Edwardus Harecourt per Hugonem Parlour cuſtod. priſonæ Dominæ Reginæ de Gatehouſe infra civitatem Weſtminſt. in Com. Middl. virtute brevis Dominæ Reginæ de Habeas Corpus ad ſubjiciend. &c. ei inde direct. & coram Domina Regina apud Weſtminſt. dicta cum cauſa, viz. quod ante advent. brevis pred. ſcil. 7. die Octobr. an. Regni Dom. Regin. nunc 39. corpus Edw. Harecourt, per duos privat. Concil. dictæ Dominæ Reginæ ei commiſſ. fuit ſalvo & ſecure cuſtodiend. certis de cauſis ipſos movent. & ei ignotis, qui committitur Marr. &c. et poſtea iſto eodem Ter. traditur in Ball. prout patet per Scivect. finium iſtius Termini.

De Vacatione Hillar. Anno 43 *El.*

Robertus Cateſbie per Johannem Philips Guardian' de le Fleet virtute brevis Dominæ Reginæ de Habeas Corpus ad ſubjiciend. &c. ei inde direct. & coram Edwardo Fenner uno Juſticiar. Dominæ Reginæ ad placita coram ipſa Regina tenend. aſſignat. apud Wincheſter-Houſe in Burgo de Southwark in Com. Surr. dict. cum cauſa, viz. quod pred. Robertus commiſſus fuit priſonæ pred. primo die Martii Anno 43 El. War. diverſorum prænobilium virorum de privato Concilio Dominæ Reginæ in hæc verba:

To the Warden of the Fleet, or his Deputy: Theſe ſhall be to will and require you, to receive at the hands of the Keeper of the Compter of Woodſtreet, *the perſon of* Robert Cateſbie, *Eſquire, and him to detain, and keep ſafely in that priſon under your charge, until you ſhall have other direction to the contrary, whereof this ſhall be your Warrant.*

Et prefat. Robertus commiſſus fuit Marr. per prefat. Edwardum Fenner, & ſtatim traditur in Ball' prout patet, &c.

Ter. Hill. Anno 43 *Eliz. Reginæ* 12 *Jac. Regis.*

Ricardus Beckwith gen' per Aquilam Wykes cuſtod. priſonæ de Gatehouſe in Com. Midd. virtute brevis Dom. Regis de Habeas Corpus ad ſubjiciend. ei inde direct. & coram Domino Rege duct. cum cauſa, viz. quod ante advent. brevis predict. ſcilicet 10 die Julii Anno Regni Dom. Jac. Regis Dei gratia Angliæ, Franc. & Hiberniæ fidei defenſor. &c. 11 & Scot. 47. predict. Ricardus Beckwith ſibi commiſſus fuit priſonæ predict. ſub cuſtod. ſua virtute cujuſdem Warrant. ſibi fact. & direct. per Georgium divina providentia Cant. Archiepiſcopum totius Angliæ Primat. & Metropolitan. Henric. Com. Northampton Dominum Guardian. 5 portuum & un. de privato Concil. Regis, Tho. Com. Suffolk Dom. Camerar' Regiæ Familiæ ac ſacr' Concil. Dom. Regis Edwardum Domini Wooton gubernator Regiæ familiæ, Johannem Dom. Stanhope Vice-Camerar' Regiæ familiæ; cujus Warrant. tenor ſequitur in hæc verba:

To Aquila Wykes, *Keeper of the Gatehouſe in* Weſtminſter, *or his Deputy: Whereas it is thought meet that* Miles Rayner *and* Richard Beckwith *be reſtrained of their Liberty, and committed to the priſon of the Gatehouſe; Theſe ſhall be to will and require you to receive the perſons of the ſaid* Rayner *and* Beckwith *into your charge, and ſafe keeping in that priſon, there to remain until you ſhall have further order from us in that behalf, for which this ſhall be your Warrant. Dated at* Whitehall *the* 10*th of* July, 1613. Et poſtea iſto eodem termino.

De Ter. Mich. An. 14 *Jac. per cont. ejuſd. Rot.* 147.

Thomas Mounſon miles per Georgium More locum tenent' Turris Dom. Regis London' virtute brevis Dom. Regis de Habeas Corpus ad ſubjiciend. &c. ei inde direct. coram Domino Rege apud Weſt. duct. cum cauſa, viz. quod ante adventum brevis predict. Thomas ſibi commiſſus fuit per Warrant. adverſ. Dominis de privato Concilio Regis ſibi direct &c. Qui committitur Marr. &c. & ſuper hoc traditur in Ball' prout patet per Scivect. fin. iſtius Termini.

De Ter. Mich. 7 H. VII. *& per cont. ejuſdem Rot.* 6.

Tho. Brugg junior, nuper de Yanington in Com' Hertford gen', Johannes Rawleus nuper de Lemſter in Com' pred' Yeoman, Rob. Sherman nuper de Lemſter in Com. predict. Walter Thomas nuper de eadem in Com. predict. Hoſier, Tho. Ballard nuper de eadem in eodem Com. Smith Cadwallader ap John Duy nuper de Kerry in Marchia Walliæ in Com. Salop adjacen. gen. Reginald ap Breingham, alias Sherman, nuper de Lemſter in Com. Hereford Sherman, & Thomas Turner nuper de Kingſland in Com. Hereford Courſer, ſunt in cuſtod. Marr. ad mandatum Dom. Regis, &c. ac pro aliis certis de cauſis prout patet alibi de Record. &c. per Record. iſtius Ter. poſtea iſto Termin. Dominus relaxavit mandatum ſuum & proſecut. predict. comparuerint per Attorn. &c. Et quod utlag. verſus prefat. Thomam Brugg revocatur iſto termino & predict. Johannes Rawleus pro felon. & murdro predict. traditur in Ball' prout patet alibi, &c. ideo hic Marr. de ejus corpore per cur. exoneratur, &c.

Ter. Hillar. 7 H. VII. *& per cont. ejuſdem Rot.* 18.

W. Bartholomew, Johannes Bartholomew, Willielmus Chace, Henr. Carr, Tho. Roteſley, Tho. Street, Robertus Feldone, & Henr. Bancks ſunt in cuſtod. Marr. ad cuſt. mandat. dom. Regis, &c. per record. iſtius termin. ac predict. Willielmus Chace pro pace Randulpho Joſſelen inveniend. &c. Paſche ſequen. per poſtea termin. ſequen. dictus Dominus Rex mandatum ſuum predict. quoad Willielmus Chace relaxavit per Regis Attornat. & pro pace & pro felon. & murdro traditur in ball.

De Ter. Paſ. 7 H. VII. *& per cont. Rot. ejuſdem* 18.

Johannes Beomond de Wedneſbury in Com' Staff. Ar' eſt in cuſtod. Mar' ad mandatum Dom. Regis, &c. per record. iſtius ter' poſtea ſcilicet Trin' 7 Hen. VII. ſequen' predict. Johannes Beomond de mandato

dato predict. exoneratus exiſtit ideo Mar' de eo per eandem Cur' exoneratus exiſt.

De Ter. Mich. Anno 12 *H.* VII. *Rot.* 8.

Thomas Yewe de villa de Staff. in com' Stafford Yeoman, per Johannem Shawe & Ricardum Haddon vic' London virtute brevis Dom. Regis de Habeas Corpus, ad Sect. ipſius Regis eis inde direct. coram Rege duct. cum cauſa quod idem Thomas Yewe attachiatus fuit per Ricardum Whittington Serjeant apud Baynard's Caſtle Civitatis predict. & priſona dicti Dom. Regis infra eandem Civitatem ſalvo cuſtodiend. cauſa pro ſuſpicione felon. apud Coventrie in com' War' perpetrat. ad Suggeſtionem Willielmi King Innholder, ac inſuper idem Tho. Yewe detinetur in priſona predict, virtute cujuſdem alterius querel. verſus ipſum ad ſectam Johannes Freeman Serjeant de eo quod inveniat. ei inſufficiend. ſecur. pacis indicta cur. coram Johanne Waiger nuper vic. Ac ulterius idem Tho. Yewe detent. eſt in dicta priſona pro 23*l.* debit. & 2*s.* 8*d.* dampnis & cuſtag. quos Robertus Corbet Mercer, ex cognitione ipſius defend. verſus eum recuperavit in eadem cur. coram eodem Johanne Waiger nuper vic. Ac etiam idem Tho. detinetur in dicta priſona ad mandatum domini Regis, per Johannem Shawe, Alderman, Civitatis London, qui committitur Marr. &c. poſtea ſcilicet ter. Sanct. Trin. Anno 19 Regis H. VII. predict. Johannes Freeman relaxavit ſecur. pacis verſus eundem Tho. Yewe dictuſq; Robertus Corbet cognovit ſe fore ſatisfact. de debito & dampnis predict. Ac Jacobus Hubberd Attornat. General. dom. Regis relaxavit mandatum dom. Regis, ac pro ſuſpicione feloniæ predict. traditur in Ball. Symon Little de London Taylor, & Johanni Aſhe de London Skinner, uſque Octabis Mich. ubicunq; &c. Ad qui diem comperuit & Robertus Throgmorton miles unus cuſtod. pacis predict. com' Warr' return' quod null. Indictament. de aliquibus felon' ſive tranſgreſſ. verſus prefat. Tho. Yewe coram eo & Sociis ad preſens reſidet. et ulter. virtute brevis dom. Regis ſibi & Sociis ſuis direct. per Sacrament. 12 probor. & legal. hominum de villa de Coventry predict. de geſtu & fama predict. Thome diligenter inquiſitionem fecerunt, & nihil de eo preter bonum coram eo & Sociis ſuis eſt compertum ſed de bono geſtu & fama, ideo conceſſ. eſt quod predict. Tho. eat inde ſine die,

Ter. Hillar. Anno 9 *H.* VII. *& per cont. ejuſdem Rot.* 14.

Humfridus Broche nuper de Canterbrig. in Cantabr. Scholar. per Robertum Willoughbie dom' Brook mil. Seneſchall. Hoſpitii dom. Regis, ac Johannem Digbie mil. Marr' cur' Marr' Hoſpitii predict' virtute cujuſdem brevis dom. Regis de Habeas Corpus ad ſectam ipſius Regis ad ſtand. rect', &c. ad ſect. partis utlag. eis inde direct. coram Rege duct. cum cauſa viz. quod idem Humfridus commiſſus fuit Gaol. Marr' Hoſpitii dom. Regis & hac de cauſa & non alia idem Humfridus in priſona pred. detinetur, qui committitur Marr' &c. poſtea Paſ. ſequen' Rex relinquit mandatum ſuum Capital. Juſticiar' per Tho. Lovett mil. oſten' & pro utlag. pred. traditur in Ball. prout patet alibi.

De Ter' Sct. Trinit' anno 39 *El. & per cont. Rot. ejuſdem* 113.

Lawrence Broome per Hugonem Parlour cuſtod. priſone Domine Regine de la Gatehouſe, virtute brevis Domine Regine de Habeas Corpus ad ſubjiciend. &c. ei inde direct. & coram Domina Regina apud Weſtminſt' duct. cum cauſa viz. quod predict. Lawrence Broome in arcta cuſtod. ſua remanſet per mandatum duorum de Concilio dicte Domine Regine pro certis cauſis eos movent' qui committitur Marr' & poſtea iſte eodem termino traditur in Ball. prout patet, &c.

Per Scrivect. Fin. Ter' Sct' Trin. anno 39 *El. Regine.*

Lawrence Broome de Parva Baddow in Com. pred. huſband. traditur in Ball' ad ſubjiciend. &c. ad mandat. privat. Concil. Domine Regine ſuper Habeas Corpus,

Verſus Rando. Mayall de Hatfield Beverell in Com' pred' Gener.
Verſus Henrico Odall de eadem Gen.
Verſus Will. Eckaſden de Weſtminſt' Bricklayer.
Verſus Ric. Morgan de Weſtminſt' Labourer.
Uterq; ſub pena 40*l.* & princeps ſub pena 100 marcarum.
Pro ſuſpicione proditionis cum Johanne Smith mil.

De Ter' Sct' Michaelis anno 4 *El. & per cont. Rot. ejuſdem* 37.

Tho. Wenden per Hugonem Parlour gen' cuſtod. priſone Domine Regine de le Gatehouſe, virtute brevis Domine Regine de Habeas Corpus ad ſubjiciend. &c. ei inde direct' & coram Domina Regina apud Weſtm' duct. cum cauſa, viz. quod 18 die Junii, Anno Regni Domine El. nunc Regine Anglie 38. corpus, &c. infra nominat. Tho' Wenden extra cur' ejuſdem Domine Regine coram ipſa Domina Regina privati Concilii Dom. Regis cujus tenor ſequitur in hæc verba, ſcilicet; *Theſe are to will and require you to receive into your charge and cuſtody, the perſon of* John Brocket, *Knight, and him to retain in ſafe keeping under your charge until you ſhall have further order for his inlargement; whoſe commitment being for ſome ſpecial matter conce ning the ſervice of our ſovereign Lord the King, you may not fail to regard this Warrant accordingly. From the King's Palace at* Whitehall, *the laſt of* March, 1605. Eaq; fuit cauſa detentionis pred. Johannis in priſona pred. qui committitur Marr. &c. & poſtea traditur in Ball' prout patet, &c.

Ter. Mich. anno 12 *Jac. Regis, Rot.* 110.

Milo Reyner per Aquilam Wykes cuſtod. priſone de le Gatehouſe, virtute brevis dom. Regis de Habeas Corpus ad ſubjiciend. &c. coram Domino Rege duct. cum cauſa viz. quod ante advent. brevis pred. ſcilt. 10 Julii Anno Dom. 1613. pred. Milo Reyner commiſſus fuit priſonæ pred' & huc uſq; detent. virtute Warr' cujuſdem fact. & direct. per Georgium Archiepiſcopum Cant. Henr. Com. Northampton. Tho. Com. Suffolk, Willielm. Dom. Knolles, Edwardum, Dom. Wooton, & Edwardum Dom. Stanhope, cujus Warranti tenor ſequitur in hæc verba. *To* Aquila Wykes, *Keeper of the Gatehouſe in* Weſtminſter, *or his Deputy: Whereas it is thought meet that* Miles Reyner *and* Richard Beckwith *be reſtrained of their liberty, and committed to the priſon of the Gatehouſe: Theſe ſhall be to will and require you, to receive the perſons of* Reyner *and* Beckwith *into your charge and keeping, until you ſhall have further order from us in that behalf, for which this ſhall be your ſufficient Warrant, dated at* Whitehall, *the* 10th of July, 1613. Et hæc eſt cauſa detentionis ſue in priſona pred. qui committitur Marr' &c. & poſtea iſto eodem ter' traditur in Ball' prout patet, &c.

Ter. Hill. 5 *H.* VII. *& per Cont. ejuſdem Rot.* 18.

Ric'us Everard nuper de Colcheſter in Com. Eſſex Clericus, & Robertus Wight nuper de Norwico Smith, per Robertum Willoughbie mil. Dom. de Brooke, Seneſchall' Hoſpitii Dom. Regis, & Johannem Turberville mil' Marr' Hoſpitii pred. virtute bre. de Habeas Corpus ad ſectam ipſius Regis pro quibuſdam proditionibus, & felon' unde indicto Com. Eſſex indictat. ſunt eis inde direct. coram Domino Rege duct. cum cauſa, viz. quod iidem Ricardus Everard & Robertus Wight commiſſ. fuer' cuſtod. Marr. pred. per mandat. Dom. Regis, qui committitur Marr. &c.

Ter. Hill. 8 *H.* VII. *& per Cont. ejuſdem Rot.* 14.

Roger Cherrie nuper de Nova Windſor in Com' pred. Yeoman, alias dict. Rogerus Stearries nuper de eadem in eodem Com' Yeom. per Johan. Baker, Majorem villæ Dom. Regis de Nova Windſor in Com. pred. virtute brevis Dom. Regis de Habeas Corpus ad ſect. ipſius Regis pro quibuſdam feloniis & tranſgr. unde in Com. Midd. indictatus eſt ſibi inde direct. coram Domino Rege duct. cum cauſa, viz. quod idem Roger' commiſſus fuit Gaol. Dom. Regis infra villa pred. per mandat. Dom. Regis qui committitur Marr. &c.

Ter. Hill. 9 *H.* VII. *& per Cont. ejuſdem Rot.* 14.

Chriſtophorus Burton nuper de Rocheſter in Com' Cantii Hackneyman, per Robertum Willoughbie Dom. Brooke, mil' Seneſchall' Hoſpitii Dom. Regis, & Johannem Digbie mil' Marr. cur. Marr. Hoſpitii pred. per mandatum Dom. Regis. Et hæc eſt cauſa & non alia, qui committitur Marr. &c.

Ter. Paſ. Anno 19 *H.* VII. *& per Cont. ejuſdem Rot.* 23.

Georgius Urſewicke de London, Mercer, per Oliverum Wood locum tenen. priſone Dom. Regis de le Fleet, virtute brevis Dom Regis de conſervand. diem, &c. ei inde direct. coram Rege duct. cum cauſa, viz. quod idem Georgius, 13 Maii, Anno 19. Regis commiſſus fuit priſone de le Fleet, per mandatum ipſius Dom. Regis ſalvo cuſtodiend. ſub pena 40*l.* qui committitur Marr. &c.

Ter. Trin. Anno 8 *H.* VIII. *per Cont. ejuſdem Rot.* 23.

Edwardus Page nuper de London, Gent. per Georgium Com. Salopiæ Seneſchall. Hoſpitii Dom. Regis & Henricum Shamburne Marr. cur. Mar. Hoſpitii pred. virtute brevis Dom. Regis de Habeas Corpus, ad ſect. ipſius Regis ad conſervand. diem, &c. eis inde direct. & coram Rege duct. cum cauſa, viz. quod idem Edwardus captus & detentus in priſona Regis Matr. pred. per mandatum Dom. Regis ibidem ſalvo cuſtodiend. &c. qui committitur Marr. Hoſpitii Dom. Regis.

Ter. Mich. Anno 8 *Jac. & per Cont. ejuſdem Rot.* 99.

Tho. Cæſar per Tho. Vavaſour mil' Mar. Hoſpitii Dom. Regis & Marr. ejuſdem Hoſpitii Dom. Regis, virtute brevis Domini Regis de Habeas Corpus ad ſubjiciend. &c. ei inde direct. & coram Rege apud Weſtminſt. duct. cum cauſa, viz. quod ante adventum brevis pred. ſcil. 18 Julii Anno Regni dicti Dom. Regis nunc Angliæ, &c. 7. Tho. Cæſar, in brevi fuit pred. nominat. captus apud Whitehall in Com' Middl. per ſpeciale mandatum Dom. Regis ac per eundem Regem adtunc & ibidem commiſſ. fuit priſon. Marr. ibidem ſalvo cuſtodiend. quouſq; &c. Et ea fuit cauſa captionis & detentionis ejuſdem Tho. Cæſar, qui committitur priſonæ Marr. pred.

Ter. Sancti Mich. 8 *Jac. Regis.*

Niſi pred. Seneſchall. & Marr. Hoſpitii Dom. Regis ſufficienter return' bre. de Habeas Corpus, Tho. Cæſar die Mercur. per quinden. Sanct. Martini defendens exonerabitur.

Ter. Hill. 12 *Jac. Rot.* 153.

Jacobus Demaiſtres, Edwardus Emerſon, Georgius Brookeſhall & W. Stephens, per Tho. Vavaſour mil' Marr. Marr. Hoſpitii Regis virtute bre. Dom. Regis de Habeas Corpus ad ſubjiciend. &c. ei inde direct. coram Domino Rege apud Weſtminſt. duct. cum cauſa, viz. quod ante adventum brevis pred. ſcilt. 22 Januar. Anno Regis Jacobi Angliæ, &c. 12. & Scot. 48. pred. Jacobus Demaiſtres, Edwardus Emerſon, Georgius Brookeſhall, & W. Stephens in brevi huic Schedul' annex. nominat. commiſſ. fuer' Gaol' Marr. Hoſpitii Dom. Regis, pro cauſis ipſum Regem & ſervic' ſuum tangen. & concernen. Et hæc eſt cauſa Captionis pred. Jacobi, Edwardi, Georgii & Willielmi, & poſtea immediate remittitur præfat. Marr. Hoſpitii pred.

Ter. Hill. 12 *Jac. Regis.*

Samuel Saltonſtall miles per Johannem Wilkinſon arm' guard. de le Fleet, virtute brevis Dom. Regis de Habeas Corpus ad ſubjiciend. &c. ei inde direct. & coram Domino Rege apud Weſtminſt. duct. cum cauſa, viz. quod pred. Samuel commiſſ. fuit priſonæ pred. 11 Martii, 1608. per Warrant. a Dominis de privato concilio Dom. Regis & quod detentus fuit etiam idem Samuel in priſona pred. virtute cujuſdem ordinis in cur. Can' Dom. Regis fact. cujus ordinis tenor patet per Rot. Record. iſtius Termini ad quem diem pred. Samuel remittitur priſonæ pred. Et ſecundus dies prox. ter' datus eſt guardian. priſonæ pred. ad emendand. return. ſuum ſufficien. ſuper pred. bre. de Habeas Corpus, & quod tunc intulerit hic in cur. corpus pred. Samuel Saltonſtall mil'. Ad quem quidem diem prefat. Guardian. priſonæ pred. ſuper pred. bre. de Habeas Corpus retorn. quod pred. Samuel commiſſus fuit priſonæ pred. 11 die Martii 1608. per Warrant. a Dom. de privat' Concil. dicti Dom. Regis apud Whitehall tunc ſeden. & quod poſtea 11 die Febr. 1610. commiſſ. fuit extra cur. Canc. Dom. Regis apud Weſtminſt. pro contemptu ſuo eidem cur. illat. Et qua detent. fuit etiam idem Samuel in priſona pred. per mandat. Dom. Cancellar' Angliæ ſuper quo pred. Samuel iterum remittitur priſonæ pred. & ulterius dies dat. eſt prefat. Guardian. ad emendand. retorn. ſuum ſuper Habeas Corpus ver. defend. prout ſtare voluit uſq; diem Jovis prox' Menſ. Paſch. Et tunc ad habend. Corpus &c. Ad quam diem prefat. guardian. intulit corpus hic in cur. & return' ſuper Habeas Corpus quod pred. Samuel commiſſ. fuit priſonæ pred. 11 die Martii, 1608. virtute cujuſdem Warranti a Dominis de privato Concil' Dom. Regis tunc ſeden. apud Whitehall, & quod etiam idem

Sam.

Sam. commiſſ. fuit priſonæ 11 Febr. Anno Regis Jac. 8. per cur. Canc. Dom. Regis apud Weſtminſt. tunc exiſten. pro quadam contempt. per eundem Samuel eidem cur. illat. & perpetrat. proinde ſalvo cuſtodiend. qui remittitur priſonæ pred.

Ter. Tr. anno 13 *Jac. & per Cont. ejuſdem Rot.* 17.

Samuel Saltonſtall miles per Johannem Wilkinſon Guardian. priſonæ de le Fleet, virtute brevis Dom. Regis de Habeas Corpus ad ſubjiciend. & recipiend. &c. ei inde direct. & coram Domino Rege apud Weſtminſt. duct. cum cauſa, viz. quod pred. Samuel Saltonſtall commiſſus fuit priſonæ pred. 12 die Martii Anno Regis Jacob. Angliæ, &c. ſexto, virtute cujuſdam Warrant. a dominis de privat. Concilio Dom. Regis tunc ſeden. apud Whitehall commiſſus fuit etiam idem Samuel Saltonſtall miles priſonæ pred. 12 die Febr. Anno 1610. & Anno Reg. Jac. Angliæ, &c. 8. per conſiderat. cur. Cancell' dicti Dom. Regis apud Weſtminſt. pro contempt. eidem cur. adtunc per pred. Samuel illat. ibidem proind. ſalvo cuſtodiend. Et hæc ſunt cauſæ captionis & detentionis pred. Sam. Saltonſtall mil. in priſona pred. cujus tamen corpus ad diem & locum infra content. parat. habeo prout mihi precipitur.

True Copies of the Records not printed, which were uſed by Sir Edward Littleton.

Inter Record. Domini Regis Caroli in Theſaur. Recept. Scaccarii ſui ſub cuſtodia Theſaurar. & Camerar. ibidem remanent. viz. Pl. coram ipſo Domino Rege, & Concilio ſuo, ad Parliamentum ſuum poſt Paſch. apud London in Maner' Arch-Epiſcopi Ebor', anno Regni Domini Regis Ed. III. 21. Inter alia ſic continetur ut ſequitur, Rot. 2. indorſo.

STephanus Rabaz Vicecomes Leic & Warw. coram ipſo Domino Rege & ejus Concilio arenatus & ad Rationem poſitus de hoc quod cum J. B. E. H. & W. H. nuper Balliv' ipſius Vicecomitis per Dom. Regem fuiſſent aſſign' ad Gaolas Domini Regis deliberand. eidem vic' quendam W. P. per quendam appellatorem ante adventum eorum Juſticiariorum ibidem appellat. & capt. vivente ipſo appellatore uſque diem deliberationis coram eis fact. demiſſ. per pleviam contra formam Statuti, &c. Et etiam quendam R. de C. qui de morte hominis judicatus fuit, & per eundem Vicecomit' captus, idem R. ſine ferris coram eiſdem Juſticiar' ad deliberationem præd' produxit contra conſuetudinem Regni, & ſimiliter quendam Walterum filium Walteri le Perſone qui per præceptum Comitis Warwici captus fuit, dimiſit per pleviam contra vocem & preceptum Domini Regis; cum idem Dominus Rex per literas ſuas ſub privato Sigillo ſuo eidem Vicecomit. precipiet quod nulli per preceptum pred. Com. Warwici capt. aliquam gratiam vel favorem fac. &c. Et ſuper hoc prefat. J. B. qui preſens eſt, & qui fuit primus Juſticiar. pred. premiſſ. recordatur & pred. vicecomes dicit quoad pred. W. P. ipſe nunquam a tempore captionis ipſius W. per pred. appellatorem demiſſ. fuit per pleviam aliquam ante advent. pred. Juſticiar. Imo dicit quod per dimid. Anni ante adventum eorum Juſticiar. captus fuit. Et quoad pred. R. bene cognoſcit quod ipſe dimiſit eum per pleviam, & hoc bene facere potuit ratione ac authoritate officii ſui, eo quod captus fuit pro quadam ſimplici tranſgreſſione, & non pro aliqua felonia, pro qua replegiari non potuit. Et quoad 3. viz. W. filium Perſone bene cognoſcit quod ipſe captus fuit per preceptum pred. Com. Warwici & quod dimiſit eum per pleviam. Sed dicit quod hoc fecit ad rogatum quorundam de Hoſpitio & Curia Dom. Regis, qui eum ſpecialiter inde rogaverint per literas ſuas. Et ſuper hoc idem vicecom. queſivit per Dom. Regem quis eum rogavit, & literas ſuas ei direxit, & ubi literæ illæ ſunt, dicit quod Walterus de Langton eum per literas ſuas inde rogavit, ſed dicit quod literæ illæ ſunt in partibus ſuis Leic. Et ſuper hoc idem Vicecomes profert bre. Dom. Regis de privato ſigillo eidem vic. direct. quod teſtatur quod Dominus Rex eidem Vic. precipit, quod omnes illos tranſ. contra pacem & de quibus Comes Warwici ei ſcire fecit, caperet, & ſalvo cuſtodir. abſque aliqua gratia eis facienda. Et quia pred. Juſticiar' expreſſe recordat. quod ipſi & ſocii ſui per bonam & legalem inquiſitionem de militibus & aliis communibus coram eis fact. invenerunt quod pred. W. de Petling dimiſſus fuit per pleviam per magnum tempus ante adventum eorundem Juſtic. uſq; adventum eorundem & per vic. pred. Et etiam quia pred. vic. cognoſcit quod pred. R. dimiſſus fuit per pleviam per ipſum vic. & hoc dic. quod bene facere potuit, eo quod captus fuit pro levi tranſgreſſion. & per record. ejuſdem Juſticiar. compert. eſt quod captus fuit pro morte hominis quod eſt contrar. dict. pred. vicecom. & ſimiliter quod idem vicecom. cognovit, quod recepit literam Dom. Regis per quam Rex ei precepit, quod nullam gratiam fecerit illis qui capt. fuer. per precept. pred. Com. & idem vicecomes contra preceptum illud dimiſit pred. Willielmum filium Walteri per pleviam qui captus fuit per preceptum pred. Comitis prout idem vicecomes fatetur. Et ſic tam ratione ipſius tranſgr. quam aliarum pred. incidit in penam Stat. Conſ. eſt quod pred. vicecomes committatur priſonæ juxta formam Statuti, &c.

Ex Rot. Parliamenti de anno 35 *Regis Ed.* III. *Numero* 9.

Primerement que le grand Chartre, & le Chartre de Foreſt, & les autres Statuts fait en ſon temps & de ſes Progenitors per profits de lui, & de la Commenalty ſoient bien & ferment gardes, & miſe en due execution ſauns diſturbance mettre ou arreſt faire le contre per ſpecial mandement, ou en autre manere. Noſtre Seignior le Roy per aſſent Prelates, Dukes, Comites, Barons, & la Commenaltie ad ordeine & eſtabili que les dits Chartres & Statuts ſoient tenus & miſe en execution ſelon le dit Petition.

Stat. 36 *Ed.* III. *Numb.* 22.

Item, comme il ſoit contenus en le grand Chartre & autres Statuts que nul home ſera priſe ne impriſon per ſpecial mandement ſauns Indictment, ou autre proces a faire per le ley & ſoient foits ad eſtre, & uncore eſt que pleſures gents ſont empeſches priſe, & impriſon ſauns indictement ou autre proces fait per le ley ſur eux, cibien del choſe fait hors de le foreſt le Roy, come per autre cauſe que pleſe a noſtre dit Sr. command. & deliv. ceux que ſont auxi priſe per tiel ſpecial mandement contre le forme de Chartres & Statuts avant dits.

Item, pleſt ou Roy & ſi nul de ſent greine vingne, & fait le plaint & droit ſerra fait a luy.

Parliament. Anno 42 *Ed.* III. *Numero* 12.

Item, pur ceo que pluſours de voſtre come ſont amerce & diſturbes per faulx accuſors queux ſont lour accuſements plus pur lour vengeances & ſingulers profits que pur le profit de Roy ou de ſon peuple, & les accuſes per eux aſcuns ont eſt pris & aſcuns ſont faire ven. de le Conceil Roy per brief ou autre mandement de Roy ſub grande pain encountre la ley, Pleſe a noſtre Sr. le Roy & ſon Conceil pur droit gouvernment de ſon peuple ordeign que ſi deſire aſcun accuſors purpoſe aſcun matire pur profit du Roy que cele matire ſoit mander a ſes Juſtices del' un Banke ou del' autre, ou d'Aſſiſes deut enquere & terminere ſelonque la ley, & ſi le touche la onſour ou partie eit ſa ſont a la come ley, & que null home ſoit mis a reſpondere ſans preſentment deut Juſtices, ou choſe de Record, ou per due proces & briefe original, ſelon l'ancient ley de la terre, & ſi rien deſire enovant ſoit fait a l' encontre, ſoit voide en ley, & tenu pur error. Pur ceo que ceſte Article eſt Article de le grande Chartre le Roy voet que ceo ſoit fait come la Petition demande.

Ex Rot. clauſ. de Anno Regni Regis, Ed. I. *primo, Membrano* 1.

Thomas de Clere de Beckwith captus & detent. in priſona de Northampton pro tranſgreſſione foreſt. habet literas Rogero de Clifford, Juſticiar' Foreſt. citra Trent. quod ponatur per ball' Dat. apud Sanct. Martin. Magn. London 20 die Octobr.

Membrano 7.

Stephanus de Lindley capt. & detent. in priſona pro tranſgreſ. per ipſum fact. in foreſt. Regis de Lindley habet literas Regis Galfrido de Nevill, Juſticiar. ultra Trent. quod ponatur per ballium.

Membrano 8.

Tho. Spademan capt. & detent. in priſona de Oxon. pro morte Willielmi Winne unde rectat. eſt, habet literas Regis Vicec. Oxon. quod ponatur per ball'.

Membrano 9.

Willielmus de Deane, Matheus Cruſt, Roger de Bedell, W. Halfrench, Robertus Wyat, Alexander Hareing, Harry de Shorne, Nicolas de Snodilonde, Turgeſius de Hertfield, Robertus de Pole, & Ricardus Galiot, capti & detent. in priſona de Cant. pro morte Galfridi de Cottiller unde appellati ſunt, habent literas Regis Vic' Kan. quod ponantur per ball' Dat. 23 Martii.

Clauſ. Anno 2 *Ed.* I. *Membr.* 12.

Rex Rogero de Clifford, Juſticiar. Foreſt. citra Trent. mandamus vobis quod ſi Robertus Unwin, capt. & detent. in priſona noſtra de Ayleſbury pro tranſgreſ. Foreſt. noſtr. invenerit vobis 12 probos & legales homines de Ball. veſtra qui manucapiant eum habere coram Juſticiar. noſtr. ad placita Foreſt. cum in partes, &c. ad Stand. inde rectat. tunc apud Robertum ſi ſecundum Aſſiſam Foreſt. fuer. repleg. per dictos duodecim, interim traditur in Ball. ſicut pred. eſt & habeatis nomina illorum 12 hominum. Et hoc bre. &c. Dat. 27 Februar.

Clauſ. Anne 2 *Ed.* I. *Num.* 14.

Unwynus de Boycot, Galfridus de Wickeram, & Hugo de Stone, detent. in priſona Regis de Ayleſbury pro tranſgr. venationis habuit bre. direct. Rogero de Clifford Juſticiar. Foreſt. quod ſi ſecundum Aſſiſ. Foreſtæ erunt repleg. uſque advent. Juſticiar. Regis ad placita Foreſt. cum in partes illas venerint. Dat. apud Coddington, 28 die Decembr.

Numero 15.

Guilbert Conray de Keddington, & Hugo le Taylor de Keddington capt. & detent. in priſona ſancti Edmundi pro morte Edmundi Bunting unde rectati ſunt habuerint literas Regis vic' Suff. quod ponantur per Ball.

Clauſ. Anno 3 *Ed.* I. *Num.* 11.

Galfridus de Hairton captus & detentus in priſona Regis Ebor' pro morte Adel' Clerke, unde rectatus eſt habet literas Regis vic' Ebor. quod ponatur per Ball' Dat. apud Weſtminſt. 15 Junii.

Numero 20.

Robertus Belbarbe captus & detentus in priſona de Newgate pro morte Thomæ Pollard, unde rectatus eſt habet literas Regis vic. Midd. quod ponatur per Ball' Dat. 28 Februar.

Clauſ. num. 4 *Ed.* I. *Membr.* 5.

Mandatum eſt Rado de Sandwico quod ſi W. de Pattare, & Johannes filius ejus, Walterus Home, Walterus Corwen, Henricus Path, & W. Cadegan, capt. & detent. in priſona Regis de Sanct. Brionell pro tranſgr. For. unde rectati ſunt, invenerint ſibi 12 probos & legales homines de Ball. ſua, viz. quilibet eorum 12 qui eos manucap' habere coram Juſticiar. Regis ad placita Foreſt. cum in partes illas venerint ad ſtand. inde rectat. tunc ipſos Willielm. Johannem, Walterum, Walterum, Henricum, & Willielm. pred. 12 ſi ſecundum Aſſiſ. fuer. repleg. tradantur in Ball' ut pred. eſt, & habeant ibi nomina illorum 12 hominum & hoc bre. Teſt. Rege apud Ball' locum Regis 29 die Auguſti.

Clauſ. Anno 4 *Ed.* I. *Membr.* 16.

Henricus filius Rogeri de Kenn de Cotteſbrooke capt. & detent. in priſona noſtra Northampton pro morte Simonis de Charrettell, unde appellatus eſt, habet literas Regis vic' Northampton quod ponatur per ballium.

Clauſ. Anno 5 *Ed.* I. *Memb.* 1.

Mandatum eſt Galfrid. de Nevil Juſticiar. Foreſt. ultr. Trent. quod S. Walterus de le Greene captus & detentus in priſona de Nottingham pro tranſgr. For' invenerit ſibi 12 probos & legales homines qui eum manucapiant, &c. ad ſtand' inde rectat. ſecundum aſſiſſ. For' Regis tunc ibidem Walter. pred. 12 traditur in ballium ſicut pred. eſt. Dat. 16 Nov.

Membrano 2.

Thomas de Upwell & Juliana uxor ejus capt. & detent. in priſona de Wynboteſham pro morte Stephani Southel, unde rectat. ſunt, habent literas vic' Norff. quod ponantur per Ballium. Dat. apud Rothelm 28 die Septembr.

Clauſ. Anno 6 *Ed.* I. *num.* 2.

Bilherus Peſtle captus & detentus fuit in priſona Regis de Norwic. pro morte Julianæ quondam uxor' ſuæ, unde rectatus eſt & habet literas vic' Norff. quod ponatur per Ball' Teſte Rege apud Weſtminſt. 12 Novemb.

Membrano

Membrano 4.

Mandatum eſt vic' Nottingham quod ſi Tho. de Cudart rectat. de tranſgr. Foreſt. quod feciſſe dicebatur in Foreſt. de Sherwood, invenerit ſibi ſex probos & legales homines de Balliva ſua qui eum manucap' habere coram rege ad mandatum regis ad ſtand. rect. coram rege cum Rex inde cum eo loqui voluerit, tunc pred. Tho. pred. ſex hominib. tradat in ballium juxta manucapt. ſupradict. Dat. 15. die Decembr.

Membrano 4.

Tho. Burrell captus & detent. in priſona Regis Exon. pro morte Galfrid. Geffard unde rectat. eſt habet literas Dom. Regis vic' Devon. quod ponatur per ball'.

Clauſ. Anno 1 *Ed.* II. *Membr.* 1.

Johannes Brynn de Rollinwrith capt. & detent. in priſona Regis Oxon. pro morte Johannis de Sutton, unde rectat. eſt habet literas Regis vic. Oxon. quod ponatur per Ball. uſque prim. Aſſiſ. ſi ea occaſione, &c. Teſte Rege apud Briſtol, 28 Junii.

Membrano 2.

W. Spore Capell. capt. & detent. in priſona Regis Oxon. pro morte Johannis Spore unde indictatus eſt, & habet literas Regis vic' Devon. quod ponatur per ballium uſque ad prox. Aſſiſ. ſi ea occaſione, &c. Teſte rege apud Windſor 28 die Maii.

Numero 10.

Gilbertus Fairchild capt. & detent. in Gaole Regis Dorceſter pro morte Henrici de Langton, unde indictat. eſt habet literas quod ponatur per ballium uſque ad prim' aſſiſ. Teſte Rege apud Weſtminſt. 28. Februar'.

Clauſ. Anno 2 *Ed.* II. *Membr.* 1.

Willielmus Sandie de Cobham capt. & detent. in priſona Regis Cant. pro morte Johannis de Sprink, Johannis Ermona de Dunberke, unde rectatus eſt habet literas Regis vic' Kanc' quod ponatur per Ball' uſque ad primum Aſſiſ. ſi ea occaſione, &c. Teſte rege apud Ceſtre. 29 Junii.

Radulph. Corynn capt. & detentus in Gaole Regis de Lincolne pro morte Willielmi filii Symonis Porter unde rectat. eſt & habet literas Regis vic' Lincolne quod ponatur per Ball' uſque ad primam Aſſiſ. ſi ea occaſione, &c. Teſte rege apud Sheene 3 diei Junii.

Membrano 7.

Johannes de Githerd capt' & detent. in priſona Regis Ebor' pro morte Mathei Sampſon de Ebor' unde rectatus eſt habet literas Regis vic' Ebor' quod ponatur per Ball' uſque ad prim' Aſſiſ. Dat. apud Langele 30 die Aprilis.

Clauſ. 3 *Ed.* II. *Membr.* 13.

Adam de Pepper captus & detent. in Gaole Regis Ebor' pro morte Henrici le Symer' de Eaſtrick unde rectatus eſt habet literas Regis vic' Ebor' quod ponat' per Ball' uſque ad primam aſſiſ. Teſte rege apud Weſtminſt. 7 die Febr.

Numero 14.

Margareta uxor Willielmi Calbot capta & detenta in Gaole Regis Norwici pro morte Agnetis filiæ Willielmi Calbot, & Matildæ ſororis ejuſdem Agnetis, unde rectata eſt habet literas Regis vic' Norff. quod ponatur per Ball'. Teſte rege apud Sheene 22 Jan.

Numero 18.

Johannes Frere captus & detent. in Gaole Regis Oxon. pro morte Adæ de Egeleigh unde rectat. eſt habet literas Regis vic' Devon. quod ponatur per Ball'. Teſte apud Weſtminſt. 8 Decembr.

Clauſ. Anno 4. *Ed.* II. *Membr.* 7.

Robertus Shereve capt. & detent. in Gaole Regis de Colceſtr. pro morte Roberti le Moigne, unde rectat. eſt habet literas Regis vic' Eſſex quod ponatur per Ball' uſque ad prim' Aſſiſ. Dat. 22 die Maii.

Numero 8.

W. Filius Roberti le Fiſhere de Shirborne capt. & detent. in Gaole Regis Ebor' pro morte Roberti le Monus de Norton, unde rectatus eſt habet literas Regis vic. Ebor. quod ponatur per Ball. uſque ad primam Aſſiſ. Dat. 25 April.

Clauſ. Anno 4 *Ed.* II. *Numero* 22.

Thomas Ellis de Stanford capt. & detent. in priſona Regis Lincolne pro morte Michaelis filii Willielmi de Fodering, unde rectat. eſt habet literas Regis vic. Lincolne quod ponatur per Ball' uſque ad prim. Aſſiſ. Teſte Rege apud novam Weſtmonaſt. 8 die Septembr.

Sir Edward Coke *took up the Argument, as to the rational part of the Law, and began with this Introduction* *.

YOUR Lordſhips have heard ſeven Acts of Parliament in point, and thirty-one precedents ſummarily collected, and with great underſtanding delivered; which I have peruſed, and underſtand them all thoroughly, and that there was not one of them againſt the reſolution of the Houſe of Commons. Twelve of the precedents are *in terminis terminantibus*, a whole Jury of precedents, and all in point; and to my underſtanding, they admit of no anſwer: but I am perſuaded in my conſcience, that a number of them was never ſhewed at the *King*'s-*Bench*, becauſe I know out of whoſe quiver two of them came, and that they were not known before. I am much tranſported with joy, becauſe of the hopes to proceed with good ſucceſs in this weighty buſineſs, your Lordſhips being ſo full of Juſtice, and the very theme and ſubject doth promiſe ſucceſs, which was, *Corpus cum cauſa*, the freedom of an *Engliſhman*, not to be impriſoned without cauſe ſhewn; which is my part to ſhew, and the reaſon and the cauſe why it ſhould be ſo. And I doubt not but we ſhall go on happily; and, my Lords, it would be unſeaſonable to be prolix and copious, becauſe, *quod intempeſtum injucundum.* I would ſpeak here a little to ſome points which are not ſo clear and obvious, for otherwiſe *perſpicua vera non ſunt probanda*, and to gild gold were idle and ſuperfluous; therefore ſhall briefly clear to your Lordſhips ſome doubts made of the Statute of *Weſtminſter*, which ſays, Sheriffs and others may not replevy men in priſon for four cauſes;

1. For Death of a Man.
2. Commandment of the King.
3. Abſolute Command from the Juſtices.
4. For Matters of the Foreſt.

I was once a Judge of the *King*'s-*Bench*, and did wonder how the Judges of theſe times thus interpret the Statute. The Statute only ſhews what Sheriffs can only do, by way of replevin; the Sheriffs Court is a petty and baſe Court, and not of Record, where the Sheriff is not the Judge, but the Jurors, that is, *John a Noke*, and *John a Stiles*, *William Roe*, and *John Doe*, and ſuch worthies as theſe. Again, the Statute ſaith there, he cannot be replevied if he be taken for the death of a man; and no marvel, whoever thought it; for the Scripture ſaith, *Sanguis nullo modo expiari poteſt niſi Sanguine.* But if he cannot be there replevied, at the *King*'s-*Bench* he may, it is there done every day. Mr. Sheriff, you ſhould replevy a man in ſuch a caſe, *Ergo*, not bail him, my Lords the Judges, *(non ſequitur)*: What not Judges bail? What not the *King*'s-*Bench*, the higheſt Court of Record of ordinary juriſdiction? for the *King*'s-*Bench* is higher than the *Chancery*. And this he prov'd by Heraldry, *Additio probat minoritatem*, that addition proves the younger Brother. Now the *Teſte* of the *King*'s-*Bench* is *coram Dom. Rege*, without any addition, but that of the *Chancery*, *coram Dom. Rege in Cancellaria*, with that addition of a Cadet, a younger Brother. I am very ſorry I am ſo much ſtraitned for want of time, for I am much delighted with theſe things. What, may not the Judges meddle with any thing in the Foreſt? If that were ſo, I would never dwell in a Foreſt, to be wholly under the juriſdiction of the Wardens and Regarders. Theſe gloſſes and interpretations are very ſtrange to me, and others who have been Judges. My Lords, all thoſe arguments offered unto your Lordſhips in this laſt conference, are of a double nature. 1. Acts of Parliament. 2. Judicial Precedents. For the firſt, I hold it a proper argument for your Lordſhips, becauſe you, my Lords Temporal, and you, my Lords Spiritual, gave your aſſent unto thoſe Acts of Parliament; and therefore if theſe cannot perſuade you, nothing can. For the ſecond, which are judicial precedents, it is *Argumentum ab authoritate*, and *Argumentum ab authoritate valet affirmativè*: that is, I conceive, tho' it be no good argument to ſay negatively, the Judges have given no opinion in the point, *Ergo*, that is not law; yet affirmatively it concludes well: the Judges have clearly delivered their opinions in the point, *Ergo*, it is good law; which I fortify with a ſtrong axiom, *Neminem oportet ſapientiorem eſſe legibus*, as long as theſe laws ſtand unrepealed. Now, theſe two arguments being ſo well preſſed to your Lordſhips by my Colleagues, I think your Lordſhips may wonder what my part may be; it is ſhort, but ſweet: it is the reaſon of all thoſe laws and precedents, and reaſon muſt needs be welcome to all men; for all men are not capable of the underſtanding of the law, but every man is capable of reaſon. And thoſe reaſons I offer to your Lordſhips, in affirmance of the ancient laws and precedents made for the liberty of the ſubject, againſt impriſonment without cauſe expreſſed, and ſhall ſhew them in order and method, to confirm the ſame.

1. *A re ipſa.*
2. *A minori ad majus.*
3. From the remedies provided.
4. From the extent and univerſality of the ſame.
5. From the infiniteneſs of the time.
6. *A Fine.*

The firſt general reaſon is, *à re ipſa*, even from the nature of impriſonment, *ex viſceribus cauſæ*; for I will ſpeak nothing but *ad idem*, be it cloſe or other impriſonment: and this argument is threefold, becauſe an impriſoned man upon will and pleaſure is,

1. A Bondman.
2. Worſe than a Bondman.
3. Not ſo much as a man; for *mortuus homo non eſt homo*, a priſoner is a dead man.

1. No man can be impriſoned upon will and pleaſure of any, but he that is a Bondman and Villein, for that impriſonment and bondage are *propria quarto modo* to Villeins †. Now *propria quarto modo*, and the *ſpecies*, are convertible; whoſoever is a Bondman, may be impriſoned upon will and pleaſure, and whoſoever may be impriſoned upon will and pleaſure, is a Bondman.

2. If a Freeman of *England* might be impriſoned at the will and pleaſure of the King or his commandment, then were they in worſe caſe than Bondmen or Villeins; for the Lord of a Villein cannot command another to impriſon his Villein without cauſe, as of diſobedience, or refuſing to ſerve, as it is agreed in the Year-books. And here he ſaid, that no man ſhould reprehend any thing that he ſaid out of the Books or Records: he ſaid §, he would prove a Freeman impriſonable upon command or pleaſure, without cauſe expreſſed, to be abſolutely in worſe caſe than a Villein; and if he did not make this plain, he deſired their Lordſhips not to believe him in any thing elſe: and then produced two Book-caſes, 7 *E.* III. *fol.* 50. in the new print, 348 old print. "A Prior had commanded one to impriſon his Villein, the Judges were ready to bail him, till the Prior gave his reaſon, that he refuſed to be Bailiff of his Manor; and that ſatisfied the Judges. 2*d* Caſe, 33 *Ed.* III. title *Treſp.* 253. in *Faux impriſonment*, it was of an Abbot, who commanded one to take and detain his Villein, but demanded his cauſe; he gives it, becauſe he refuſed, being thereunto required, to drive his Cattle.

"*Ergo*, Freemen impriſoned, without cauſe ſhewn, are in worſe caſe than Villeins, that muſt have a cauſe ſhewn them why they are impriſoned.

*. The Lord-Preſident, who reported the Conference to the Houſe, begun thus: The Conference upon *Monday* laſt with the Lower Houſe, was about the Liberty of the Subject; to ſet this forth, they employed four Speakers: the firſt was Sir *Dudley Diggs*, a Man of a voluble and eloquent Speech, his part was the Introduction; the ſecond was Mr. *Littleton*, a grave and learned Lawyer; whoſe part was to repreſent the reſolution of the Houſe, and their Grounds whereupon they went; the third was Mr. *Selden*, a great Antiquary and a pregnant Man, his part was to ſhew the Law, and the precedents in point; the fourth was the Lord *Coke*, that famous reporter of the Law, whoſe part was to ſhew the reaſon of all that the others had ſaid, and all that which was ſaid was but an affirmance of the Common-Law. *From a MS. belonging to the late* Peter le Neve, *Eſq*; *and wrote at that time, wherein the Conference is related.*

† *Vide* the Writ *de Nativo habendo.* § *Fitz-Herbert fait ut non de ceq.*

"3. A Freeman impriſoned without Cauſe, is ſo far from being a "Bondman, that he is not ſo much as a Man, but is indeed a dead Man, "and ſo no Man: Impriſonment is accounted in Law a civil Death, *per-* "*dit domum, familiam, vicinos, patriam,* and is to live amongſt wretched "and wicked Men, Malefactors, and the like." And that Death and Impriſonment was the ſame, he proved by an Argument *ab effectis*, becauſe they both produce the like immediate Effects; he quoted a Book for this: If a Man be threatened to be killed, he may avoid a Feoffment of Lands, Gifts of Goods, &c. 39 *H.* I. 65, &c. ſo it is if he be threatened to be impriſoned; the one is an actual, the other is a civil Death. And this is the firſt general Argument, drawn *à re ipſa*, from the Nature of Impriſonment, to which *res ipſa conſilium dedit.*

The ſecond general Reaſon he took alſo from his Books; for he ſaid he had no Law, but what by great Pains and Induſtry he learnt at his Book; for at ten Years of Age, he had no more Law than other Men of like Age: And this ſecond Reaſon is, *à minori ad majus*; he takes it from *Bracton, fol.* 105, *minima pœna corporalis, eſt major qualibet pecuniaria.*

But the King himſelf cannot impoſe a Fine upon any Man, but it muſt be done judicially by his Judges, *per Juſticiarios in Curia, non per Regem in Camera*; and ſo it hath been reſolved by all the Judges of *England:* He quoted 3 *R.* II. *fol.* 11.

The third general Reaſon is taken from the Number and Diverſity of Remedies, which the Laws give againſt Impriſonment, *viz.*

Breve de homine replegiando.
De odio & atia.
De Habeas Corpus.
An Appeal of Impriſonment.
Breve de manucaptione.

Two of theſe are antiquated, but the Writ *de odio & atia* is revived, for that was given by the Statute of *Magna Charta, chap.* 26. and therefore though it were repealed by the Statute of 28 *E.* III. *cap.* 9. yet it is revived again by the Statute 42 *E.* III. *cap.* 1. by which it is provided, that all Statutes made againſt *Magna Charta* are void. Now the Law would never have given ſo many Remedies, if the Freemen of *England* might have been impriſoned at free Will and Pleaſure.

The fourth general Reaſon is from the Extent and Univerſality of the pretended Power to impriſon: For it ſhould extend not only to the Commons of this Realm, and their Poſterities, but to the Nobles of the Land, and their Progenies, to the Biſhops and Clergy of the Realm, and their Succeſſors. And he gave a Cauſe why the Commons came to their Lordſhips, *Commune periculum commune requirit auxilium.* Nay, it reacheth to all Perſons, of what Condition, or Sex, or Age ſoever; to all Judges and Officers, whoſe Attendance is neceſſary, &c. without Exception; and therefore an Impriſonment of ſuch an Extent, without Reaſon, is againſt Reaſon.

The fifth general Reaſon is drawn from the Indefiniteneſs of Time; the pretended Power being limited to no Time, it may be perpetual during Life; and this is very hard: To caſt an old Man into Priſon, nay, to cloſe Priſon, and no Time allotted for his coming forth, is a hard Caſe, as any Man would think that had been ſo uſed. And here he held it an unreaſonable Thing, that a Man had a Remedy for his Horſe or Cattle, if detained, and none for his Body thus indefinitely impriſoned; for a Priſon without a prefixed time, is a Kind of Hell.

The ſixth and laſt Argument is *à Fine*; and *ſapiens incipit à Fine*, and he wiſhed he had begun there alſo; and this Argument he made threefold.

Ab honeſto. This being leſs honourable.
Ab utili. This being leſs profitable.
A tuto. This Impriſonment by Will and Pleaſure, being very dangerous for the King and Kingdom.

1. *Ab honeſto.* It would be no Honour to a King or Kingdom, to be a King of Bondmen or Slaves; the End of this would be both *dedecus & damnum*, both to King and Kingdom, that in former Times hath been ſo renowned.

2. *Ab utili.* It would be againſt the Profit of the King and Kingdom, for the Execution of thoſe Laws before remembered, *Magna Charta,* 5 *Edw.* III. 25 *Edw.* III. 28 *Edw.* III. whereby the King was inhibited to impriſon upon Pleaſure: You ſee (quoth he) that this was *vetus querela*, an old Queſtion, and now brought in again, after ſeven Acts of Parliament: I ſay, the Execution of all theſe Laws are adjudged in Parliament to be for the common Profit of the King and People; (and he quoted the Roll) this pretended Power being againſt the Profit of the King, can be no Part of his Prerogative.

He was pleaſed to call this a binding Reaſon, and to ſay, that the Wit of Man could not anſwer it; indeed the great Men kept this Roll from being printed, but that it was equivalent in Force to the printed Rolls.

3. A Reaſon *à tuto.* It is dangerous to the King for two Reſpects; firſt, of Loſs; ſecondly, of deſtroying the Endeavours of Men. Firſt, If he be committed without the Expreſſion of the Cauſe, though he eſcape, albeit in Truth it were for Treaſon or Felony, yet this Eſcape is neither Felony nor Treaſon; but if the Cauſe be expreſſed for Suſpicion of Treaſon or Felony, then the Eſcape, though it be innocent, is Treaſon or Felony. [The Act, which is in *Latin*, is, *niſi cauſa pro qua captus, & impriſonat. fuit tale judicium requirat, ſi de illa pro legem & conſuetudinem terræ fuiſſet convictus.*] He quoted a Cauſe in Print like a Reaſon of the Law, not like *remittitur* at the riſing of the Court; for there the Priſoner *traditur in Ballium quod breve Regis non fuit ſufficiens cauſa:* The King's Command. He quoted another famous Cauſe; the Commons in Parliament, incenſed againſt the Duke of *Suffolk*, deſire he ſhould be committed: The Lords and all the Judges, whereof thoſe great Worthies, *Preſcot* and *Forteſcue*, were two, delivered a flat Opinion, that he ought not to be committed without an eſpecial Cauſe. He queſtioned alſo the Name and Etymology of the Writ in queſtion, *Corpus cum cauſa*; *Ergo*, the Cauſe muſt be brought before the Judge, elſe how can he take Notice hereof?

Laſtly, He preſſed a Place in the Goſpel, *Acts* 25. laſt Verſe, where *Feſtus* conceives it an abſurd and unreaſonable Thing, to ſend a Priſoner to a *Roman* Emperor, and not to write along with him the Cauſe alledged againſt him: Send therefore no Man a Priſoner without his Cauſes along with him, *hoc fac & vives.* And that was the firſt Reaſon, *à tuto*, that it was not ſafe for the King, in regard of Loſs, to commit Men without a Cauſe.

The ſecond Reaſon is, that ſuch Commitments will deſtroy the Endeavours of all Men. Who will endeavour to employ himſelf in any Profeſſion, either of War, Merchandize, or of any liberal Knowledge, if he be but a Tenant at Will of his Liberty? For no Tenant at Will will ſupport or improve any Thing, becauſe he hath no certain Eſtate; *Ergo*, to make Men Tenants at Will of their Liberties deſtroys all Induſtry and Endeavours whatſoever. And ſo much for theſe ſix principal Reaſons: Taken,

1. *A re ipſa.*
2. *A minori ad majus.*
3. *A remediis.*
4. From the Extent and Univerſality.
5. From the Infiniteneſs of the Time.
6. *A fine.*

Loſs of { Honour. Profit. Security. Induſtry.

Theſe were his Reaſons.

Here he made another Proteſtation, That if a Remedy had been given in this Caſe, they would not have meddled therewith by no Means; but now that remedy being not obtained in the *King's-Bench*, without looking back upon any thing that hath been done or omitted, they deſire ſome Proviſion for the future only. And here he took Occaſion to add four Bookcaſes and Authorities, all in the Point; ſaying, that if the learned Counſel on the other Side could produce but one againſt the Liberties, ſo pat and pertinent, oh! how they could hug and cull it! 16 *H.* VI. *tit. Monſtrance de fait* 82. by the whole Court, the King in his Preſence cannot command a Man to be arreſted, but an Action of falſe Impriſonment lieth againſt him that arreſteth: If not the King in his Royal Preſence, then none others can do it. *Non ſic itur ad aſtra.* 1 *Hen.* VII. 4. *Huſſey* reports the Opinion of *Markham*, Chief-Juſtice to *Edw.* IV. that he could not impriſon by Word of Mouth; and the Reaſon, becauſe the Party hath no Remedy; for the Law leaves every Man a Remedy of cauſeleſs Impriſonment. He added, that *Markham* was a worthy Judge, though he fell into Adverſities at laſt by the Lord *Rivers*'s Means. *Forteſcue*, chap. 8. *Proprio ore nullus Regum uſus eſt*, to impriſon any Man, &c. 4 *Eliz.* Times bleſſed and renowned for Juſtice and Religion, in *Plowden*, 235. the Common Law hath ſo admeaſured the King's Prerogative, as he cannot prejudice any Man in his Inheritance; and the greateſt Inheritance a Man hath, is the Liberty of his Perſon, for all others are acceſſary to it: For thus he quoted the Orator *Cicero*, *Major hæreditas venit unicuique noſtrum à Jure legibus quam à parentibus.*

And theſe are the Authorities he cited in this Point.

Now he propounded and anſwered two Objections: Firſt, in Point of State; Secondly, in the Courſe held by the Houſe of Commons.

May not the Privy-Council commit, without Cauſe ſhewed, in no Matter of State where Secrecy is required? Would not this be an Hindrance to his Majeſty's Service?

It can be no Prejudice to the King by reaſon of Matter of State, for the Cauſe muſt be of higher or lower Nature. If it be for Suſpicion of Treaſon, Miſpriſion of Treaſon, or Felony, it may be by general Words couched; if it be for any other thing of ſmaller Nature, as Contempt, and the like, the particular Cauſe muſt be ſhewed, and no *individuum vagum*, or uncertain Cauſe to be admitted.

Again, if the Law be ſo clear as you make it, why needs the Declaration and Remonſtrance in Parliament?

The Subject hath in this Caſe ſued for Remedy in *King's-Bench* by *Habeas Corpus*, and found none; therefore it is neceſſary to be cleared in Parliament. And here ended his Diſcourſe. And then he made a Recapitulation of all that had been offered unto their Lordſhips, that generally their Lordſhips had been adviſed by the moſt faithful Counſellors that can be; dead Men, theſe can't be daunted by Fear, nor miſled by Affection, Reward, or Hope of Preferment, and therefore your Lordſhips might ſafely believe them: Particularly their Lordſhips had three ſeveral Kinds of Proofs.

1. Acts of Parliament, judicial Precedents, good Reaſons. Firſt, You have had many ancient Acts of Parliament in the Point, beſides *Magna Charta*; that is, ſeven Acts of Parliament, which indeed are thirty-ſeven, *Magna Charta* being confirmed thirty times, for ſo often have the Kings of *England* given their Royal Aſſent thereto.

2. Judicial Precedents of grave and reverend Judges, *in terminis terminantibus*, that long ſince departed the World, and they were many in Number. Precedents being twelve, and the Judges four of a Bench, made four times twelve, and that is forty-eight Judges.

3. You have, as he termed them, *vividas rationes*, manifeſt and apparent Reaſons: towards the Concluſion he declareth to their Lordſhips, that they of the Houſe of Commons have, upon great Study and ſerious Conſideration, made a great Manifeſtation unanimouſly, *Nullo contradicente*, concerning this great Liberty of the Subject, and have vindicated and recovered the Body of this fundamental Liberty, both of their Lordſhips and themſelves, from Shadows, which ſome times of the Day are long, ſome times ſhort, and ſome times long again; and therefore we muſt not be guided by Shadows: And they have tranſmitted to their Lordſhips, not *capita rerum*, Heads or Briefs, for theſe *compendia* are *diſpendia*; but the Records at large, *in terminis terminantibus.* And ſo he concluded, that their Lordſhips are involved in the ſame Danger, and therefore *ex congruo & condigno*, they deſired a Conference, to the End their Lordſhips might make the like Declaration as they had done; *Commune periculum requirit commune auxilium*; and thereupon take ſuch further Courſe as may ſecure their Lordſhips and them, and all their Poſterity, in enjoying of their ancient, undoubted, and fundamental Liberties.

The Subſtance of the Objections made by Mr. Attorney-General (*Sir* Robert Heath) *before a Committee of both Houſes, to the Argument that was made by the Houſe of Commons, at the firſt Conference with the Lords.*

AFTER the firſt Conference, which was deſired by the Lords, and had by a Committee of both Houſes in the Painted Chamber, touching the Reaſons, Laws, Acts of Parliament, and Precedents concerning the Liberty of the Perſon of every Freeman; Mr. Attorney-General being heard before the Committee of both Houſes, as it was aſſented to by

the Houſe of Commons, that he might be, before they went up to the conference; after ſome preamble made, wherein he declined the anſwering all Reaſons of Law, and Acts of Parliament, came only to the precedents uſed in the argument before delivered; and ſo endeavoured to weaken the ſtrength of them, that had been brought in behalf of the ſubjects, and to ſhew that ſome other were directly contrary to the Law, comprehended in the reſolutions of the Houſe of Commons, touching the bailing of priſoners, returned upon the Writ of *Habeas Corpus* to be committed by the ſpecial command of the King, or the Council, without any cauſe ſhewed, for which by Law they ought to be committed. And the courſe which was taken (it pleaſed the Committee of both Houſes to allow of) was, that Mr. Attorney ſhould make his objections to every particular precedent, and that the Gentlemen appointed, and truſted herein by the Houſe of Commons, by ſeveral replies ſhould ſatisfy the Lords touching the objections made by him, againſt, or upon every particular, as the order of the precedents ſhould lead them. He began with the firſt twelve precedents that were uſed by the Houſe of Commons at the conference deſired by them, to prove that priſoners returned to ſtand ſo committed, were delivered upon bail by the Court of King's-Bench.

The firſt was that of *Bildeſton*'s caſe, in the 18 *Edw.* III. *Rot.* 33.

To this he objected; firſt, that in the return of him into the Court, it did not appear, that this *Bildeſton* was committed by the King's command; and ſecondly, that in the Record it did appear alſo that he had been committed for ſuſpicion of counterfeiting the great Seal, and ſo by conſequence was bailable by the Law, in regard there appeared a cauſe why he was committed: in which caſe it was granted by him (as indeed it was plain and agreed of all hands) that the priſoner is bailable, though committed by command of the King. And he ſaid that this part of the Record, by which it appeared he had been committed for ſuſpicion of Treaſon, was not obſerved to the Lords in the Argument before uſed; and he ſhewed alſo to the Lords, that there were three ſeveral kinds of Records, by which the full truth of every award, or bailing upon an *Habeas Corpus* is known. Firſt, the Remembrance-Roll, wherein the award is given; ſecondly, the File of the Writ and the Return; and thirdly, the Scruet-Roll or Scruet *ſinium*, wherein the bail is entered, and that only the Remembrance-Roll of this caſe was to be found: and that if the other two of it were extant, he doubted not but that it would appear alſo, that upon the return itſelf the cauſe of the commitment had been expreſſed. And ſo he concluded, that this proved not for the Reſolution of the Houſe of Commons, touching the matter of bail, where a priſoner was committed by the King's ſpecial command without cauſe ſhewed.

To theſe objections the reply was, Firſt, that it was plain that *Bildeſton* was committed by the King's expreſs command. For ſo the very words of the Writ are to the Conſtable of the Tower, *quod eum teneri & cuſtodiri facias, &c.* than which nothing can more fully expreſs a commitment by the King's command. Secondly, however it be true, that in the latter part of the Record it doth appear, that *Bildeſton* had been committed for ſuſpicion of Treaſon, yet if the times of the proceeding, expreſſed in the Record, were obſerved, it would be plain that the objection was of no force; for this one ground, both in this caſe and in all the reſt, is infallible, and never to be doubted of in the Law, That Juſtices of every Court adjudge of the force and ſtrength of a return out of the body of itſelf only, and as therein it appears. Now in *Eaſter* Term in the 18 *Edward* III. he was returned and brought before them, as committed only by the Writ; wherein no cauſe is expreſſed, and the Lieutenant and the Conſtable of the Tower, that brought him into the Court, ſays, that he had no other Warrant to detain him *niſi breve predictum*, wherein there was no mention of any cauſe; and the Court thereupon adjudged, that *breve predictum*, or that ſpecial command, was not ſufficient cauſe to detain him in priſon, and thereupon he is by judgment of the Court in *Eaſter* Term let to Mainpriſe. But that part of the Record wherein it appears, that he had indeed been committed for ſuſpicion of Treaſon, is of *Trinity* Term following, when the King, after the letting of him to Mainpriſe, ſent to the Judges that they ſhould diſcharge his Mainpriſe, becauſe no man proſecuted him. And at that time it appears (but not before) that he had been in for ſuſpicion of Treaſon; ſo that he was returned to ſtand committed by the King's ſpecial command only, without cauſe ſhewed, in *Eaſter* Term, and then by judgment of the Court let to Mainpriſe, (which to this purpoſe is but the ſame with bail, though otherwiſe it differ). And in the Term following upon another occaſion the Court knew, that he had been committed for ſuſpicion of Treaſon, which has no relation at all to the letting of him to Mainpriſe, nor to the judgment of the Court then given; when they did not, nor could poſſibly know any cauſe for which the King had committed him. And it was ſaid, in behalf of the Houſe of Commons, that they had not indeed in their Argument expreſsly uſed this latter part of the Record of *Bildeſton*'s caſe, becauſe it being only of *Trinity* Term following, could not concern the Reaſon of an award given by the Court in *Eaſter* Term next before; yet notwithſtanding that they had moſt faithfully, at the time of their argument, delivered in to the Lords, as indeed they had, a perfect copy at large of the whole Record of this caſe; as they had done alſo of all other precedents whatſoever cited by them; inſomuch as in truth there was not one precedent of Record on either ſide, the copy whereof they had not delivered in likewiſe, nor did Mr. Attorney mention any one beſides thoſe that were ſo delivered in by them. And as touching thoſe three kinds of Records, the Remembrance-Roll, the Return and File of the Writ, and Scruets; it was anſwered by the Gentlemen employed by the Houſe of Commons, that it was true, that the Scruet and the Return of this caſe of *Bildeſton* was not to be found; but that did not leſſen the weight of the precedent, becauſe always in the award or judgment drawn up in the Remembrance-Roll, the cauſe (whatſoever it be) when any is ſhewed, upon the Return is always expreſſed, as it appears clearly by the conſtant entries of the King's-Bench-Court. So that if any cauſe had appeared unto the Court, it muſt have appeared plainly in that part of the Roll which belongs to *Eaſter*-Term, wherein the judgment was given: but the return of the commitment by the King's command without cauſe ſhewed, and the judgment of the Court, that the priſoner was to be let to mainpriſe, appears therein only. And ſo, notwithſtanding any objection made by Mr. Attorney, the cauſe was maintained to be a clear proof, among many others, touching that reſolution of the Houſe of Commons.

To the ſecond of theſe twelve, which is *Parker*'s caſe, in the 22 *H.* VIII. *Rot.* 37. his objections were two; firſt, that it is true, that he was returned to be committed *per mandatum Domini Regis*; but it appeared that this command was certified to the Sheriffs of *London* by one *Robert Peck* gentleman; and that in regard that the command came no otherwiſe, the return was held inſufficient, and that therefore he was bailed. Secondly, that it appears alſo in the Record, that he was committed *pro ſuſpicione feloniæ ac per mandatum Domini Regis:* ſo that in regard that the expreſſion of the cauſe of his commitment, ſuſpicion of felony, precedes the command of the King, therefore it muſt be intended that the Court took the cauſe why the King committed him to be of leſs moment than felony, and therefore bailed him. For he objected, that even the Houſe of Commons themſelves, in ſome arguments uſed by them, touching the interpretation of the Statute of *Weſtminſter* the firſt, *cap.* 15. about this point, had affirmed, that in enumeration of particulars, thoſe of greateſt nature were firſt mentioned, and that it was ſuppoſed, that ſuch as followed were uſually of leſs nature or moment.

But the reply was to the firſt objection, that the addition of the certifying of the King's command by *Robert Peck*, altered not the caſe: Firſt, becauſe the Sheriffs in their return took notice of the command as what they were aſſured of; and then howſoever it came to them, it was of equal force, as if it had been mentioned without reference to *Peck*. Secondly, As divers Patents paſs the great Seal by Writ of Privy-Seal, and are ſubſcribed *per breve de privato ſigillo*; ſo divers *per ipſum Regem*, are ſo ſubſcribed; and oftentimes in the Roll of former times, to the words *per ipſum Regem*, are added *nunciante A. B.* So that the King's command generally, and the King's command related or certified by ſuch a man, is to this purpoſe of like nature. Thirdly, in the late great caſe of *Habeas Corpus*, where the return of the commitment was *per ſpeciale mandatum Domini Regis mihi ſignificatum per Dominos de privato Concilio*; the Court of King's-Bench did agree, that it was the ſame, and of like force as if *mihi ſignificatum, &c.* had not followed, and that thoſe words were void. According whereunto, here alſo *per mandatum Dom. Regis nunciatum per Robert Peck*, had been wholly omitted and void likewiſe. And in truth in that late caſe, this caſe of *Parker* was cited both at the Bar and Bench: and at the Bench it was interpreted by the Judges no otherwiſe, than if it had been only *per mandatum Domini Regis* in place of it: but the objection there was made of another kind, as was delivered in the firſt argument, made out of precedents in behalf of the Houſe of Commons. Therefore to the ſecond objection, touching the courſe of enumeration of the cauſes in the return, it was ſaid, that howſoever in ſome Acts of Parliament, and elſewhere in the ſolemn expreſſions uſed in the Law, things of greater nature preceded, and the leſs follow; yet in this caſe, the contrary was moſt plain, for in the return it appears, that there were three cauſes for detaining the priſoners; Surety of the peace, ſuſpicion of felony, and the King's command: and Surety of the peace is firſt mentioned, which is plainly leſs than felony. And therefore it is plain, if any force of argument be taken from this enumeration, that the contrary to that which Mr. Attorney inferred is to be concluded; that is, that as felony is a greater cauſe than Surety of the peace, ſo the matter whereupon the King's command was grounded, was greater than Felony. But in truth this kind of argument holds neither way here, and whatſoever the cauſe were, why the King committed him, it was impoſſible for the Court to know it: and it alſo might be of very high moment in matter of State, and yet of far leſs nature than felony. All which ſhews, that this precedent hath its full force alſo, according as it was firſt uſed in argument by the Houſe of Commons.

To the third of theſe, which is *Bincks*'s caſe in the 35 *H.* VIII. *Rot.* 33. the objection was, that there was a cauſe expreſſed *pro ſuſpicione feloniæ:* and though *pro aliis cauſis illos moventibus* were added in the return, yet becauſe in the courſe of enumeration, the general name of *aliis* coming after particulars, includes things of leſs nature than the particular doth, therefore in this caſe ſuſpicion of felony being the firſt, the other cauſes afterwards generally mentioned muſt be intended of leſs nature, for which the priſoner was bailable, becauſe he was bailable for the greater, which was ſuſpicion of felony. Hereunto it was replied, that the argument of enumeration in theſe caſes is of no moment, as is next before ſhewed: and that although it were of any moment, yet *aliæ cauſæ*, though leſs than felony, might be of very great conſequence in matter of State, which is pretended uſually upon general returns of command, without cauſe ſhewed; and it is moſt plain, that the Court could not poſſibly know the reaſons, why the priſoner here was committed, and yet they bailed him, without looking further after any unknown thing under that title of matter of State, which might as well have been in this caſe as in any other whatſoever.

To the fourth of theſe, which is *Overton*'s caſe, in *Paſch.* 2. & 3. *Phil. & Mar. Rot.* 58. And to the fifth, which is *Newport*'s caſe, *Paſch. Phil. & Mar.* 4 & 5 *Rot.* 45. only theſe objections were ſaid over again by Mr. Attorney, which are mentioned in the argument made out of the precedents in behalf of the Houſe of Commons at the firſt conference; and in the ſame argument are fully and clearly ſatisfied, as they were in like manner now again.

To the ſixth of theſe, which was *Lawrence*'s caſe, 9 *Eliz. Rot.* 35. and the ſeventh, which is *Conſtable*'s, *Paſch.* 9 *Eliz. Rot.* 68. the ſame objections were likewiſe ſaid over again by Mr. Attorney, that are mentioned, and are clearly and fully anſwered in the argument made at the conference out of precedents in behalf of the Houſe of Commons; the force of the objection being only, that it appeared in the margin of the Roll, that the word *Pardon* was written: but it is plain that the word there hath no reference at all to the reaſon why they were bailed, nor could it have reference to the cauſe why they were committed, in regard the cauſe why they were committed is utterly unknown, and was not ſhewed.

To the eighth of theſe precedents, which was *Browning*'s caſe, *Paſch.* 20 *Eliz. Rot.* 72. it was ſaid by Mr. Attorney, that he was bailed by a letter from the Lords of the Council, directed to the Judges of the Court; but

ut being aſked for that letter, or any teſtimony of it, he could produce none at all; but ſaid, he thought the teſtimony of it was burnt, among many other things of the Council-table at the burning of the Banqueting-Houſe.

To the 9th, being *Hareconrt*'s caſe, *Paſch.* 40 *Eliz. Rot.* 62. the ſelf-ſame objection was made by him, but no warrant was ſhewed to maintain his objection.

To the 10th, which is *Cateſby*'s caſe, *in vacatione Hill.* 43 *Eliz.* he ſaid, that it was by direction of a Privy-Seal from the Queen; and to that purpoſe he ſhewed the Privy-Seal of 43 *Eliz.* which is at large among the tranſcripts of the Records concerning bails taken in caſes, where the King or the Lords aſſented. But it was replied, That the Privy-Seal was made only for ſome particular Gentlemen mentioned in it, and for none other, as indeed appears in it: and then he ſaid, that it was likely that *Cateſby* here had a Privy-Seal in this behalf, becauſe thoſe other had ſo; which was all the force of his objection.

To the 11th of theſe, which is *Beckwith*'s caſe in *Hill.* 12 *Jac. Rot.* 153. he ſaid, that the Lords of the Council ſent a letter to the Court of King's-Bench to bail him. And indeed he produced a letter, which could not by any means be found when the arguments were made at the firſt conference: and this letter, and a copy of an obſcure report made by a young ſtudent (which was brought to another purpoſe, as is hereafter ſhewed), were the only things written of any kind that Mr. Attorney produced, beſides the particulars ſhewed by the Houſe of Commons at the firſt conference. To this it was replied, That the letter was of no moment, being only a direction to the Chief-Juſtice, and no matter of Record, nor any way concerning the reſt of the Judges: and beſides, either the priſoner was bailable by the Law, or not bailable: if bailable by the Law, then he was to be bailed without any ſuch letter; if not bailable by the Law, then plainly the Judges could not have bailed him upon the letter, without breach of their oath, which is, *That they are to do juſtice according to the Law, without having reſpect to any command whatſoever.* So that the letter in this caſe, or the like in any other caſe, is for point of Law to no purpoſe, nor hath any weight at all by way of objection againſt what the Record and the Judgment of the Court ſhew us.

To the 12th and laſt of theſe, which is Sir *Thomas Monſon*'s caſe in the 14 *Jac. Rot.* 147. the ſame objection only was ſaid over by him, which was mentioned and clearly anſwered in the argument; and that one ground which is infallible, *That the judgment upon a return is to be made only out of what appears in the body of the return itſelf*, was again inſiſted upon in this caſe, as it was alſo in moſt of the the reſt. And indeed that alone which is moſt clear Law, fully ſatisfies almoſt all kind of objections that have been made to any of theſe precedents; which, thus rightly underſtood, are many ample teſtimonies of the Judgment of the Court of King's-Bench, touching this great point, in the ſeveral ages, and reigns of the ſeveral princes under which they fall.

After his objections to the twelve, and the replies and ſatisfactions given to theſe objections, he came next to thoſe wherein the aſſent of the King and Privy-Council appears to have been upon the enlargement: but he made not to any of theſe any other kind of objections whatſoever, than ſuch as are mentioned and clearly anſwered (as they were now again) in the argument made at the firſt conference. And for ſo much as concerns letters of aſſent or direction, the ſame was here ſaid again by way of reply to him, as is before ſaid touching the letter in *Beckwith*'s caſe.

After theſe were diſpatched, he came to urge the eight precedents, which ſeemed to make for the other ſide againſt the reſolution of the Houſe of Commons: which eight were uſed, and copies of them alſo were given in to the Lords at the firſt conference.

Of theſe eight, the firſt four were urged by him, as being of one kind; the difference of them only being ſuch, that, ſave only in the names of priſons and of perſons, they are but the ſelf-ſame.

To the force of theſe four he objected thus: that *Richard Everard* (for the purpoſe) in the firſt of them, which is 5 *H.* VII. *Rot.* 18. *Roger Cherry* in the ſecond of them, which is 8 *H.* VII. *Rot.* 12. *Chriſtopher Burton*, in the third of them, which is 9 *H.* VII. *Rot.* 14. and *George Urſewick* in the fourth of them, which is 19 *H.* VII. *Rot.* 13. were returned into the King's-Bench upon ſeveral Writs of *Habeas Corpus*, to have been committed and detained in the ſeveral priſons whence they came *per mandatum Domini Regis*, and that upon that return they were committed to the Marſhal of the King's-Bench; and that however it had been objected againſt thoſe precedents, that this kind of commitment was by the courſe of that Court, always done before the bailing of the priſoner, yet that it did not appear that they were bailed.

The Reply to this objection was, That by conſtant courſe of King's-Bench, whoſoever came in upon *Habeas Corpus*, or otherwiſe upon any Writ in that Court, cannot be bailed until he be firſt committed to the Marſhal of that Court; and that thence it was, that all thoſe four were committed to the Marſhal, as appears by the entry, *Qui committitur Mareſcallo, &c.* which is the uſual entry in ſuch a caſe, and that the Clerks of that Court acknowledge this courſe and entry to be moſt conſtant. So that all the inference, that can be made out of theſe four is, that four priſoners being brought from four ſeveral priſons by *Habeas Corpus* into the King's-Bench, and returned to ſtand committed *per mandatum Domini Regis*, were ſo far from being remanded by the Law, that in all theſe four caſes, they were firſt taken from the ſeveral priſons, wherein they had been detained, by ſuch a general command (which could not have been if they had not been adjudged in every one of the caſes to have been bailable by the Court), and that this commitment of them to the Marſhal of the King's-Bench, was the firſt ſtep towards the bailing of them, as in all other caſes. But that it appears not, that either they ever demanded to be bailed, or that they were able to find ſufficient bail: and if they did not the one, or could not do the other, it may follow indeed that they were not bailed. But this commitment to the King's-Bench being the firſt ſtep to the bailing of them (as by the conſtant courſe it is) ſhews moſt plainly that they were bailable by the Law, which is the only thing in queſtion. So that altho' theſe four precedents were ranked among them, that may ſeem to make againſt the reſolution of the Houſe of Commons, which was done, both becauſe they have this ſmall colour in them for the other ſide, to any man that is not acquainted with the nature and reaſons of the entries, and courſes of the Court of King's-Bench, and alſo becauſe all or ſome of them had been uſed in the late great caſe in the King's-Bench, as precedents that made againſt the liberty claimed by the ſubject; yet, in truth, all four of them do fully prove their reſolution: that is, they plainly ſhew that the Court of King's-Bench in every one of them reſolved, that the priſoners ſo committed were bailable, otherwiſe they had been remanded, and not committed to the Marſhal of the King's-Bench. And this was the anſwer to the objection made by Mr. Attorney upon thoſe four precedents, being all of the time of King *Henry* the ſeventh.

To the fifth of theſe eight, being *Edward Page*'s Caſe, in 7 *H.* VIII. *Rot.* 23. Mr. Attorney objected thus: He ſaid, that *Edward Page* was committed to the Marſhalſea of the Houſhold, *per mandatum Domini Regis ibidem ſalvo cuſtodiend. &c. Qui committitur Mareſcallo, &c. Hoſpitii Domini Regis.* By which it appeareth, as he ſaid, that the Court remanded him back to the priſon of the Marſhalſea of the Houſhold: and he ſaid, that whereas it had been objected at the firſt conference, that there was ſome miſtaking in the entry; he conceived, indeed, that there was a miſtaking, but it was that the Clerk had entred *committitur* for *remittitur*, and that it ſhould have been *Qui remittitur Mareſcallo Hoſpitii Domini Regis:* for whenever they remanded the priſoner, *remittitur*, and not *committitur* ſhould be entered. And that miſtaking being ſo rectified and underſtood, he conceived it was a direct precedent againſt the reſolution of the Houſe of Commons.

To this it was anſwered by the Gentlemen of the Houſe of Commons, That there was no doubt, indeed, but that a miſtake was in the entry by the Clerk, but that the miſtaking was quite of another nature. The addition of thoſe words, *hoſpitii Dom. Regis*, was the miſtaking, and the entry ſhould have been, *qui committitur Mareſcallo, &c.* only; that is, he was committed to the Marſhal of the King's-Bench; and ſo indeed the force of this precedent ſhould be but juſt the ſame with the firſt four: but the ignorance of the Clerk that entered it, knowing not how to diſtinguiſh between the Marſhal of the Houſhold and the Marſhal of the King's-Bench, was the cauſe of the addition of theſe words, *hoſpitii Dom. Regis.*

And to confirm fully this kind of interpretation of that precedent, and of the miſtaking of it, it was obſerved by the Gentlemen of the Houſe of Commons, that there is in the margin of the Roll an infallible character that juſtifies ſo much. For by the courſe of that Court, whenſoever a priſoner is committed to the Marſhal of the King's-Bench and not remanded, the word *Mareſcallo* is written in the margin ſhort by *Marr'* turned up; and that is never written there, but when the meaning and ſenſe of the entry is, that the priſoner is committed to the priſon of the ſame Court. Now in this caſe *Marr'* in the Margin is likewiſe written: which moſt clearly ſhews that the truth of this caſe was, that this *Page* was committed to the Marſhal of the King's-Bench, and not remanded; which if it had been, neither could the entry have been *committitur*, nor ſhould the margin of the Roll have had *Marr'* written in it.

And thus they have anſwered Mr. Attorney's objections touching this precedent, and concluded that now, beſides the firſt four of the eight, they had another, and ſo five to prove that a priſoner committed *per mandatum Domini Regis*, generally was bailable by the judgment of the Court. However, it appears not in theſe particulars that they were bailed; which perhaps they were not, either becauſe they prayed it not, or becauſe they could not find ſufficient bail.

The ſixth of theſe precedents, being the caſe of *Thomas Cæſar*, in the 8 *Jac. Regis Rot.* 99. Mr. Attorney objected to it thus: That *Cæſar* being committed *per mandatum Domini Regis* to the Marſhalſea of the Houſehold, was returned upon *Habeas Corpus* to be ſo committed, and therefore detained in priſon, and that the entry is, *Qui committitur priſonæ Mareſcal. prædict.* by which it appears clearly, that he was remanded to the ſame priſon from whence he came.

To this the Gentlemen of the Houſe of Commons gave this anſwer: They ſaid, that the uſual entry of a *remittitur*, when it is to ſhew that the Court by way of judgment, or award upon a reſolution, or debate, remands the priſoner, is, *remittitur quouſque ſecundum legem deliberatus fuerit:* but when they adviſe, or give way to the Keeper of the priſon to amend his return, or the like, then the entry is only *remittitur* generally, or *remittitur priſonæ prædict.* But it was indeed affirmed by Mr. *Keeling*, a Clerk of great experience in that Court, that the entry of a *Remittitur* generally, or *remittitur priſonæ prædictæ* was indifferently uſed for the ſame, as *remittitur quouſque*, &c. Yet it was expreſsly ſhewed by the Gentlemen of the Houſe of Commons, that there was ſometimes a difference, and that ſo it might well be in this caſe. For in the laſt of theſe eight precedents, which is *Saltonſtall*'s caſe, they obſerved that *remittitur priſonæ prædictæ* is often uſed; and that it is twice uſed only for a remanding, during the time that the Court gave leave to the Warden of the Fleet to amend his return; which ſhews plainly, that tho' ſometimes *remittitur* generally, and *remittitur quouſque*, &c. may mean the ſame, yet ſometimes it doth not. And that, in this caſe of *Cæſar* it doth not mean any other, but only ſo much as it doth twice in that of *Saltonſtall*'s caſe, was proved alſo by a rule of the Court, which was cited out of the rule-book of the Court of King's-Bench, by which rule the Court expreſsly ordered, that unleſs the Steward and Marſhal of the Houſhold did ſufficiently return the Writ of *Habeas Corpus* for *Cæſar*, that he ſhould be diſcharged. The words of the rule are, *Niſi prædicti Seneſcallus & Mareſcallus hoſpitii Domini Regis ſufficienter returnaverint breve de Habeas Corpus, Tho. Cæſar die Mercurii proximæ poſt quindenam Sancti Martini de priſona exonerabitur.* And this was the opinion of the Court; which ſhews that the Court was ſo far from remanding him upon the return, that they reſolved, that unleſs ſome better return were made, the priſoner ſhould be diſcharged of his firſt impriſonment, though it appeared to them out of the body of the return (upon which they were only to judge), that he was committed *per mandatum Domini Regis* only. And the rule not only ſhews the opinion of the Court then to have been agreeable with the reſolution of the Houſe of Commons, but alſo proves that *Remittitur* generally, or *Remittitur priſonæ prædictæ*, doth not always imply a remanding upon judgment or debate. And this anſwer was given to this of *Cæſar*'s caſe, that is the ſixth of this number.

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The ſeventh is the caſe of *James Demetrius*. It was 12 *Jac. Rot.* 153. Mr. Attorney objected that this *Demetrius* and divers others being Brewers, were committed *per concilium Domini Regis* to the Marſhalſea of the Houſhold, and that upon the commitment ſo generally returned, they were remanded, and that the entry was *immediate remittitur præfato Mareſcallo hoſpitii prædicti*; where he obſerved, that *immediate* ſhews that the Judges of that time were ſo reſolved of this Queſtion, that they remanded them preſently, as men that well knew what the Law was herein.

Hereunto the Gentlemen of the Houſe of Commons gave theſe anſwers. Firſt, That the *Remittitur* in this caſe is but as the other in *Cæſar*'s, and ſo proves nothing againſt them. Secondly, That *immediate* being added to it, ſhews plainly that it was done without debate, or any argument or conſideration had of it, which makes the authority of the precedents to be of no force in point of Law; for judgments and awards given upon deliberation only and debate are proofs and arguments of weight, and not any ſudden Act of the Court without debate or deliberation. And the entry of *immediate* being propoſed by Mr. *Keeling*, it was confirmed by him, that by that entry it appears by this courſe, that the remanding of him was the ſelf-ſame day he was brought, which, as it was ſaid by the Gentlemen of the Houſe of Commons, might be at the riſing of the Court, or upon adviſement, and the like. And this anſwer was given to this precedent of the Brewers.

The laſt of the eight, to which Mr. Attorney objected, is *Saltonſtall*'s caſe, in the 13 *Jac. Regis*. He was committed *per mandatum Dominorum Regis de privato Concilio*: and being returned by the Warden of the Fleet to be ſo, *Remittitur priſonæ prædictæ*; and in the 13 *Jac.* in the ſame caſe there is *remittitur* generally in the Roll. And theſe two make but one caſe, and are as one precedent.

To this the Gentlemen of the Houſe of Commons anſwered, That it is true, the Rolls have ſuch entries of *remittitur* in them generally, but that proves nothing upon the reaſon before uſed by them in *Cæſar*'s caſe. But alſo *Saltonſtall* was committed for another cauſe beſides *per mandatum Dom. Regis*, a contempt againſt an order in the Chancery, and that was in the return alſo. And beſides the Court, as it appears in the Record, gave ſeveral days to the Warden of the Fleet to amend his return, which they would not have done, if they had conceived it ſufficient, for that which is ſufficient needs not amendment.

To this Mr. Attorney replied, That they gave him a day to amend his return, in reſpect of that part of it which concerns the order in Chancery, and not in reſpect of that which was *per mandatum Dom. Regis*. But the Gentlemen of the Houſe of Commons anſwered, That that appeared not any where, nor indeed is it likely at all, nor can be reaſonably ſo underſtood; becauſe if the other return *per mandatum Dom. Regis* had been ſufficient by itſelf, then doubtleſs they would have remanded him upon that alone; for then they needed not at all to have ſtood upon the other part of the return in this caſe. So that out of the Record itſelf it appears fully, that the Court conceived the return to be inſufficient.

So the Gentlemen of the Houſe of Commons concluded, that they had a great number of precedents beſides divers Acts of Parliament, and Reaſons of Common Law, agreeable to their reſolution; and that there was not one precedent at all that made againſt them, but indeed, that almoſt all that were brought, as well againſt them as for them, if rightly underſtood, made fully for the maintenance of their reſolution: and that there was not one example or precedent of a *Remittitur* in any kind upon the point before that of *Cæſar*'s caſe, which is before cleared with the reſt, and is but of late time, and of no moment againſt the reſolution of the Houſe of Commons.

And thus, for ſo much as concerned the precedents of Record, the firſt day of the conference deſired by the Lords ended.

The next day they deſired another conference with the Houſe of Commons, at which it pleaſed the Committee of both Houſes to hear Mr. Attorney again make what objections he could againſt other parts of the argument formerly delivered from the Houſe of Commons. He then objected againſt the Acts of Parliament, and againſt the Reaſons of Law, and his objections to thoſe parts were anſwered, as it appears by the anſwers by order given into the Houſe of Commons by the Gentlemen that made them. [*Vide poſtea*, p. 180.] He objected alſo upon the ſecond day againſt the ſecond kind of precedents, which are reſolutions of Judges in former times, and not of Record, and brought alſo ſome other teſtimonies of the opinions of Judges in former times, touching this point.

Firſt, for that reſolution of all the Judges of *England* in 34 *Eliz.* mentioned and read in the arguments at the firſt conference, he ſaid, That it was directly againſt the reſolution of the Houſe of Commons, and obſerved the words of it in one place to be, that perſons ſo committed by the King, or by the Council, may not be delivered by any of the Courts, *&c.* And in another, that if the cauſe were expreſſed, either in general or in ſpecialty, it was ſufficient; and he ſaid that the expreſſing of a cauſe in generality was to ſhew the King or the Council's command: and to this purpoſe, he read the whole words of that reſolution of the Judges. Then he objected alſo, that in the report of one *Roſwell*'s caſe in the King's-Bench, in 13 *Jac.* he found that the opinion of the Judges of that Court (Sir *Edward Coke* being then chief Judge and one of them) was, that a priſoner being committed *per mandatum Dom. Regis*, or *privati Concilii*, without cauſe ſhewed, and ſo returned, could not be bailed becauſe it might be matter of State, or *Arcana Imperii*, for which he ſtood committed. And to this alſo he added, an opinion he found in a Journal in the Houſe of Commons of 13 *Jac.* wherein Sir *Edward Coke* ſpeaking to a Bill preferred for the explanation of *Magna Charta* touching impriſonment, ſaid in the ſame Houſe, That one ſo committed could not be inlarged by the Law, becauſe it might be matter of State for which he was committed. And amongſt theſe objections of the other nature alſo, he ſpake of the confidence that was ſhewed in behalf of the Houſe of Commons: and he ſaid, it was not confidence on either part could add any thing to the determination of the queſtion; but if it could, that he had as much reaſon of confidence for the other ſide againſt the reſolution of the Houſe of Commons, grounding himſelf upon the force of his objections, which, as he conceived, had ſo weakened the arguments of the Houſe of Commons.

To this a reply was made; and firſt it was ſaid to the Lords on the behalf of the Houſe of Commons, That notwithſtanding any thing yet objected, they were upon clear reaſon ſtill confident of the truth of their firſt reſolution, grounded upon ſo juſt examination, and deliberation taken by them. And it was obſerved to the Lords alſo, that their confidence herein was of another nature, and of greater weight, than any confidence that could be expreſſed by Mr. Attorney, or whomſoever elſe being of his Majeſty's Counſel learned.

To which purpoſe the Lords were deſired to take into their memories the difference between the preſent qualities of the Gentlemen that ſpake in behalf of the Houſe of Commons, and of the King's learned Counſel in their ſpeaking there, howſoever accidentally they were both men of the ſame profeſſion: for the King's Counſel ſpake as Counſel perpetually retained by Fee, and if they made gloſſes or what advantageous interpretation ſoever for their own part, they did but what belonged to their place and quality, as Mr. Attorney had done. But the Gentlemen that ſpake in behalf of the Houſe of Commons, came there, bound on the one ſide by the truſt repoſed in them by their Country that ſent them, and on the other ſide by an oath taken by every of them before he ſit in the Houſe, to maintain and defend the Rights and Prerogatives of the Crown: ſo that even in the point of confidence alone, thoſe of them that ſpeak as retained Counſel by perpetual Fee, and thoſe that by their place being admitted to ſpeak, are bound to utter nothing but truth, both by ſuch a truſt and ſuch an oath, were no way to be ſo compared or counterpoiſed, as if the one were of no more weight than the other.

And then the objections before mentioned were alſo anſwered.

For that of the reſolution of all the Judges of *England* in 34 *Eliz.* it was ſhewed, that plainly it agreed with the reſolution of the Houſe of Commons: for although indeed it might have been expreſſed with more perſpicuity, yet the words of it, as they are, ſufficiently ſhew the meaning of it to be no otherwiſe. To that purpoſe, beſides the words of the whole frame of this reſolution of the Judges, as it is in the copy tranſcribed out of the Lord Chief Juſtice *Anderſon*'s Book, written in his own hand, which book was here offered to be ſhewed in the behalf of the Houſe of Commons; it was obſerved, that the words of the firſt part of it ſhew plainly, that all the Judges of *England* then reſolved, that the priſoners ſpoken of in the firſt part of their reſolution were only priſoners committed with cauſe ſhewed; for they only ſay they might not be delivered by any Court without due trial by Law, and judgment of acquittal had; which ſhews plainly they meant that by trial and acquittal they might be delivered. But it is clear that no trial or acquittal can be had, where there is not ſome cauſe laid to their charge, for which they ought to ſtand committed. Therefore in that part of the reſolution ſuch priſoners are only meant as are committed with cauſe ſhewed, which alſo the Judges in that reſolution expreſsly thought neceſſary, as appears in the ſecond part of their reſolution, wherein they have theſe words: "If upon the return of "their *Habeas Corpus*, the cauſe of their commitment be certified to the "Judges, as it ought to be, *&c.*" By which words they ſhew plainly, that every return of a commitment is inſufficient that hath not a cauſe ſhewed of it. And to that which Mr. Attorney ſaid, as if the cauſe were ſufficiently expreſſed in generality, if the King's command or the Council's were expreſſed in it, as if that were meant in the reſolution for a ſufficient general cauſe; it was anſwered, That it was never heard of in Law, that the power or perſon that committed the priſoner was underſtood for the *cauſa captionis* or *cauſa detentionis*, but only the reaſon why that power or perſon committed the priſoner. As alſo in common ſpeech, if any man aſk why or for what cauſe a man ſtands committed, the anſwer is not, that ſuch a one committed him, but his offence or ſome other cauſe is underſtood in the queſtion, and is to be ſhewed in the anſwer. But to ſay that ſuch a one committed the priſoner, is an anſwer only to the queſtion, who committed him? and not why, or for what cauſe he ſtands ſo committed?

Then for that of the copy of the report, in 13 *Jac.* ſhewed forth by Mr. Attorney, it was anſwered by the Gentlemen of the Houſe of Commons, That the report itſelf which had been before ſeen, and peruſed among many other things at a Committee made by the Houſe, was of ſlight or no authority, for that it was taken by one, who was at that time a young ſtudent, and as a reporter in the King's Bench, and there was not any other report to be found that agreed with it. Secondly, Although the reports of young ſtudents, when they take the words of Judges as they fall from their mouths at the Bench, and in the ſame perſon and form as they have ſpoken, may be of good credit; yet in this caſe there was not one word ſo reported: but in truth there being three caſes at a time in the *King*'s-*Bench*, one *Roſwell*'s caſe, *Allen*'s, and *Saltonſtall*'s caſe, every of which had ſomething of like nature in it, the ſtudent having been preſent in the Court, made up the frame of one report or caſe out of all three in his own words, and ſo put it into his Book: ſo that there is not a word in the report, but it is framed according to the ſtudent's fancy, as it is written; and nothing is expreſſed in it, as it came from the mouth of the Judges, otherwiſe than his fancy directed him.

Thirdly, There are in the report plain falſhoods of matter of fact, which are to be attributed either to the Judges or to the Reporter. It is moſt likely by all reaſon, that they proceeded from the Reporter's fault; howſoever, theſe matters of falſhood ſhew ſufficiently that the credit of the reſt is of light value. It is ſaid in the report, that *Harecourt* being committed by the Council, was bailed, in 40 *Eliz.* upon a Privy-Seal or a Letter, whereas in truth there is no ſuch thing. And it is ſaid there, that kind of Letters are filed in the Crown-Office, whereas in truth there was not any ſuch kind of Letters filed there in any caſe whatſoever. That Reſolution of the Judges in 34 *El.* is miſ-cited there, and made in 36 *El.* And it is ſaid there, that by that Reſolution, a priſoner returned to be committed by the command of the King, might not at all be delivered by the Court; whereas no ſuch thing is comprehended in that Reſolution.

But that which is of moſt moment is, that howſoever the truth of the report were, yet the opinion of the Judges being ſudden, and without any debate had of the caſe, is of light moment: for, in difficult points eſpecially, the moſt grave and learned men living may on the ſudden let fall (and

that without any diſparagement to them) ſuch opinions as they may well, and ought to change upon further inquiry, examination, and full debate had before them, and mature deliberation taken by them. Now plainly in that of 13 *Jac.* there is not ſo much as a pretence of any debate at the Bar or Bench. All that is reported to have been, is reported as ſpoken of the ſudden. And can any man take ſuch a ſudden opinion to be of value againſt ſolemn debates and mature deliberations ſince had of the point? And indeed this great point, and all circumſtances belonging to it, have within this half year, been ſo fully examined and ſearched into, that it may well be affirmed, that the moſt learned man whatſoever that hath now conſidered of it, hath within that time, or might have, learned more reaſon of ſatisfaction in it, than ever before he met with. Therefore the ſudden opinion of the Judges to the contrary is of no value here, which alſo is to be ſaid of that opinion obviouſly delivered in the Commons Houſe in 18 *Jac.* as Mr. Attorney objected out of the Journal of the Houſe. But beſides, neither was the truth of that report of that opinion in the Journal any way acknowledged; for it was ſaid in behalf of the Houſe of Commons, that their Journals were for matters of Orders and Reſolutions of the Houſe of ſuch authority, as that they were as their Records. But for any particular man's opinion, noted in any of them, it was ſo far from being of any authority with them, that in truth no particular opinion is at all to be entered in them, and that their Clerk offends, whenever he doth to the contrary. And to conclude, no ſuch opinion whatſoever can be ſufficient to weaken the clear Law comprehended in theſe Reſolutions of the Houſe of Commons, grounded upon ſo many Acts of Parliament, ſo much Reaſon of the Common-Law, and ſo many Precedents of Record, and the Reſolution of all the Judges of *England*; and againſt which not one Law, written or unwritten, not one Precedent, not one Reaſon hath been brought, that makes any thing to the contrary.

And thus ended the next day of the Conference deſired by the Lords, and had by a Committee of both Houſes.

Serjeant Aſhley's *Argument, ſeconding Mr.* Attorney, *in the behalf of his Majeſty.*

I Hope it will be neither offenſive nor tedious to your Lordſhips, if I ſaid ſomewhat to ſecond Mr. Attorney: which I the rather deſire, becauſe yeſterday it was taken by the Gentlemen, and argued on the behalf of the Commons, that the cauſe was as good as gained by them, and yielded by us, in that we acknowledged the Statute of *Magna Charta*, and the other ſubſequent Statutes to be yet in force: for on that they inforced this general concluſion:

That therefore no man could be committed, or impriſoned, but by due proceſs, preſentment or indictment.

Which we ſay is a *Non ſequitur* upon ſuch our acknowledgement; for then it would follow by neceſſary conſequence, that no impriſonment could be juſtified but by proceſs of law, which we utterly deny. For in the cauſe of the Conſtable cited by Mr. Attorney, it is moſt clear, that by the ancient law of the land a Conſtable might, *ex officio*, without any Warrant, arreſt and reſtrain a man to prevent an affray, or to ſuppreſs it. And ſo is the authority 38 *Hen.* VIII. *Brook's abſtract.* So may he, after the affray, apprehend and commit to priſon the perſon that hath wounded a man that is in peril of death, and that without warrant or proceſs; as it is in 38 *Edw.* III. *fol.* 6.

Alſo any man that is no Officer may apprehend a Felon without Writ, or Warrant, or purſue him as a Wolf, and as a common enemy to the Commonwealth, as the Book is 14 *Hen.* VIII. *fol.* 16. So might any one arreſt a Night-walker, becauſe it is for the common profit, as the reaſon is given 4 *Hen.* VII. *fol.* 7.

In like manner the Judges in theſe ſeveral Courts may commit a man, either for contempt, or miſdemeanor, without either Proceſs or Warrant, other than Take him Sheriff, or Take him Marſhal, or Warden of the *Fleet.* And the adverſaries will not deny, but if the King will alledge cauſe, he may commit a man *per mandatum* as the Judges do, without Proceſs or Warrant.

And various are the caſes that may be inſtanced, wherein there may be a lawful commitment without proceſs. Wherefore I do poſitively and with confidence affirm, that if the impriſonment be lawful, whether it be by proceſs, or without proceſs, it is not prohibited by the law.

Which being granted, then the queſtion will aptly be made, Whether the King or Council may commit to priſon *per legem terræ*, were only that a part of the Municipal Law of this Realm, which we call the Common-Law? For there are alſo divers juriſdictions in this Kingdom, which are alſo reckoned the law of the land.

As in *Cawdry's* caſe in *Coke's* 5th report, *fol.* 1. the firſt *Eccleſiaſtical* Law is held the law of the land, to puniſh Blaſphemies, Schiſms, Hereſies, Simony, Inceſt, and the like, for a good reaſon there rendered, *viz.* That otherwiſe the King ſhould not have power to do Juſtice to his Subjects in all caſes, nor to puniſh all crimes within his Kingdom.

The Admiral's juriſdiction is alſo *lex terræ*, or things done upon the Sea: but if they exceed their juriſdiction, a prohibition is awarded upon the Statute of *nullus liber homo*; by which appears that the Statute is in force, as we have acknowledged.

The Martial Law likewiſe, though not to be exerciſed in times of peace, when recourſe may be had to the King's Courts, yet in times of invaſion, or other times of Hoſtility, when an Army-Royal is in the field, and offences are committed, which require ſpeedy reformation, and cannot expect the ſolemnity of legal Trials; then ſuch impriſonment, execution, or other Juſtice done by the Law Martial is warrantable, for it is then the law of the land, and is *jus gentium*; which ever ſerves for a ſupply in the defect of the Common Law, when ordinary proceeding cannot be had.

And ſo it is alſo in the caſe of the Law of the Merchant, which is mentioned 13 *Edw.* IV. *fol.* 9, 10. where a Merchant-ſtranger was wronged in his goods, which he had committed to a Carrier to convey to *Southampton*, and the Carrier imbezzled ſome of the goods: for remedy whereof the Merchant ſued before the Council in the *Star-Chamber* for redreſs. It is there ſaid thus: Merchant-ſtrangers have by the King ſafe-conduct for coming into this Realm; therefore they ſhall not be compelled to attend the ordinary Trial of the Common Law, but, for expedition, ſhall ſue before the King's Council, or in Chancery, *de die in diem & de horâ in horam*; where the caſe ſhall be determined by the Law of Merchants.

In the like manner it is in the Law of State; when the neceſſity of State requires it, they do and may proceed to natural equity; as in thoſe other caſes where the law of the land provides not, there the proceeding may be by the law of natural equity: and infinite are the occurrences of State, unto which the Common Law extends not. And if theſe proceedings of State ſhould not alſo be accounted the law of the land, then we do fall into the ſame inconveniency mentioned in *Cawdry's* caſe, that the King ſhould not be able to do Juſtice in all caſes within his own Dominions.

If then the King nor his Council may not commit, it muſt needs follow, that either the King muſt have no Council of State, or having ſuch a Council, they muſt have no power to make Orders, or Acts of State; or if they may, they muſt be without means to compel obedience to thoſe Acts: and ſo we ſhall allow them juriſdiction, but not compel obedience to thoſe Acts; but not correction, which will be then as fruitleſs as the command. *Fruſtra potentia quæ nunquam redigitur in ſtatutum.* Whereas the very Act of *Weſtminſter* the firſt, ſhews plainly that the King may commit, and that his commitment is lawful, or elſe that Act would never have declared a man to be irrepleviable when he is committed by the command of the King, if the Law-makers had conceived that his commitment had been unlawful. And Divine Truth informs us, that the Kings have their power from God, the *Pſalmiſt* calling them *the Children of the Moſt High*; which is in a more ſpecial manner underſtood than of other men: for all the ſons of *Adam* are by election the ſons of God, and all the ſons of *Abraham* by recreation, or regeneration, the children of the Moſt High, in reſpect of the power which is committed unto them; who hath alſo furniſhed them with ornaments and arms fit for the exerciſing of that power, and hath given them Scepters, Swords, and Crowns; Scepters to inſtitute, and Swords to execute laws; and Crowns as Enſigns of that power and dignity, with which they are inveſted. Shall we then conceive that our King hath ſo far tranſmitted the power of his Sword to inferior Magiſtrates, that he hath not reſerved ſo much ſupreme power as to commit an offender to priſon? 10 *Hen.* VI. *fol.* 7. it appears that a Steward of a Court-Leet may commit a man to priſon, and ſhall not the King, from whom all inferior power is deduced, have power to commit? We call him the Fountain of Juſtice, yet when theſe ſtreams and rivulets, which flow from that fountain, come freſh and full, we would ſo far exhauſt that fountain, as to leave it dry. But they that will admit him ſo much power, do require the expreſſion of the cauſe; I demand whether they will have a general cauſe alledged, or a ſpecial? If general, as they have inſtances for Treaſon, Felony, or for Contempt, (for to leave fencing, and to ſpeak plainly as they intend it) *viz.* If Loan of money ſhould be required and refuſed, and thereupon a commitment enſue, and the cauſe ſignified to be for Contempt, this being unequal inconvenience from yielding, the remedy is ſought; in the next Parliament would be required the expreſſion of the particular cauſe of the commitment. Then how unfit would it be for King or Council in caſes to expreſs the particular cauſe, it's eaſily to be adjudged, when there is no State, or Policy of Government, whether it be Monarchical, or of any other frame, which have not ſome Secrets of State, not communicable to vulgar underſtanding.

I will inſtance but one; if a King imploy an Ambaſſador to a Foreign Country or State, with inſtructions for his Negotiation, and he purſue not his inſtructions, whereby diſhonour and damage may enſue to the Kingdom, is not this committable?

And yet the particular of his inſtruction, and the manner of his miſcarrying, is not fit to be declared to his Keeper, or by him to be certified to the Judges, where it is to be opened and debated in the preſence of a great audience.

I therefore conclude, for offences againſt the State, in caſe of State Government, the King and his Council have lawful power to puniſh by impriſonment, without ſhewing particular cauſe, where it may tend to the diſcloſing of State-Government. It is well known to many that know me, how much I have laboured in this law of the ſubjects liberty very many years before I was in the King's ſervice, and had no cauſe then to ſpeak, but to ſpeak *ex animo*; yet did I then maintain and publiſh the ſame opinion which now I have declared concerning the King's ſupreme power in matters of State, and therefore cannot juſtly be cenſured to ſpeak at this preſent only to merit of my Maſter. But if I may freely ſpeak my own underſtanding, I conceive it to be a queſtion too high to be determined by any legal direction; for it muſt needs be an hard caſe of contention, when the Conqueror muſt ſit down with irreparable loſſes, as in this caſe. If the Subject prevails, he gains liberty, but loſeth the benefit of that State-Government, by which a Monarchy may ſoon become an Anarchy; or if the State prevails, it gains abſolute Sovereignty, but loſeth Subjects: not their ſubjection, for obedience we muſt yield, tho' nothing be left us but prayers and tears, but yet loſeth the beſt part of them, which is their affections, whereby Sovereignty is eſtabliſhed, and the Crown firmly fixt on his royal head. Between two ſuch extremes there is no way to moderate, but to find a *medium* for the accommodation of the difference; which is not for me to preſcribe, but only to move your Lordſhips, to whom I ſubmit.

After Mr. Serjeant's ſpeech ended, my Lord-Preſident ſaid thus to the Gentlemen of the Houſe of Commons; That though at this free conference, liberty was given by the Lords to the King's Counſel to ſpeak what they thought fit for his Majeſty, *yet Mr. Serjeant* Aſhley *had no authority, or direction from them to ſpeak in that manner he had done.* And he was committed into cuſtody, and afterwards, being ſorry for any haſty expreſſion he might have uſed, was diſcharged.

The Objections of the King's Counſel, with the Anſwers made thereunto, at the two Conferences touching the ſame matter.

IT was agreed by the Attorney-General, Sir *Robert Heath*, that the ſeven Statutes urged by the Commons were in force, and that *Magna Charta* did extend moſt properly to the King. But he ſaid, 1. That ſome of them are in general words, and therefore conclude nothing, but are to be expounded by the precedents; and others that be more particular, are applied to the ſuggeſtions of ſubjects, and not to the King's command ſimply of itſelf. Hereunto it was anſwered, That the Statutes were as direct as could be, which appeareth by the reading of them; and that though ſome of them

ſpeak

ſpeak of ſuggeſtions of the ſubjects, yet others do not: and they that do, are as effectual, for that they are in equal reaſon, a commitment by the command of the King, being of as great force, when it moveth by a ſuggeſtion from a ſubject, as when the King taketh notice of it himſelf; the rather for that Kings ſeldom intermeddle with matters of this nature, but by information from ſome of their people.

2. Mr. Attorney objected, that *per legem terræ* in *Magna Charta* (which is the foundation of this queſtion) cannot be underſtood for proceſs of the law and original writs; for that in all criminal proceedings no original writ is uſed at all; but every Conſtable either for Felony or Breach of the Peace, or to prevent the Breach of the Peace, may commit without proceſs or original writ, and it were hard the King ſhould not have the power of a Conſtable. And the Statute cited by the Commons, makes proceſs of the law and writ original, to be all one.

The anſwer of the Commons to this objection was, that they do not intend original writs only by law of the land, but all other legal proceſs, which comprehends the whole proceedings of law upon cauſe, other than trial by Jury, *Judicium parium*, unto which it is oppoſed. Thus much is imported *ex vi termini* out of the word Proceſs; and by the true acceptation thereof in the Statutes that have been uſed by the Commons to maintain the declaration, and moſt eſpecially the Statutes of 25 *Ed.* III. *cap.* 4. where it appeareth that a man ought to be brought in to anſwer by the courſe of the law, having former mention of proceſs made by original writ.

And in 28 *Ed.* III. *cap.* 3. by the courſe of the law is rendered by due proceſs of the law. And 36 *Ed.* III. *Rot. Parliamenti*, *num.* 20. the petition of the Commons ſaith, that no man ought to be impriſoned by ſpecial command without indictment or other due proceſs to be made by the law. 37 *Ed.* III. *cap.* 18. calleth the ſame thing proceſs of the law; and 42 *Ed.* III. *cap.* 3. ſtileth it by due proceſs and writ original; where the conjunctive muſt be taken for a diſ-junctive, which change is ordinary in an expoſition of Statutes and Deeds, to avoid inconveniences, to make it ſtand with the reſt; and with reaſon, as it may be collected, by the law of the land in *Magna Charta*, by the courſe of the law in 25 *Ed.* III. by the due proceſs of law in 28 *Ed.* III. other due proceſs to be made by the law in 36 *Ed.* III. proceſs of the law in 37 *Ed.* III. and by due proceſs and writ original in 42 *Ed.* III. are meant one and the ſame thing; the latter of theſe Statutes referring always to the former, and that all of them import any due and regular proceedings of law upon a cauſe other than the Trial by Jury. And this appeareth 10 *Rep.* 74. in the caſe of the *Marſhalſea*, and 11 *Rep.* 99. *James Bagg*'s caſe, where it is underſtood of giving juriſdiction by Charter or Preſcription, which is the ground of a proceeding by courſe of law. And in *Selden*'s Notes on *Forteſcue*, *fol.* 29. where it is expounded for law-wager, which is likewiſe a Trial at law by the oath of the parties differing from that by Jury. And it doth truly comprehend theſe and all other regular proceedings in law upon cauſe, which gives authority to the Conſtable to arreſt upon cauſe. And if this be not the true expoſition of theſe words *per legem terræ*, the King's Counſel were deſired to declare their meaning, which they never offered to do; and yet certainly theſe words were not put into the Statute without ſome intention of conſequence.

And thereupon Mr. Serjeant *Aſhley* offered an interpretation of them thus: namely, That there were divers laws of this Realm, as the Common Law, the Law of the Chancery, the Eccleſiaſtical Law, the Law of the Admiralty or Marine Law, the Law of Merchants, the Martial Law, and the Law of State; and that theſe words *per legem terræ* do extend to all theſe Laws.

To this it was anſwered, that we read of no law of State, and that none of theſe Laws can be meant there, ſave the Common Law, which is the principal and general law, and is always underſtood by way of excellency, when mention is made of the law of the land generally: and that though each of the other laws, which are admitted into this Kingdom by Cuſtom or Act of Parliament, may juſtly be called *a* law of the land, yet none of them can have the preheminence to be ſtiled *the* law of the land. And no Statute, Law-Book, or other Authority, printed or unprinted could be ſhewn, to prove that the law of the land, being generally mentioned, was ever intended of any other than the Common Law; and yet even by theſe other laws, a man may not be committed without a cauſe expreſſed.

But it ſtandeth with the rule of other legal expoſitions, that *per legem terræ* muſt be meant the Common Law, which is the general and univerſal Law by which men hold their Inheritances; and therefore if a man ſpeak of eſcuage generally, it is underſtood, as *Littleton* obſerveth, *Sect.* 99. of the incertain eſcuage, which is a Knight's ſervice tenure, for the defence of the Realm, by the body of the tenant in time of war, and not of certain eſcuage, which giveth only a contribution in money, and no perſonal ſervice.

And if a Statute ſpeak of the King's Courts of Record, it is meant only of the four at *Weſtminſter* by way of excellency, *Coke*'s 6. *Rep.* 20. *Gregory*'s caſe. So the Canoniſts by the Excommunication ſimply ſpoken, do intend the greater Excommunication. And the Emperor in his Inſtitutions ſaith, that the Civil Law being ſpoken generally, is meant of the Civil Law of *Rom*, though the Law of every City is a Civil Law; as when a man names the Poet, the *Grecians* underſtand *Homer*, the *Latiniſts Virgil*.

2. Admit *per legem terræ* extend to all the laws of the land, yet a man muſt not be committed by any of them, but by the due proceedings that are executed by thoſe laws, and upon a cauſe declared.

Again, it was urged, That the King was not bound to expreſs a cauſe of impriſonment, becauſe there may be in it matter of State, not fit to be revealed for a time, leſt the confederates thereupon make means to eſcape the hands of Juſtice. And therefore the Statutes cannot be intended to reſtrain all commitments, unleſs a cauſe be expreſſed; for that it would be very inconvenient and dangerous to the State, to publiſh the cauſe at the very firſt.

Hereunto it was replied by the Commons, That all danger and inconvenience may be avoided by declaring a general cauſe, as for Treaſon, Suſpicion of Treaſon, Miſpriſion of Treaſon, or Felony, without ſpecifying the particular; which can give no greater light to a confederate, than will be conjectured by the very apprehenſion upon the impriſonment, if nothing at all were expreſſed.

It was further alledged, That there was a kind of contradiction in the poſition of the Commons, when they ſay, a party committed without a cauſe ſhewed, ought to be delivered or bailed; bailing being a kind of impriſonment; delivery, a total freeing.

To this it hath been anſwered, that it hath always been the diſcretion of the Judges, to give ſo much reſpect to a commitment by the command of the King, or the Privy-Council, (which are ever intended to be done in juſt and weighty cauſes) that they will not preſently ſet them free, but bail them to anſwer what ſhall be objected againſt them on his Majeſty's behalf; but if any other inferiour Officer do commit a man without ſhewing cauſe, they do inſtantly deliver him, as having no cauſe to expect their leiſure. So the delivery is applied to an impriſonment by the command of ſome mean Miniſter of Juſtice; bailing, when it is done by the command of the King or his Council.

It was argued by Mr. Attorney, that bailing was a grace and favour of a Court of Juſtice, and that they may refuſe to do it.

This was agreed to be true in divers caſes; as where the cauſe appears to be for Felony, or other crimes expreſſed, for that there is another way to diſcharge them in ſome convenient time by their Trial; and yet in theſe caſes, the conſtant practice hath been anciently and modernly to bail men: but where no cauſe of the impriſonment is returned, but the command of the King, there is no way to deliver ſuch perſon by Trial or otherwiſe, but that of the *Habeas Corpus*. And if they ſhould be then remanded, they might be perpetually impriſoned, without any remedy at all; and conſequently a man that had committed no offence, might be in a worſe caſe than a great offender; for the latter ſhould have an ordinary Trial to diſcharge him, the other ſhould never be delivered.

It was further ſaid, that though the Statute of *Weſtminſter* 1. *cap.* 15. be a Statute which by way of proviſion did extend only to the Sheriff, yet the recital of that Statute touching the four caſes, wherein a man was not repleviable at the Common Law, namely, thoſe that were committed for the death of a man, by the command of the King, or of his Juſtices, or for the Foreſt; did declare that the Juſtices could not bail ſuch a one, and that repleviable and bailable were ſynonimous or all one: and that *Stamford*, a Judge of great authority, doth expound it accordingly (*Stam. pl. Cor.* 72.) and that neither the Statute nor he ſay repleviable by the Sheriff, but generally without reſtraint; and that if the Chief Juſtice commits a man, he is not to be inlarged by any other Court, as appeareth in the *Regiſter*.

To this it was anſwered, 1. That the recital of the body of the Statute, relateth to the Sheriff only, as appeareth by the very words. 2. That repleviable is to the Sheriff, for that the word imports no more; but a man committed by the Chief Juſtice, is bailable by the Court of *King's-Bench*. 3. That *Stamford* meaneth all of the Sheriff, or at leaſt he hath not ſufficiently expreſſed that he intended the Juſtices. 4. It was denied that repleviable and bailable were the ſame, for they differ in reſpect of the place where they are uſed, bail being in the King's Court of Record, repleviable before the Sheriff; and they are of ſeveral natures, repleviable being a letting at large upon ſureties, bailing being when one *traditur in ballium*, the bail are his Gaolers, and may impriſon him, and ſhall ſuffer body for body; which is not true of replevying by ſureties: and bail differeth from mainprize in this, that mainprize is an undertaking in a ſum certain, bailing is to anſwer the condemnation in civil cauſes, and in criminal, body for body.

The reaſons and authorities in the firſt conference were then renewed, and no exceptions taken to any, ſave that in 22 *Hen.* VI. it doth not appear that the command of the King was by his mouth, which muſt be intended, or by his Council, which is all one, as is obſerved by *Stamford*; for the two words are, that a man is not repleviable by the Sheriff, who is committed by the Writ or the commandment of the King.

21 *Ed.* I. *Rot.* 2, *dorſ.* was cited by the King's Counſel; but it was anſwered, that it concerned the Sheriff of *Leiceſterſhire* only, and not the power of the Judges. 33 *Hen.* VI. the King's Attorney confeſſed, was nothing to the purpoſe; and yet that Book hath been uſually cited by thoſe that maintain the contrary to the declaration of the Commons. And therefore ſuch ſudden opinions as have been given thereupon, are not to be regarded, the foundation failing.

And where it was ſaid that the *French* of 36 *Ed.* III. *Rot. Parliamenti*, *num.* 9. which can receive no anſwer, did not warrant what was inferred thence; but that theſe words, *ſans diſturbance mettre, ou arreſt faire, & le contre per ſpecial mandement ou en autre maniere*, muſt be underſtood, that the Statutes ſhould be put in execution, without putting diſturbance, or making arreſt to the contrary by ſpecial command or in other manner; the Commons did utterly deny the interpretation given by the King's Counſel: and to juſtify their own did appeal to all men that underſtood *French*. And upon the ſeven Statutes did conclude, that their declaration remained an undoubted truth, not controlled by any thing ſaid to the contrary.

[*The Proceedings againſt the Earl of* Suffolk, 14 April, 1628 *.

MR. *Kerton* acquainted the Houſe, that the Earl of *Suffolk* had ſaid to ſome Gentlemen, *That Mr.* Selden *had razed a Record, and deſerved to be hanged, for going about to ſet diviſion betwixt the King and his Subjects*. And being demanded to whom the words were ſpoken, he was unwilling to name any, till upon the queſtion it was reſolved he ſhould nominate him. He then named Sir *John Strangways*; who was unwilling to ſpeak what he had heard from the Earl: but being commanded by the Houſe, and reſolved upon the queſtion, he confeſſed,

That upon *Saturday* laſt, he being in the Committee-Chamber of the Lords, the Earl of *Suffolk* called to him, and ſaid, *Sir* John, *will you not hang* Selden? To whom he ſaid, For what? The Earl replied, *By God he hath razed a Record, and deſerves to be hanged* †.

This the Houſe of Commons took as a great injury done to the whole Houſe, Mr. *Selden* being employed by them in the Conference with the Lords in the great cauſe concerning the Liberty of the perſons of the ſubjects.

The

* This was *Theophilus* Earl of *Suffolk*, Son to *James* Earl of *Suffolk*, Lord-Treaſurer, *Temp. Jac.* I.

† Mr. *Selden.*] I am called up to juſtify myſelf. I ſee the words charge me to have razed Records. I hope no man believes I ever did it. I cannot gueſs what this Lord means. I did deliver in whole Copies of divers Records examined by myſelf, and divers other Gentlemen of this Houſe. Theſe I delivered in to the Lords Houſe; and the Clerk of the Crown brought in the Records of the Office before the Lords: I deſire that there may be a meſſage from this Houſe to the Lords, to make at the Bar there a Charge againſt the Lord that ſpoke thus; and I hope we ſhall have Juſtice. *Ex MSS. Pymmii in* Selden's *Life, in his Works*, Vol. p. 16.

The House presently sent Sir *Robert Phillips* with a message to the Lords to this effect; he expressed the great care the Commons had upon all occasions to maintain all mutual respect and correspondency betwixt both Houses: then he informed them of a great injury done by the Earl of *Suffolk* to the whole House, and to Mr. *Selden*, a particular Member thereof, who by their command had been employed in the late conference with their Lordships: that the House was very sensible thereof, and according to former precedents, made them truly acquainted with it, and demanded Justice against the Earl of *Suffolk*. He read the words, saying they were spoken to Sir *John Strangways*, a Member of their House.

After a short stay, the Lords called for the Messenger, to whom the Lord-Keeper gave this answer; he signified the great desire and care of their Lordships to maintain and increase the correspondencies betwixt both Houses, and as a testimony thereof they had partly taken into consideration the charge: that the Earl of *Suffolk*, being a man of great place and honour, had voluntarily protested upon his Honour and Soul, that there passed no such words as those from him to Sir *John Strangways*: and the Lord-Keeper wished that their Lordships speedy proceedings in this business might testify their love and good-will to the Commons House.

The next day, being the 15th of *April*, Sir *John Strangways* made a protestation openly in the House, wherein he avowed that (notwithstanding the Earl's denial) he did speak those words positively unto him, and would maintain it any way fitting a Member of that House, or a Gentleman of Honour.

They ordered that this protestation should be entered into the Journal-book, and that a Committee should take into consideration what was fit for the House to proceed to, for the justification of Sir *John Strangways*, and what was fitting to be done in this case, and to examine witnesses of the proof the words.

Upon the 17th day Sir *John Elliot* reported what the Committee had done; That they had sent for and examined Sir *Christopher Nevil*; who related, that upon *Saturday* being in the Lords Committee-Chamber, the Earl of *Suffolk* said thus to him: Mr. Attorney hath cleared the business, and hath made the cause plain on the King's side; and further said, Mr. *Selden* hath razed a Record, and hath deserved to be hanged, and the Lower House should do well to join with the higher in a petition to the King to hang him; and added as a reason, for Mr. *Selden* went about, and took a course to divide the King from his people, or words to that effect. And being asked, whether he conceived that those words of dividing the King from his people, had relation to the whole and general action of Mr. *Selden* before the Lords, or to the particular of razing a record? He conceived they were referred to the general action.

They had examined one Mr. *Littleton*, who confessed he heard the Earl of *Suffolk* speak to a Gentleman, whom he knew not, words to this effect, *viz.* That he would not be in Mr. *Selden*'s coat for 10,000*l.* and that Mr. *Selden* deserved to be hanged.

The second part of this report concerned the particular of Sir *John Strangways*, wherein though the Committee found no witness to prove the words spoken to Sir *John Strangways*, yet there were many circumstances which persuaded them of the truth thereof.

1. That the same words in the same syllables were spoken to Sir *Christopher Nevil*, and that the Earl as he called to him Sir *John Strangways*, so he called to him Sir *Christopher Nevil*.

2. That the Earl of *Suffolk* called Sir *John Strangways* to him, and spake to him, was proved by Sir *George Fane*, and Sir *Alexander St. John*, at which time the Earl seemed full of that which he delivered.

3. That Sir *John Strangways* instantly after his discourse with the Earl of *Suffolk* went to the Earl of *Hertford*, and delivered him the passages betwixt them, being the same related in the House.

4. From the unwillingness of Sir *John Strangways*, though called upon by the House, to testify against the Earl, till it was resolved by question he should do it: from a probability, that had not these words been spoken to himself, it is like he would have produced Sir *Christopher Nevil*, from whom he also heard the same.

5. From the worth of the Gentleman, and his ingenuous protestation in the House, That he was ready to justify the truth of what he said in any course the House should think meet, or was fit for a Gentleman of Honour.

Hereupon the House resolved upon the Question;

1. That the Earl of *Suffolk*, notwithstanding his denial, had laid a most unjust and scandalous imputation upon Mr. *Selden*, a Member of the House, being imployed in the service of the House, and therein upon the whole House of Commons.

2. That this House, upon due examination, is fully satisfied that Sir *John Strangways* (notwithstanding the Earl of *Suffolk*'s denial) hath affirmed nothing but what is most true and certain.

3. That these particulars and additions be again presented to the Lords, and the Earl of *Suffolk* be newly charged at the bar, and the Lords desired to proceed in Justice against the Earl, and to inflict such punishment upon him as an offence of so high a nature, being against the House of Commons, doth deserve.

Sir *John Elliot* was sent with a message to the Lords; who after a while returned this answer, That they had taken the message into consideration, and would further take it into due consultation, and in convenient time would return an answer by Messengers of their own. *But what was done in this affair does not appear.*

MR. *Noye*, on the 16th of *April*, offered an answer to the inconveniencies presented by Mr. Attorney, which were four in number.

First, where it was objected, that it was inconvenient to express the cause, for fear of divulging the *Arcana imperii*, for hereby all may be discovered, and abundance of Traitors never brought to Justice:

To this that learned man answered,

That the Judges by the intention of the Law are the King's Counsel, and the secrets may safely be committed to all or some of them, who might advise whether they will bail him: and here is no danger to King, or subjects; for their oath will not permit them to reveal the secrets of the King, nor yet to detain the subject long, if by law he be to be bailed.

Secondly, For that objection of the children of *Odonell*, he laid this for a ground, that the King can do no wrong; but in cases of extreme necessity, we must yield sometimes for the preservation of the State, *ubi unius damnum utilitate publica rependitur*: he said there was no trust in the children of Traitors, no wrong done if they did *tabefacere*, or *marcescere in carcere*. It is the same case of necessity, as when to avoid the burning of a Town, we are forced to pull down an honest man's house, or to compel a man to dwell by the sea-side for defence or fortitude. Yet the King can do no wrong, for *potentia juris est non injuria: Ergo* the Act of the King, tho' to the wrong of another, is by the Law made no wrong; as if he commanded a person to be kept in prison, yet he is responsible for his wrong: he quoted a book, 42. 6. *Ass. Port.*

Thirdly, The instance made of *Westminst.* first, he said there was a great difference between those three, Mainprise, Bail, and Replevin. The Statute says, a man cannot be replevied: *Ergo*, not bailed *non sequitur*. Mainprise is under pain; Bail is body for body: but no pain is ever in Court to be declared, unless the party appears. Replevin is neither by surety nor bail; and Replevin is never in Court.

Fourthly, Where it is said that Bail is *ex gratia*, he answers, That if the prisoner comes to *Habeas Corpus*, then it is not *ex gratia*, yet the Court may advise, but mark the words *ad subjiciendum & recipiendum prout curia consideraverit*. Now it is impossible the Judges should do so, if no cause be expressed; for if they know no cause, he may bring the first, second, third, and fourth *Habeas Corpus*, and so infinite till he find himself a perpetual prisoner: so that no cause expressed, is worse for a man than the greatest cause or villainy that can be imagined. And thus far proceeded that learned Gentleman.

MR. *Glanvile* said, That by favour of the House of Commons he had liberty to speak, if opportunity were offered. He applied his answer to one particular of Mr. Attorney, who assigned to the King four great trusts: 1. War, 2. Coins, 3. Denizens, 4. Pardons; it is assented to, that the King is trusted with all these four legal Prerogatives, but the argument followeth not, the King is trusted with many Prerogatives: *Ergo*, in this *non sequitur non est sufficiens enumeratio partium*. He said he could answer these particulars with two rules, whereof the first should wipe off the first and the second; and the other, the third and fourth.

The first rule is this: there is no fear of trusting the King with any thing, but the fear of ill Counsel: the King may easily there be trusted, where ill Counsel doth not engage both the King and subjects, as it doth in matter of War and Coin. If he miscarry in the Wars, it is not always *plectuntur Archivi*, but he smarts equally with the people; if he abase his Coin, he loseth more than any of his people; *Ergo*, he may safely be trusted with the flowers of the Crown, War and Coin.

The second rule he began was this, When the King is trusted to confer grace, it is one thing; but when he is trusted to infer an injury, it is another matter. The former power cannot, by miscounselling, be brought to prejudice another, the latter may; if the King pardoneth a guilty man, he punisheth not a good subject; if he denizen never so many strangers, it is but *damnum sine injuria*: we allow him a liberty to confer grace, but not without cause to infer punishment; and indeed he cannot do injury; for if he command to do a man wrong, the command is void, *& actor fit author*, and the actor becomes the wrong doer. Therefore the King may safely be trusted with War, Coin, Denizens, and Pardons, but not with a power to imprison without expression of cause, or limitation of time; as the Poet tells us, because *Libertas potius auro*.

After these Debates, the House of Peers called upon the Judges to answer the Charge of the House of Commons, for their Judgment on the *Habeas Corpus*, brought in *Mich.* Term by the Gentlemen imprisoned for refusing to subscribe to the *Loan*.

The Answer of the Judges for Matter of Fact upon the Habeas Corpus, 21 April.

THE Chief-Justice saith, They are prepared to obey our command, but they desire to be advised by us, whether they being sworn upon penalty of forfeiting Body, Lands, and Goods, into the King's hands to give an account to him, may without Warrant do this.

The Duke said, He had acquainted the King with the business, and for aught he knew he is well content therewith; but for better assurance, he hath sent his brother of *Anglesey* to know his pleasure.

Devonshire. If a complaint be made by a mean man against the greatest Officer in this place, he is to give an account of his doings to this House.

Bishop of *Lincoln.* This motion proceeded from him, and so took it for clear, that there was an appeal from the Chancery to a higher Court than the King's-Bench, and that Court hath ever given an account of their doings.

The Lord *Say.* He wondered there should be any question made of this business, because in his opinion this being the highest Court, did admit of no appeal.

The President. The Judges did not do this by way of appeal, but as the most common way for them, this being a matter concerning the King's Prerogative.

Lord *Say.* If they will not declare themselves, we must take into consideration the point of our privilege.

The Duke. This was not done by the Judges, as fearing to answer, but respect to the King. And now his brother was come with answer from the King, that they might proceed.

Order was taken that this passage should not be entered into the Journal-Book.

And so Judge WHITLOCK *spake.*

MY Lords, we are by your appointment here ready to clear any aspersion of the House of Commons in their late presentment upon the King's-Bench, that the Subject was wounded in this judgment there lately given. If such a thing were, my Lords, your Lordships, not they, have the power to question and judge the same. But, my Lords, I say there was no judgment given, whereby either the Prerogative might be enlarged, or the Right of the Subject trenched upon. It is true, my Lords, in *Michaelmas* Term last, four Gentlemen petitioned for an *Habeas Corpus*, which they obtained, and Counsel was assigned unto them; the return was *per speciale mandatum Domini Regis*, which likewise was made unto us under the hands of eighteen Privy Councillors. Now, my Lords, if we had delivered them presently upon this, it

muſt have been, becauſe the King did not ſhew the cauſe, wherein we ſhould have judged the King had done wrong; and this is beyond our knowledge, for he might have committed them for other matters than we could have imagined. But they might ſay, thus they might have been kept in priſon all their days; I anſwer no, but we did remit them, that we might better adviſe of the matter: and they the next day might have had a new Writ, if they had pleaſed. But they ſay, we ought not to have denied bail. I anſwer, if we had done ſo, it muſt needs have reflected upon the King, that he had unjuſtly impriſoned them. And it appears in *Dyer*, 2 *Eliz.* that divers Gentlemen being committed, and requiring *Habeas Corpus*, ſome were bailed, others remitted: whereby it appears, much is left to the diſcretion of the Judges.

For that which troubled ſo much, *remittitur quouſque*, this, my Lords, was only (as I ſaid before) to take time what to do; and whereas they will have a difference betwixt *remittitur* and *remittitur quouſque*, my Lords, I confeſs I can find none; but theſe are new inventions to trouble old Records. And herein, my Lords, we have dealt with knowledge and underſtanding; for had we given a Judgment, the party muſt thereupon have reſted. Every Judgment muſt come to an iſſue in matter of fact, or demur in point of Law; here is neither, therefore no Judgment.

As to endeavouring to have a Judgment entered; it is true, Mr. Attorney preſſed the ſame for his Maſter's ſervice; but we being ſworn to do right betwixt the King and his Subjects, commanded the Clerk to make no entry, but according to the old form; and the rule was given by the Chief-Juſtice alone. I have ſpent my time in this Court, and I ſpeak confidently, I did never ſee nor know by any Record, that upon ſuch a return as this, a man was bailed, the King not firſt conſulted with in ſuch a caſe as this.

The Commons Houſe do not know what letters and commands we received, for theſe remain in our Court, and were not viewed by them: for the reſt of the matters preſented by the Houſe of Commons, they were not in agitation before us, whether the King may commit, and how long he may detain a man committed. Therefore having anſwered ſo much as concerneth us, I deſire your Lordſhips good conſtructions of what hath been ſaid.

JUDGE *Jones* ſaid, he was here to deliver before us, what Judgment was given before them concerning the *Habeas Corpus:* he anſwered, No judgment was given, and the matter of fact was ſuch as my brother delivered unto you yeſterday. Theſe four Gentlemen were committed to the Fleet, Gate-houſe, and Marſhal of the Houſhold. Four returns were made upon the Writs, and every one of them had a Counſellor appointed, who had copies of the returns. A rule was granted, their Council heard, and exception taken to the return, becauſe it did not ſhew cauſe of their caption.

Theſe were of no force, in the opinion of the Judges. The next exception was, becauſe no cauſe of their commitment was ſhewed, which the Judges held to be all one in point of Law. Then, my Lords, they alledged many Precedents and Statutes of themſelves, which the King's Attorney anſwered, That perſons committed by the King, or Counſel, were never bailed, but his pleaſure was firſt known.

We agreed at the Chamber of the Chief-Juſtice, that all the Statutes alledged are in force; but whether we ſhould bail them or no, was the queſtion, therefore we remitted them *quouſque*. After which Mr. Attorney required a Judgment might be entered: I commanded the Clerk, he ſhould not ſuffer any ſuch thing to be done, becauſe we would be better adviſed.

But ſome will ſay, our Act is otherwiſe: I anſwer, No; for we have done no more than we do upon an ordinary Writ, when we purpoſe to be better adviſed, and that was only an interlocutory order. But, my Lords, put the caſe a *Habeas Corpus* ſhould be granted for one that is committed by the Houſe of Commons, would they (think you) take it well he ſhould be bailed at his firſt coming to the Court? I think they would not, and I think the King would have done ſo in this caſe. Now, my Lords, there is a petition of Right, and a petition of Grace: to be bailed, is a matter of Grace; therefore if a man be brought upon an *Habeas Corpus*, and not bailed, he cannot ſay the Court hath done him any wrong. I have now ſerved ſeven years a Judge in this Court, and my conſcience beareth me witneſs, that I have not wronged the ſame; I have been thought ſometimes too forward for the Liberty of the Subject. I am myſelf *Liber Homo*, my Anceſtors gave their voice for *Magna Charta*. I enjoy that Houſe ſtill, which they did; I do not now mean to draw God's wrath upon my poſterity; and therefore I will neither advance the King's Prerogative, nor leſſen the Liberty of the Subject, to the danger of either King or People. This is my profeſſion before God and your Lordſhips.

JUDGE *Dodderidge* ſaid, It is no more fit for a Judge to decline to give an account of his Doings, than for a Chriſtian of his Faith. God knoweth, I have endeavoured always to keep a good conſcience; for a troubled one, who can bear? The Kingdom holds of none but God, and Judgments do not paſs privately in Chambers, but publickly in Court, where every one may hear, which cauſeth Judgment to be given with maturity. Your Lordſhips have heard the particulars delivered by my Brethren, how that Counſel being aſſigned to thoſe four Gentlemen, in the latter end of *Michaelmas* Term their cauſe received hearing; and upon conſideration of the Statutes and Records, we found ſome of them to be according to the good old Law of *Magna Charta:* but we thought, that they did not come ſo cloſe to this caſe, as that bail ſhould be thereupon preſently granted. My Lords, the *Habeas Corpus* conſiſts of three parts, the Writ, the Return upon the Writ or Schedule, and the Entry or Rule reciting the *Habeas Corpus*; and the Return, together with the opinion of the Court, either a *remittitur*, or *traditur in Ballium*. In this caſe a *remittitur* was granted, which we did, that we might take better adviſement upon the caſe, and upon the *remittitur* (my Lords) they might have had a new Writ the next day; and I wiſh they had, becauſe it may be they had ſeen more, and we had been eaſed of a great labour. And, my Lords, when the Attorney, upon the *remittitur*, preſſed an entry, we all ſtraitly charged the Clerk that he ſhould make no other entry than ſuch as our Predeceſſors had uſually made in like caſes: for the difference (my Lords) betwixt *remittitur* and *remittitur quouſque*, I could never yet find any. I have now ſat in this Court fifteen years, and I ſhould know ſomething; ſurely, if I had gone in a mill ſo long, ſome duſt would cleave to my cloaths. I am old, and have one foot in the grave, therefore I will look to the better part, as near as I can. But *omnia habere in memoria, & in nullo errare, divinum potius eſt quam humanum.*

THE Lord-Chief-Juſtice, Sir *Nicholas Hyde*, ſaid, He ſhould not ſpeak with confidence, unleſs he might ſtand right in the opinion of the Houſe; and proteſted what he ſpake the day before, was not ſaid by him with any purpoſe to trench upon the Privileges of this Houſe, but out of that reſpect which by his place he thought he owed to the King. He ſaid, concerning the point he was to ſpeak of, that he would not trouble the Lords with things formerly repeated, wherein he concurred with his Brethren. He ſaid, if it were true the King might not commit, they had done wrong in not partly delivering; for, my Lords (ſaith he), theſe Statutes and good Laws being all in force, we meant not to trench upon any of them; moſt of them being Commentaries upon *Magna Charta:* but I know not any Statute that goeth ſo far, that the King may not commit. Therefore juſtly we think, we delivered the interpretation thereof to that purpoſe: for, my Lords, *Lex terræ* is not to be found in this Statute, they gave me no example, neither was there any cauſe ſhewed in the Return. A precedent (my Lords) that hath run in a ſtorm, doth not much direct us in point of Law, and Records are the beſt Teſtimonies. Thoſe precedents they brought being read, we ſhewed them wherein they were miſtaken; if we have erred, *erramus cum patribus*, and they can ſhew no precedent, but that our Predeceſſors have done as we have done, ſometimes bailing, ſometimes remitting, ſometimes diſcharging. Yet we do never bail any committed by the King, or his Council, till his pleaſure be firſt known. Thus did the Lord-Chief-Juſtice *Coke* in *Rayner*'s caſe. They ſay, this would have been done if the King had not written; but why then was the letter read and publiſhed, and kept; and why was the Town-Clerk ſent carefully to enquire (becauſe the letter ſo directed) whether theſe men offered for bail were Subſidy Men? The letter ſheweth alſo, that *Beckwith* was committed for ſuſpicion of being acquainted with the Gunpowder-Treaſon; but no proof being produced, the King left him to be bailed.

*The Earl * of* WARWICK's *Speech*, 21 April, 1628.

MY Lords, I will obſerve ſomething out of the law wherein this Liberty of the Subject's Perſon is founded, and ſome things out of precedents which have been alledged. For the law of *Magna Charta*, and the reſt concerning theſe points, they are acknowledged by all to be of force; and that they were to ſecure the ſubjects from wrongful impriſonment, as well, or rather more concerning the King, than the ſubject. Why then, beſides the grand Charter, and thoſe ſix other Acts of Parliament, in the very point, we know that *Magna Charta* hath been at leaſt thirty times confirmed; ſo that upon the matter we have ſix or ſeven-and-thirty Acts of Parliament to confirm this Liberty, although it was made matter of deriſion the other day in this Houſe.

One is that of 36 *E.* III. N°. 9. and another in the ſame year, N°. 20. not printed, but yet as good as thoſe that are; and that of 42 *E.* III. *cap.* 3. ſo expreſs in the point, eſpecially the Petition of the Commons that year; which was read by Mr. *Littleton* with the King's anſwer ſo full, and free from all exception, to which I refer your Lordſhips, that I know not how any thing in the world can be more plain. And therefore, if in Parliament ye ſhould make any doubt of that which is ſo fully confirmed in Parliament, and in a caſe ſo clear go about by new gloſſes to alter the old and good Law, we ſhall not only forſake the ſteps of our Anceſtors, who in caſes of ſmall importance would anſwer, *nolumus mutare leges Angliæ*; but we ſhall yield up and betray our Right in the greateſt inheritance the ſubjects of *England* have, and that is the Laws of *England*. And truly I wonder how any man can admit of ſuch a gloſs upon the plain Text, as ſhould overthrow the force of the Law; for whereas the Law of *Magna Charta* is, that no Freeman ſhall be impriſoned but by lawful Judgment of his Peers, or the Law of the Land; therefore that the King hath power to commit without cauſe, is a ſenſe not only expreſsly contrary to other Acts of Parliament, and thoſe eſpecially formerly cited, but againſt common ſenſe. For Mr. Attorney confeſſeth this Law concerns the King; why then, where the Law ſaith the King ſhall not commit, but by the Law of the Land, the meaning muſt be, as Mr. Attorney would have it, that the King muſt not commit but at his own pleaſure. And ſhall we think that our Anceſtors were ſo fooliſh, to hazard their perſons and eſtates, and labour ſo much to get a Law, and to have it thirty times confirmed, that the King might not commit his Subjects but at his own pleaſure? And if he did commit any of his Subjects without a cauſe ſhewn, then he muſt lie during pleaſure, than which nothing can be imagined more ridiculous, and contrary to true reaſon.

For the precedents, I obſerve, that there hath been many ſhewn, by which it appears to me evidently, that ſuch as have been committed by the King's Council, they have been delivered upon *Habeas Corpus*, and that conſtantly. It is true, that ſome precedents were brought on the King's part, that when ſome of theſe perſons deſired to be delivered by *Habeas Corpus*, the King, or his Council ſignified his Majeſty's pleaſure that they ſhould be delivered, or the King's Attorney hath come into the Court, and related the King's command: but this ſeems to make for the Subject; for it being in his Majeſty's power to deliver them, who by his ſpecial command were impriſoned, may not we well think, that his Majeſty would rather at that time have ſtayed their deliverance by Law, than furthered it with his letters; and made the priſoners rather beholden to him for his grace and mercy, than to the Judges for Juſtice, had not his Majeſty known that at that time they ought to have been delivered by Law? I think no man would imagine a wiſe King would have ſuffered his Grace and Prerogative (if any ſuch Prerogative were) to be ſo continually queſtioned; and his Majeſty and his Council ſo far from commanding the Judges not to proceed to deliver the priſoner by them committed,

* This was *Robert* Earl of *Warwick*, afterwards Admiral for the Long Parliament.

without cauſe ſhewn, as that on the other ſide, which is all the force of theſe precedents, the King and the Council ſignified to the Judges, that they ſhould proceed to deliver the parties. Certainly if the King had challenged any ſuch Prerogative, that a perſon committed, without any cauſe ſhewn, ought not to be delivered by the Judges without his conſent, it would have appeared, by one precedent or other amongſt all that have been produced, that his Majeſty would have made ſome claim to ſuch a Prerogative. But it appears to the contrary, that, in many of theſe caſes, the King or his Council did never interpoſe; and where they did, it was always in affirmation and encouragement to that Court to proceed. And beſides, the writing of letters from his Majeſty to the Judges to do Juſtice to his Majeſty's Subjects, may with as good reaſon be interpreted, that without thoſe Letters they might not do Juſtice: alſo the King ſignified his willingneſs, that ſuch and ſuch perſons, which were committed by him, ſhould be delivered; therefore they could not be delivered without it, which is a ſtrange reaſon. So that finding the Laws ſo full, ſo many, and ſo plain in the point, and finding, that whenever any were committed, without cauſe ſhewn, and brought their *Habeas Corpus*, they were delivered, and no command ever given to the contrary, or claim made on the King's part to any ſuch Prerogative: I may ſafely conclude, as the Houſe of Commons have done; and if any one precedent or two of late can be ſhewn, that the Judges have not delivered the priſoners ſo committed, I think it is their fault, and to be inquired of. But contrary, it ſeems to me to be an undoubted Liberty of the Subject, that if he be committed without cauſe, or without cauſe ſhewn, yet he may have ſome ſpeedy courſe to bring himſelf to trial, either to juſtify his own innocency, or to receive puniſhment according to his fault: for God forbid, that an innocent man, by the Laws of *England*, ſhould be put in worſe caſe than the moſt grievous malefactors are; which muſt needs be, if this ſhould be, that if a cauſe be ſhewed, he may have his trial; but if none, he muſt lie and pine in priſon during pleaſure. Mr. Serjeant *Aſhley*, the other day, told your Lordſhips of the Emblem of a King, but by his leave made wrong uſe of it. For a King bears in one hand the Globe, and in the other the golden Scepter, the types of Sovereignty and Mercy, but the Sword of Juſtice is ever carried before him by a Miniſter of Juſtice; which ſhews, Subjects may have their remedies for injuſtice done, and appeals to higher powers: for the Laws of *England* are ſo favourable to their Princes, as they can do no Injuſtice.

Therefore I will conclude, as all diſputes I hold do, *Magna eſt veritas & prævalebit*; ſo I make no doubt, we living under ſo good a Prince as we do, when this is repreſented unto him, he will anſwer us, *Magna eſt Charta & prævalebit.*

From this time to the 25th of the ſame month, the Houſe of Commons in a grand Committee ſpent moſt of their time in debate about Martial Law, and part thereof in giving the Lords a meeting at two conferences, concerning their reſolves, in order to a Petition of Right, tranſmitted by the Commons to their Lordſhips.

Friday, 25th *of* April, 1628, *the Lords had a conference with the Commons, where the Lord Archbiſhop of* Canterbury, *(Dr.* George Abbot*) ſpake as follows:*

Gentlemen of the Houſe of Commons,

THE ſervice of the King and ſafety of the Kingdom do call on us my Lords, to give all convenient expedition, to diſpatch ſome of theſe great and weighty buſineſſes before us. For the better effecting whereof, my Lords have thought fit to let you know, that they do in general agree with you, and doubt not, but you will agree with us, to the beſt of your power, to maintain and ſupport the fundamental Laws of the Kingdom, and the fundamental Liberties of the Subject: for the particulars which may hereafter fall in debate, they have given me in charge to let you know, That what hath been preſented by you unto their Lordſhips, they have laid nothing of it by, they are not out of love with any thing that you have tendered unto them; they have voted nothing, neither are they in love with any thing proceeding from themſelves: for that which we ſhall ſay and propoſe unto you, is out of an intendment to invite you to a mutual and free conference, that you with confidence may come to us, and we with confidence may ſpeak with you; ſo that we may come to a concluſion of thoſe things, which we both unanimouſly deſire.

We have reſolved of nothing, deſigned or determined nothing, but deſire to take you with us, praying help from you as you have done from us.

My Lords have thought of ſome Propoſitions, which they have ordered to be read here, and then left with you in writing, that if it ſeem good to you, we may uniformly concur for the ſubſtance; and if you differ, that you would be pleaſed to put out, add, alter, or diminiſh, as you ſhall think fit, that ſo we may come the better to the end that we do both ſo deſirouſly embrace.

Then the five Propoſitions following were read by the Clerk of the Upper Houſe.

1. THAT his Majeſty would be pleaſed graciouſly to declare, That the good old Law called *Magna Charta*, and the ſix Statutes conceived to be declarations and explanations of that Law, do ſtill ſtand in force to all intents and purpoſes.

2. That his Majeſty would be pleaſed graciouſly to declare, That according to *Magna Charta*, and the Statutes afore-named, as alſo according to the moſt antient Cuſtoms and Laws of this Land, every free Subject of this Realm hath a fundamental Propriety in his Goods, and a fundamental Liberty of his Perſon.

3. That his Majeſty would be graciouſly pleaſed to declare, That it is his royal pleaſure to ratify and confirm unto all and every his loyal and faithful Subjects, all their ancient, ſeveral, juſt Liberties, Privileges, and Rights, in as ample and beneficial manner, to all intents and purpoſes, as their Anceſtors did enjoy the ſame, under the Government of the beſt of his moſt noble Progenitors.

4. That his Majeſty would be pleaſed graciouſly to declare, for the good content of his Loyal Subjects, and for the ſecuring them from future fear, That in all caſes within the cognizance of the Common Law concerning the Liberties of the Subject, his Majeſty would proceed according to the Common-Law of this Land, and according to the Laws eſtabliſhed in the Kingdom, and in no other manner or wiſe.

5. As touching his Majeſty's Royal Prerogative, intrinſical to his Sovereignty, and intruſted him withal from God, *ad communem totius populi ſalutem, & non ad deſtructionem*; his Majeſty would reſolve not to uſe or divert the ſame, to the prejudice of any of his loyal people, in the propriety of their goods, or liberty of their Perſons. And in caſe, for the ſecurity of his Majeſty's Royal Perſon, the common ſafety of his People, or the peaceable government of this Kingdom, his Majeſty ſhall find juſt cauſe for reaſon of State to impriſon or reſtrain any man's perſon, his Majeſty would graciouſly declare, That within a convenient time he ſhall, and will expreſs the cauſe of the commitment or reſtraint, either general or ſpecial; and upon a cauſe ſo expreſſed will leave him immediately to be tried according to the common juſtice of the Kingdom.

After the reading of the Propoſitions, the Archbiſhop ſaid:

This is but a Model to be added unto, altered, or diminiſhed, as in your reaſons and wiſdoms ye ſhall think fit, after ye have communicated the ſame to the reſt of the Members of the Houſe.

To this Speech, Sir Dudley Diggs, *it being at a free conference in behalf of the Commons, made this Reply:*

MY Lords, it hath pleaſed Almighty God many ways to bleſs the Knights, Citizens and Burgeſſes, now aſſembled in Parliament, with great comfort, and ſtrong hopes, that this will prove as happy a Parliament as ever was in *England*. And in their conſultations for the ſervice of his Majeſty, and the ſafety of this Kingdom, our ſpecial comfort and ſtrong hopes have riſen from the continued good reſpect, which your Lordſhips ſo nobly have been pleaſed to ſhew unto them; particularly at this preſent, in your ſo honourable profeſſion to agree with them in general, in deſiring to maintain and ſupport the fundamental Laws and Liberties of *England*.

The Commons have commanded me in like ſort, to aſſure your Lordſhips they have been, are, and will be, as ready to propugn the juſt Prerogative of his Majeſty, of which in all their Arguments, Searches of Records, and Reſolutions, they have been moſt careful, according to that which formerly was, and now again is, proteſted by them.

Another noble argument of your honourable diſpoſition towards them is expreſſed in this, That you are pleaſed to expect no preſent anſwer from them, who are (as your Lordſhips in your great wiſdoms, they doubt not, have conſidered) a great Body, that muſt adviſe upon all new propoſitions, and reſolve upon them before they can give anſwer, according to the antient order of their Houſe. But it is manifeſt in general (God be thanked for it) there is a great concurrence of affection to the ſame end in both Houſes, and ſuch good harmony, that I intreat your Lordſhips leave to borrow a compariſon from nature, or natural philoſophy: As two Lutes well ſtrung and tuned brought together, if one be played on, little ſtraws and ſticks will ſtir upon the other, though it lie ſtill; ſo though we have no power to reply, yet theſe things ſaid and propounded cannot but work in our hearts, and we will faithfully report theſe paſſages to our Houſe, from whence in due time (we hope) your Lordſhips ſhall receive a contentful anſwer.

Mr. Selden's *Speech, about the five Propoſitions ſent from the Lords to the Houſe of Commons,* April 26, 1628.

OUR Debate is now, how we like of the Propoſitions. Ours were reſolutions of Law, and no man can make queſtion of them. And as we are conſtant, ſo I hope they of other places that have weighed them, are of the ſame mind with us. But now their Lordſhips laying them by, propound what they would have to be Law. As they may ſpeak to what comes from us, ſo may we to what comes from them, and they did invite us thereto. I think there is not one of the five fit to be deſired and aſked. The firſt three are not fit, for there is no uſe of them in theſe great queſtions. The fourth we have already, and the fifth is not fit to be had at all. The firſt is, to declare that *Magna Charta* and the ſix Statutes, conceived to be declarations and explanations of that Law, do ſtill ſtand in force to all intents and purpoſes. Conſider what it is we aſk: Who doubts whether they ſtand in force or no? Indeed ſome have publiſhed that *Magna Charta* is but a Charter, and no Law. But it is an Act of Parliament; and let men ſpeak what they will, that was the faſhion of Statutes till printing came in. The Statutes were ſent down in the King's name to be proclaimed, and he prefixed his name, and this was till about *Hen.* VI. Alſo the body of *Magna Charta* is, that it is conſented to by all the Earls, *&c.* and for the aſſent there was a fifteenth granted, and clearly that cannot be without an Act of Parliament: and ſo conſtant it is, that all elſe in it is to this day put in execution. In former Parliaments, by thirty at leaſt, it was confirmed, but it was not of neceſſity, and yet they are ſurer than this declaration you will now add. For the ſecond, that his Majeſty will declare that every Subject hath a Propriety in his goods, and Liberty of his perſon; they that drew this might mean ſomewhat more than I underſtand: I know not what we gain. Who doubts of our propriety? I never heard it denied, but in the pulpit, which is of no weight. For the third, that his Majeſty will confirm all juſt liberties; none can tell what this will produce. It is not fit we trouble his Majeſty with it. The fourth is not fit to be aſked; That in all caſes within the cognizance of the Common Law concerning the Liberties of his Subjects, his Majeſty would proceed according to the Common Law. I conceive his Majeſty never proceeded but according to Law. It may be there were commitments, yet the Courts of Juſtice were open for the parties to ſeek Juſtice. And if any thing be done againſt the Law, there, it is the fault of them that ſit there. So we ſhall take it. But

yet

his Majesty hath done nothing against the Law. For the fifth, it is not fit to be had, and therefore not fit to be asked. If we ask it parliamentarily, we shall have a Law to that Sense, and so we shall destroy our fundamental Liberties, which we have already resolved. Now a *convenient time* must be set down. In former Times there was no need of such Innovations; for such Law of State, in a *convenient time* every Man was to be delivered by Law. If they were so wise then to hold it needless, why is it now necessary? And for *convenient time*; what is *convenient time?* Who shall judge of it but the Judges? And so they now shall have the Power of the Lords, and of the Council. Also now we desire in some Cases the Prerogative, *&c.* I would fain see if any Person may not be committed at Pleasure by this Clause, and no Man is exempted. At this little Gap every Man's Liberty may in Time go out.

The Commons were not satisfied with these Propositions, which were conceived to choak the Petition of Right, then under Consideration, but demurred upon them.

Monday, 28 April. *The Lord Keeper spake to both Houses of Parliament by the King's Command, who was then present.*

MY Lords, and ye the Knights, Citizens, and Burgesses of the House of Commons, ye cannot but remember the great and important Affairs, concerning the Safety both of State and Religion, declared first from his Majesty's own Mouth, to be the Causes of the assembling of this Parliament; the Sense whereof, as it doth daily increase with his Majesty, so it ought to do, and his Majesty doubts not but it doth so with you, since the Danger increaseth every Day, both by Effluxion of Time, and Preparations of the Enemy.

Yet his Majesty doth well weigh, that this Expence of Time hath been occasioned by the Debate which hath arisen in both Houses touching the Liberty of the Subject; in which, as his Majesty takes in good part the Purpose and Intent of the Houses, so clearly and frequently professed, that they would not diminish or blemish his Royal and just Prerogative, so he presumes, that ye will all confess it a Point of extraordinary Grace and Justice in him, to suffer it to rest so long in Dispute without Interruption. But now his Majesty, considering the length of Time which it hath already taken, and fearing nothing so much as any future Loss of that, whereof every Hour and Minute is so precious; and foreseeing that the ordinary way of Debate, though never so carefully husbanded, must, in regard of the Form of both Houses, necessarily take more time than the Affairs of Christendom can permit; his Majesty, out of his great princely Care, hath thought of this Expedient to shorten the Business, by declaring the Clearness of his own Heart and Intention: And therefore hath commanded me to let you know, *That he holdeth the Statute of* Magna Charta, *and the other six Statutes insisted upon for the Subject's Liberty, to be all in force, and assures you, that he will maintain all his Subjects in the just Freedom of their Persons, and Safety of their Estates; and that he will govern according to the Laws and Statutes of this Realm; and that ye shall find as much Security in his Majesty's Royal Word and Promise, as in the Strength of any Law ye can make; so that hereafter ye shall never have Cause to complain.* The Conclusion is, That his Majesty prayeth God, who hath hitherto blessed this Kingdom, and put into his Heart to come to you this Day, to make the Success thereof happy, both to King and People: And therefore he desires, that no Doubt or Distrust may possess any Man, but that ye will all proceed speedily and unanimously to the Business.

The Commons being returned from the Lords House, Mr. Secretary *Cook* persuaded them to comply with the King.

His Majesty, said he, puts us in Mind of the great important Affairs of the State, and of his Sense thereof, that by Effluxion of Time increaseth in him, and he doubts not but that it doth increase in us. Ye see his Majesty's Moderation in the Interpretation of all our Actions; he saith, that he hopes we have the same Sense he hath, he is pleased to consider of the Occasion of Expence of Time that grew from the Debates in both Houses. We see how indulgent he is, that however the Affairs of Christendom are great, yet he omits not this, nay, he takes in good Part our Proceedings and our Declarations, that we will not impeach the Prerogative: Also his Majesty presumes, that we will confess, that he hath used extraordinary Grace, in that he hath endured dispute so long, he acknowledgeth it Justice to stand as we have done.

Further, Out of a princely Care of the Publick, he is careful no more Time be lost; and because he sees some extraordinary Course to be taken to satisfy us, he observes, that in the Form of the Debate, such length is required as the Nature of the Business will not endure. It is to be presumed, that his Government will be according to the Law: We cannot but remember what his Father said, *He is no King, but a Tyrant, that governs not by Law*; but this Kingdom is to be governed by the Common Law, and his Majesty assures us so much; the Interpretation is left to the Judges, and to his great Council, and all is to be regulated by the Common Law. I mean not *Magna Charta* only, for that *Magna Charta* was part of the Common Law, and the ancient Law of this Kingdom; all our Difference is in the Application of this Law, and how this Law, with Difference, is derived into every Court. I conceive there are two Rules, the one of Brass, that is rigid, and will not bend, and that is the Law of the King's-Bench, this Law will not bend; and when it lights on Subjects fitting, if it do not bend, it is unjust; and there comes in the Law of Chancery and Equity: This is Application of Law in private Men's Causes, when it comes to *Meum & Tuum*. And thus the general Government of Cases, with relation to the common State of the Kingdom, is from the Council-board, and there they are to vary from the Law of the Kingdom; suppose it be in Time of Dearth, Propriety of Goods may in that Time be forced, and be brought to the Market: We saw the Experience of it in Coals in *London*, and the Council-Board caused them to be brought forth and sold. In a Time of Pestilence Men may be restrained: If a Schism be like to grow in a Church, the State will enquire after the Favourers of it: If there be fear of an Invasion, and it be encouraged by hope of a Party among us, it is in the Power of the Government to restrain Men to their Houses.

In the Composure of these things, there is great Difference: What Differences have been between the Courts of Chancery and King's-Bench? It is hard to put true Difference between the King's Prerogative and our Liberties. His Majesty saw Expence of Time would be prejudicial; it pleased God to move his Majesty by a Divine Hand to shew us a Way to clear all our Difficulties, let us attend to all the Parts of it; there be five Degrees, and there is more Assurance than we could have by any Law whatsoever. His Majesty declares, that *Magna Charta* and the other Statutes are in Force: This is not the first time that the Liberty of the Subject was infringed, or was in debate and confirmed; all Times thought it safe, that when they came to a Negative of Power, it was hard to keep Government and Liberty together; but his Majesty stopped not there; but according to the Sense of these Laws, that he will govern his Subjects in their just Liberties, he assures us our Liberties are just, they are not of Grace, but of Right; nay, he assures us, he will govern us according to the Laws of the Realm, and that we shall find as much Security in his Majesty's Promise, as in any Law we can make; and whatsoever Law we shall make, it must come to his Majesty's Allowance; and if his Majesty find Cause in his Government, he may not put Life to it: We daily see all Laws are broken, and all Laws will be broke for the publick Good, and the King may pardon all Offenders; his Majesty did see, that the best way to settle all at Unity, is to express his own Heart: The King's Heart is the best Guider of his own Promise, his Promise is bound with his own Heart. What Prince can express more Care and Wisdom?

Lastly, he saith, That hereafter ye shall never have the like Cause to complain: May we not think the Breach is made up? Is not his Majesty engaged in his Royal Word?

The Conclusion is full of Weight: And he prays God, that as God hath blessed this Kingdom, and put it into his Heart to come amongst us, so to make this Day successful. *The Wrath of a King is like the roaring of a Lion*, and all Laws with his Wrath are to no Effect; but *the King's Favour is like the Dew upon the Grass*, there all will prosper; and God made the Instruments to unite all Hearts.

His Majesty having thus discharged himself, he prays us to proceed to the Business that so much concerns him. As his Majesty hath now shewed himself the best of Kings, let us acknowledge his Majesty's Goodness, and return to that Union which we all desire.

But this Motion was not received with general Acceptation; and Sir *Benjamin Rudyard* replied to it.

WE are now upon a great Business, and the Manner of handling it may be as great as the Business itself. I need not tell you, that Liberty is a precious Thing, for every Man may set his own Price upon it, and he that doth not value it, deserves to be valued accordingly. For my own Part, I am clear without Scruple, that what we have resolved, is according to the Law; and if any Judge in *England* were of a contrary Opinion, I am sure we should have heard of him ere now. Without all Question, the very Point, Scope, and Drift of *Magna Charta* was, to reduce the Regal to a Legal Power, in Matter of Imprisonment, or else it had not been worthy so much contending for.

But there have been Precedents brought to prove the Practice and Interpretation of the Law. I confess I have heard many Precedents of Utility and Respect, but none at all of Truth, or of Law: Certainly there is no Court of Justice in *England*, that will discharge a Prisoner committed by the King, *Rege inconsulto*, without acquainting the King; yet this good Manners was never made, or mentioned as a legal Part of the Delivery.

It is objected, That the King ought to have a Trust left and deposited in him; God forbid but he should: And I say, that it is impossible to take it from him, for it lies not in the Wit of Man to devise such a Law as should be able to comprehend all Particulars, all Accidents, but that extraordinary Cases must happen, which, when they come, if they be disposed of for the common Good, there will be no Law against them, yet must the Law be general, for otherwise Admissions and Exceptions will fret, and eat out the Law to nothing. God himself has constituted a general Law of Nature, to govern the ordinary Course of Things, he hath made no Law for Miracles; yet there is this Observation of them, that they are rather *præter naturam*, than *contra naturam*, and always *propter bonos fines*: For Kings Prerogatives are rather besides the Law, than against it; and when they are directed to right Ends for the publick Good, they are not only concurring Laws, but even Laws in Singularity and Excellency.

But to come nearer, Mr. Speaker, let us consider where we are now, what Steps we have gone and gained; the King's learned Counsel have acknowledged all the Laws to be still in Force; the Judges have not allowed any Judgment against these Laws; the Lords also have confessed, that the Laws are in full Strength; they have further retained our Resolutions entire, and without Prejudice.

All this hitherto is for our Advantage; but above all, his Majesty has this Day (himself been publickly present) declared by the Mouth of the Lord-Keeper, before both the Houses, That *Magna Charta*, and the other six Statutes, are still in Force; that he will maintain his Subjects in the Liberties of their Persons, and Proprieties of their Goods; that he will govern them according to the Laws of the Kingdom: this is a solemn and binding Satisfaction, expressing his gracious readiness to comply with his People in all their reasonable and just Desires. The King is a good Man, and it is no Diminution to a King to be called so; for whosoever is a good Man, shall be greater than a King that is not so. The King certainly is very tender of his present Honour, and of his Fame hereafter: He will think it hard to have a worse Mark set upon his Government than upon any of his Ancestors, by extraordinary Restraints: His Majesty hath already intimated unto us by a Message, That he doth willingly give way to have the Abuse of Power reformed. By which I do verily believe, that he doth very well understand what a miserable Power it is, which hath produced so much Weakness to himself, and to the Kingdom; and it is our Happiness, that he is so ready to redress it.

For my own Part, I shall be very glad to see that good old decrepid Law of *Magna Charta*, which hath been kept so long, and lain Bed-rid as it were; I shall be glad to see it walk abroad again with new Vigour and Lustre, attended and followed with the other six Statutes: Questionless it will be a great heartdning to all the People. I doubt not, but upon a debating Conference with the Lords, we shall happily fall upon a fair and fit

accommodation,

accommodation, concerning the Liberty of our Perſons and propriety of our Goods. I hope we may have a Bill, to agree in the point, againſt impriſonment for Loans or Privy-Seals. As for intrinſical power and reaſon of State, they are matters in the clouds, where I deſire we may leave them, and not meddle with them at all; leſt by the way of admittance, we may loſe ſomewhat of that which is our own already. Yet this by the way I will ſay of Reaſon of State, That, in the latitude by which 'tis uſed, it hath eaten out almoſt, not only the Laws, but all the Religion of Chriſtendom.

Now, Mr. Speaker, I will only remember you of one precept, and that of the wiſeſt man; *Be not over-wiſe, be not over-juſt:* and he gives this reaſon, *for why wilt thou be deſolate?*

Sir, if Juſtice and Wiſdom may be ſtretch'd to deſolation, let us thereby learn, that Moderation is the Virtue of Virtues, and the Wiſdom of Wiſdoms. Let it be our Maſter-piece ſo to carry our buſineſs, that we may keep Parliaments on foot: For as long as they are frequent, there will be no irregular power; which though it cannot be broken at once, yet in ſhort time it will fade and moulder away: there can be no total or final loſs of Liberties, but by loſs of Parliaments. As long as they laſt, what we cannot get at one time, we may have at another.

Let no man think, that what I have ſaid is the Language of a private End, my aim is upon the good ſucceſs of the whole; for, I thank God, my mind ſtands above any fortune that is to be got by baſe and unworthy means: no man is bound to be rich or great, no, nor to be wiſe; but every man is bound to be honeſt, out of which heart I have ſpoken.

The Biſhop of Exeter's [Dr. *Joſeph Hall*] *Letter ſent to the Houſe of Commons*, 28 April, 1628.

Gentlemen,

FOR God's ſake be wiſe in your well-meant Zeal: why do you argue away precious time that can never be revoked, or repaired? Wo is me! while we diſpute, our friends periſh, and we muſt follow them. Where are we, if we break; and (I tremble to think) we cannot but break, if we hold ſo ſtiff. Our liberties and proprieties are ſufficiently declared to be ſure and legal, our remedies are clear and irrefragable; what do we fear, every ſubject ſees the way now chalked out for future Juſtice, and who dares henceforth tread beſides it? Certainly whilſt Parliaments live, we need not miſ-doubt the violations of our Freedoms and Rights; may we be but where the Law found us, we ſhall ſufficiently enjoy ourſelves and ours; it is no ſeaſon to ſearch for more! O let us not, whilſt we over-rigidly plead for an higher ſtrain of ſafety, put ourſelves into a neceſſity of ruin and utter deſpair of redreſs: let us not, in the ſuſpicion of Evils that may be, caſt ourſelves into a preſent confuſion. If you love yourſelves and your Country, remit ſomething of your own terms; and ſince the ſubſtance is yielded by your Noble Patriots, ſtand not too rigorouſly upon points of circumſtance: fear not to truſt a good King, who, after the ſtrict Laws made, muſt be truſted with the execution. Think that your Country, nay Chriſtendom, lies on the mercy of your preſent Reſolutions. Relent, or farewel welfare.

From him whoſe faithful heart bleeds in a vowed ſacrifice for his King and Country,

EXETER.

Upon this debate it was ordered, That a Committee of Lawyers do draw a Bill, containing the ſubſtance of *Magna Charta*, and the other Statutes, that do concern the Liberty of the Subject; which buſineſs took up two whole days.

Mr. Selden's *Speech at the Committee about the Bill for* Magna Charta, *and the Liberties of the Subject.*

April 28, 1628.

I Would have the violation tenderly mentioned. Let us ſet down the Statute of *Magna Charta*. 13 *Hen.* IV. it is adjudged in the Parliament-Roll, that the Statute of Tallage is an Act of Parliament. It is not entered in the Statute-Roll, and it was 34 *Ed.* I. 19 *Ed.* II. *rot. clauſ. mem.* 15. *Les Comens priont lou divers fuer' priſe & impriſon per accuſement de perſons malevolent lou ne fuer' indict acc' al ley del terre, ils priont que ils que ſont priſe ſans indictment veignont en Chancery, & que droit ſerra fait. Et roy vult que nul ſerra priſe.* But this is not in the Parliament-Roll 5 *Ed.* III. *c.* 9. 14 *Ed.* III *c.* 1. that there ſhall be no aid nor charge but by Parliament. 25 *Ed.* III. *c.* 4. None ſhall be attached by petition without preſentment, or an original Writ. 25 *Ed.* III. *no.* 16. *Item, priont les Comens que les loans ſoient releaſe, & null ſerra compell de faire arrere encontre les franchiſes del terre. Le roy le pleſt.* 28 Ed. III. *c.* 3. *Nul ſerra ouſte de terre ou tenements ſans due proces del ley.* 36 Ed. III. no. 9. *Que le grand Charter ſerra duly obſerve, & null ſerra impriſon ſur ſpecial command.* 36 Ed. III. no. 20. *Que nul ſerra impriſon per ſpecial command.* 36 Ed. III. no. 24. *Si aſcun home ſoit grieve contre les articles, avant dit veigne en Chancery & droit ſerra fait.* 37 Ed. III. no. 10. *Ils la deſire que le grand Charter & eſpecialment les articles darrein ſtat. ſoient execute.* 37 Ed. III. c. 18. *Il eſt conteine en le grand Charter que nul ſerra impriſon*, &c. *ils que font tiel*, &c. 38 Ed. III. no. 10. *Les Comens priont que le grand Charter & les autres ſtatuts ſoient execute & que breves ſerront grauntez al ceſtuy que ſue pur ceo, & ſi aſcun jugment ſoit fait, il ſerra void.*

THurſday the firſt of *May*, Mr. Secretary *Cook* delivered a Meſſage from his Majeſty, *viz.* to know whether the Houſe will reſt on his Royal Word, or no, declared to them by the Lord-Keeper; which if they do, he aſſures them it ſhall be royally performed.

Upon this there was a ſilence for a good ſpace: then Mr. Secretary *Cook* proceeded: This ſilence invites me to a further ſpeech, and further to addreſs myſelf; now we ſee we muſt grow towards an iſſue. For my part, how confident I have been of the good iſſue of this Parliament, I have certified in this place, and elſewhere, and I am ſtill confident therein; I know his Majeſty is reſolved to do as much as ever King did for his Subjects: all this debate hath grown out of a ſenſe of our ſufferings, and a deſire to make up again thoſe breaches that have been made.

Since this Parliament begun, hath there been any diſpenſe made of that which hath formerly been done? When means were denied his Majeſty, being a young King, and newly come to his Crown, which he found ingaged in a War, what could we expect in ſuch neceſſities? His Majeſty called this Parliament to make up the breach: his Majeſty aſſures us we ſhall not have the like cauſe to complain; he aſſures, the Laws ſhall be eſtabliſhed, what can we deſire more? All is, that we provide for Poſterity, and that we do prevent the like ſuffering for the future. Were not the ſame means provided by them before us? Can we do more? We are come to the Liberty of the Subjects, and the Prerogative of the King; I hope we ſhall not add any thing to ourſelves, to depreſs him. I will not divine I think we ſhall find difficulty with the King, or with the Lords; I ſhall not deliver my opinion as a Counſellor to his Majeſty, which I will not juſtify and ſay here, or at the Council-Board. Will we in this neceſſity ſtrive to bring ourſelves into a better condition, and greater Liberty than our Fathers had, and the Crown into a worſe than ever? I dare not adviſe his Majeſty to admit of that: If this that we now deſire be no Innovation, it is all contained in thoſe Acts and Statutes; and whatſoever elſe we would add more, is a diminution to the King's power, and an addition to our own. We deal with a wiſe and prudent Prince, that hath a ſword in his hand for our good, and this good is ſupported by power. Do not think, that by caſes of Law and Debate we can make that not to be Law, which in experience we every day find neceſſary.

Give me leave freely to tell you, that I know by experience, that by the place I hold under his Majeſty, if I will diſcharge the duty of my place and the oath I have taken to his Majeſty, I muſt commit, and neither expreſs the cauſe to the Gaoler, nor to the Judges, nor to any Counſellor in *England*, but to the King himſelf; yet do not think I go without ground of reaſon, or take this power committed to me to be unlimited; yea, rather it is to me a charge, burthen, and danger: for if I by this power ſhall commit the pooreſt porter, if I do it not upon a juſt cauſe, if it may appear, the burthen will fall upon me heavier than the Law can inflict, for I ſhall loſe my credit with his Majeſty, and my place. And I beſeech you conſider whether thoſe that have been in the ſame place have not committed freely, and not any doubt made of it, nor any complaint made by the Subject.

SIR *Robert Phillips* hereupon ſpake thus: That if the words of Kings ſtrike impreſſions in the hearts of ſubjects, then do theſe words upon this occaſion ſtrike an impreſſion in the hearts of us all: to ſpeak in a plain language, we are now come to the end of our Journey, and the well-diſpoſing of an anſwer to this meſſage, will give happineſs or miſery to this Kingdom. Let us ſet the Commonwealth of *England* before the eyes of his Majeſty, that we may juſtify ourſelves, that we have demeaned ourſelves dutifully to his Majeſty.

Mr. *Hackwell* of *Lincoln*'s-*Inn*, 1 *May*, 1628.

SIR,

I Choſe rather to diſcover my weakneſs by ſpeaking, than to betray my conſcience by ſilence: my opinion is, that we ſhall do well totally to omit our reſolution out of this Bill, and rely only upon a confirmation of the Laws.

The Objections made againſt this Opinion are two.

The firſt is, that we ſhall thereby recede from our own reſolution.

The ſecond, that by a bare confirmation of the old Laws, without inſerting of our reſolution, by way of explanation, we ſhall be but in the ſame caſe as before.

For the firſt, that though we deſire only a confirmation without adding of our reſolution, we do not thereby recede from our reſolution, I reaſon thus:

Our reſolution was drawn out of the ſenſe of thoſe Laws, which are now deſired to be confirmed, ſo that no queſtion can be made by any of us that have thus declared ourſelves, but that our reſolution is virtually contained in thoſe Laws. If that be ſo, how can our acceptance of a confirmation of theſe Laws be a departure from our reſolution?

Nay, rather we think the contrary is true; he that doubts, that by confirmation of theſe Laws our reſolution is not hereby confirmed, doubts whether we have juſtly deduced our reſolutions out of thoſe Laws, and ſo calls our reſolution into queſtion.

This argument alone is, in my opinion, a full anſwer to that firſt objection, that in deſiring a bare confirmation of thoſe Laws, we depart from our reſolutions.

The ſecond Objection is, that if we have nothing but a confirmation, we are in no better caſe than we were before thoſe late violations of the Law.

This I deny, and do confidently affirm, that although we have no more than a confirmation of thoſe Laws which are recited in the Bill that is now before us, we ſhall depart hence in far better caſe than we came, and that in divers reſpects.

Firſt, Some of the Laws recited in this Bill, and deſired to be confirmed, are not printed Laws, and are known to few profeſſors of the Law, and much leſs to others; and yet they are Laws of as great conſequence for the Liberty of the Subject, if not of greater, than any that are printed: as namely 25 *Ed.* III. *no.* 1. That Loans againſt the will of the lender are againſt reaſon and the freedom of the Realm. 36 *Ed.* III. *no.* 9. by which Impriſonments by ſpecial commandment without due proceſs are forbidden. Theſe two are not printed.

That excellent Law *de Tallagio non concedendo* in print, hath in a publick Court been by a great Counſellor ſaid to be but a Charter, and no Law.

The Statute 1 *Rich.* III. againſt Benevolences, is by ſome opinions in print an abſolute Law. If we can get all theſe good Laws, beſides thoſe ſix other, which are expoſitions of *Magna Charta*, in the point of the freedom of our perſons, to be confirmed and put in one Law, to the eaſy view of all men, is not our caſe far better than when we came hither?

Secondly, Will not the occaſion of the making of this Law of confirmation, ſo notoriouſly known, be tranſmitted to all poſterity? Certainly it will never be forgotten, that the occaſion thereof was the impriſonment of thoſe worthy Gentlemen for not lending, and the reſolution in the *King*'s-*Bench* in denying to bail them; and is not the occaſion of the making of a Law a good rule to expound it? If ſo, then by giving a confirmation upon this occaſion, we have bettered our caſe very much.

Thirdly, Have not the Judges in the *King*'s-*Bench*, in open Parliament, upon our complaint diſclaimed to have given any judgment in the point? Which

Which generally before by the Parliament was otherwiſe conceived; for now they ſay, it was but an award and no judgment, will ſuch a notorious Act upon ſo important an occaſion in ſo publick a place be quickly forgotten? Nay, will not the memory of it for ever remain upon record? Is not our caſe then much better than when we came hither?

Fourthly, Will not the reſolution of this Houſe, and all our arguments and reaſons againſt impriſonment without a cauſe expreſſed (which no doubt by the courſe we have taken will be transferred to poſterity) be a great means to ſtay any Judge hereafter from declaring any judgment to the contrary, eſpecially if there be likelihood of a Parliament? Is not our caſe in this very much amended?

Laſtly, Have we not received Propoſitions from the Lords, wherein (amongſt other things) they declared, that they are not out of love with our proceedings? Is not this a great ſtrengthening to it? But after ſo long debate amongſt them about it, they cannot take any juſt exception to it; and doth not this alſo much amend our caſe?

From all theſe reaſons, I conclude that the ſecond objection, that by a confirmation we are in no better caſe than when we came together, is alſo a weak objection.

Now for reaſons to move us to proceed in this courſe of accepting a confirmation: Firſt, We have his Majeſty's gracious Promiſe to yield to a confirmation of the old Laws, from which we may reſt moſt aſſured he will not depart; if we tender him, withal, our Propoſition to be enacted, we have cauſe to doubt that we ſhall loſe both the one and the other.

Secondly, We are no leſs aſſured of the Lords joining with us, for in their Propoſitions ſent to us they have delivered themſelves to that purpoſe: this is then a ſecure way of getting ſomewhat of great advantage to us; as we have great hopes, and in a manner aſſurance on this ſide; ſo on the other ſide we have great doubts and fears, that by offering our reſolution to be enacted, we ſhall loſe all.

For firſt we have had already experience of the Lords, that they are not very forward to join with us in a declaration of our Propoſition to be Law; if they ſtumble at a declaration, much more will they, in yielding to make a Law in the ſame point.

And have we not much more cauſe to doubt that his Majeſty will not yield unto it, ſeeing it toucheth him ſo near? Is it not the notice of his pleaſure that hath wrought thus with the Lords?

If we ſhould clog our Bill with our Propoſition, and it ſhould be rejected by the Lords, or by the King, is not our reſolution much weakened by it; and are we not then in far worſe caſe than before we made it? Our reſolution for the rejecting of our Propoſition, will tend to a juſtification of all that hath been done againſt us in this great point of our Liberty.

Let us then, like wiſe men, conform our deſire to our hopes, and guide our hopes by probabilities; other deſires and other hopes are but vain.

This is my poor opinion in this weighty buſineſs.

And ſo the day following they had further debate upon that matter, the Houſe being turned into a Grand Committee, and Mr. *Herbert* in the chair.

Some ſaid that the ſubject has ſuffered more in the violation of ancient Liberties within theſe few years, than in three hundred years before, and therefore care ought to be taken for the time to come.

Sir *Edward Coke* ſaid, That that *Royal Word* had reference to ſome meſſage formerly ſent; his Majeſty's word was, that they may ſecure themſelves any way, by Bill or otherwiſe, he promiſed to give way to it. And to the end that this might not touch his Majeſty's honour, it was propoſed, that the Bill come not from the Houſe, but from the King: We will and grant for us and our ſucceſſors, and that we and our ſucceſſors will do thus and thus; and it is the King's honour, he cannot ſpeak but by Record.

Others deſired the Houſe to conſider, when and where the late promiſe was made; was it not in the face of both Houſes? Cruel Kings have been careful to perform their promiſes, yea, though they have been unlawful, as *Herod*. Therefore if we reſt upon his Majeſty's promiſe, we may aſſure ourſelves of the performance of it; beſides, we bind his Majeſty, by relying on his word: we have laws enough, it is the execution of them that is our life, and it is the King that gives life and execution.

Sir *Thomas Wentworth* concluded the debate, ſaying, That never Houſe of Parliament truſted more in the goodneſs of their King, for their own private account, than the preſent; but we are ambitious that his Majeſty's goodneſs may remain to Poſterity, and we are accountable to a publick truſt: and therefore ſeeing there hath been a publick violation of the laws by his Miniſters, nothing will ſatisfy him but a publick amends; and our deſires to vindicate the ſubjects right by Bill, are no more than are laid down in former Laws, with ſome modeſt proviſion for inſtruction, performance and execution.

Which ſo well agreed with the ſenſe of the Houſe, that they made it the ſubject of a meſſage to be delivered by the Speaker to his Majeſty.

Amidſt thoſe deliberations, another meſſage was delivered *May* 2. from his Majeſty by Mr. Secretary *Cook*; That howſoever we proceed in this buſineſs we have in hand, which his Majeſty will not doubt, but to be according to our conſtant profeſſion, and ſo as he may have cauſe to give us thanks; yet his reſolution is, that both his royal care, and hearty and tender affection towards all his loving ſubjects, ſhall appear to the whole Kingdom, and all the World, that he will govern us according to the laws and cuſtoms of this Realm; that he will maintain us in the liberties of our perſons, and proprieties of our goods, ſo as we may enjoy as much happineſs as our fore-fathers in their beſt times; and that he will rectify what hath been, or may be found amiſs amongſt us, ſo that hereafter there may be no juſt cauſe to complain. Wherein as his Majeſty will rank himſelf amongſt the beſt of our Kings, and ſhew he hath no intention to invade or impeach our lawful liberties, or right; ſo he will have us match ourſelves with the beſt ſubjects, not by incroaching upon that ſovereignty and prerogative, which God hath put into his hands for our good, but by containing ourſelves within the bounds and laws of our fore-fathers, without reſtraining them, or enlarging them by new explanations, interpretations, expoſitions, or additions in any ſort; which, he telleth us, he will not give way unto.

That the weight of the affairs of the Kingdom, and *Chriſtendom*, do preſs him more and more, and that the time is now grown to that point of maturity, that it cannot endure long debate or delay; ſo as this Seſſion of Parliament muſt continue no longer than *Tueſday* come ſeven-night at furtheſt: in which time his Majeſty, for his part, will be ready to perform what he promiſed; and if the Houſe be not ready to do that is fit for themſelves, it ſhall be their own faults.

And upon aſſurance of our good diſpatch and correſpondence, his Majeſty declareth, that his royal intention is to have another Seſſion of Parliament at *Michaelmas* next, for the perfecting of ſuch things as cannot now be done.

This meſſage was debated the next day, being *Saturday*, *May* 3, whereupon Sir *John Elliot* ſpake to this effect:

The King, ſaith he, will rank himſelf with the beſt of Kings, and therefore he would have us rank ourſelves with the beſt ſubjects; we will not incroach upon that Sovereignty that God hath put into his hands; this makes me fear his Majeſty is miſ-informed in what we go about; let us make ſome enlargement, and put it before him, that we will not make any thing new. As for the time of this Seſſion, it is but ſhort; and look how many meſſages we have, ſo many interruptions, and miſ-reports, and miſ-repreſentations to his Majeſty produce thoſe meſſages.

Sir *Miles Fleetwood* continued the debate, and ſaid, That this buſineſs is of great importance, we are to accommodate this: the breach of this Parliament will be the greateſt miſery that ever befell us: the eyes of *Chriſtendom* are upon this Parliament, the State of all our Proteſtant Friends are ready to be ſwallowed up by the Emperor's Forces, and our own Kingdom is in a miſerable ſtrait, for the defence of our Religion that is invaded by the Roman Catholicks, by the colour of a commiſſion, which is intolerable; the defence of our Realm by Shipping is decayed, the King's revenue is ſold and gone; where ſhall the relief be obtained but in Parliament? Now we are in the way, let us proceed by way of Bill, in purſuance of the King's meſſage, to eſtabliſh the fundamental Laws in propriety of our goods, and liberty of our perſons: It was declared to us, *that courſes by Loan and Impriſonment were not lawful*; let us touch them in our Bill, and that all precedents and judgments ſeeming to the contrary, be void; and that all commitments againſt the Law be remedied, and that we be protected againſt the fear of commitments.

Mr. Mason's *Speech.*

I AM of opinion with the Gentleman that ſpake firſt, that, in our proceedings in the matter now in debate, we ſhould have uſe of the title of the Statute, called *circumſpecte agatis*; for it concerns the liberty of our perſons, without which we do not enjoy our lives.

The Queſtion is:

Whether in this Bill for the explanation of *Magna Charta*, and the reſt of the Statutes, we ſhall provide that the cauſe of the commitment muſt be expreſſed upon the commitment, or upon return of the *Habeas Corpus*?

Before I ſpeak to the queſtion itſelf, I ſhall propoſe ſome obſervations, in my conceit, neceſſarily conducing to the debate of the matter.

1. That we ought to take care, and to provide for poſterity, as our predeceſſors have done for us, and that this provident care cannot be expounded to be any diſtruſt of the performance of his Majeſty's gracious declaration, this Act providing for perpetuity, to which his Highneſs's promiſe, unleſs it were by Act of Parliament, cannot extend.

2. That we having long debated and ſolemnly reſolved our rights and privileges by virtue of theſe Statutes, and if now we ſhall reduce thoſe declarations and thoſe reſolutions into an Act, we muſt ever hereafter expect to be confined within the bounds of that Act, being made at our ſuit, and to be the limits of the Prerogative in that reſpect, and it being an Act of explanation, which ſhall receive no further explanation than itſelf contains.

3. That by this Act we muſt provide a remedy againſt the perſons which detain us in priſon, for as to the commander, there can be no certainty.

Concerning the Queſtion itſelf:

It hath been ſolemnly and clearly reſolved by the Houſe, that the commitment of a Freeman, without expreſſing the cauſe at the time of the commitment, is againſt the Law: If by this Act of explanation we ſhall provide only that the cauſe ought to be expreſſed upon the return of the *Habeas Corpus*, then out of the words of the Statute, it will neceſſarily be inferred, that before the return of the *Habeas Corpus* the cauſe need not to be expreſſed, becauſe the Statute hath appointed the time of the expreſſion of the cauſe; and it will be conſtrued, that if the makers of the Statutes had intended that the cauſe ſhould have been ſooner ſhewn, they would have provided for it by the Act, and then the Act, which we term an Act of explanation, will be an Act of the abridging of *Magna Charta*, and the reſt of the Statutes: or if this Act do not make the commitment without expreſſing the cauſe, to be lawful, yet it will clearly amount to a toleration of the commitment, without expreſſing the cauſe, until the *Habeas Corpus*, or to a general or perpetual diſpenſation, beginning with, and continuing as long as the Law itſelf. And in my underſtanding the words in this intended Law, that no Freeman can be committed without cauſe, can no ways advantage us, or ſatisfy this objection; for till the return of the *Habeas Corpus*, he that commits is Judge of the cauſe, or at leaſt hath a licence by this Law till that time to conceal the cauſe, and the Gaoler is not ſubject to any action for the detaining of the Priſoner upon ſuch command. For if the priſoner demanded the cauſe of his impriſonment of the Gaoler, it will be a ſafe anſwer for him to ſay that he detains a priſoner by warrant, and that it belongs not unto him to deſire thoſe which commit the priſoner to ſhew the cauſe until he returns the *Habeas Corpus*. And if the priſoner be a Suitor to know the cauſe from thoſe that committed him, it will be a ſufficient anſwer for them to ſay, they will expreſs the cauſe at the return of the *Habeas Corpus*. In this caſe there will be a wrong, becauſe the commitment is without cauſe expreſſed, and one that ſuffers that wrong, *viz.* the party impriſoned; and yet no ſuch wrong-doer but may excuſe, if not juſtify himſelf by this Law.

In making of Laws, we muſt conſider the inconveniences which may enſue, and provide for the prevention of them, *lex caveat de futuris*. I have taken into my thoughts ſome inconveniences which I ſhall expoſe to your conſiderations, not imagining that they can happen in the time of our gracious Sovereign; but in an Act of Parliament, we muſt provide for the prevention of all inconveniences in future times.

1. If a man be in danger to be impriſoned in the beginning of a long vacation for refuſing to pay ſome ſm[illegible] ſum of money, and knows that by this Act he can have no inlargement till the return of the *Habeas Corpus* in the Term, and that the charge of his being in Priſon, and of his inlargement by *Habeas Corpus* will amount to more than the ſum, he will part with money to prevent his impriſonment, or to redeem himſelf thence, becauſe he cannot ſay any man doth him wrong, until the return of the *Habeas Corpus*, and the Law reſolves. A man will pay a fine rather than be impriſoned, for the judgment which is given when one is fined, is *ideo capiatur*, and the execution for debt is a *capias ad ſatisfaciendum*; the Law preſuming any man will part with his money to gain his Liberty. And if the priſoner procure an *Habeas Corpus*, and be brought into the King's-Bench by virtue of it, yet the cauſe need not to be then expreſſed; the proviſion of this Law being, that if no cauſe be then expreſſed, he ſhall be bailed, and no cauſe being ſhewn upon the return of the *Habeas Corpus*, yet it may be pretended, that at the time of his commitment there were ſtrong preſumptions of ſome great offence, but upon examination they are cleared: or it may be ſaid, that the offence was of that nature, that the time of his impriſonment before the return was a ſufficient puniſhment. And we may be frequently impriſoned in this manner, and never underſtand the cauſe, and have often ſuch puniſhment, and have no means to juſtify ourſelves; and for all theſe proceedings this Law will be the juſtification, or colour.

2. If by this Act there be a toleration of impriſonment without ſhewing cauſe, until the return of the *Habeas Corpus*; yet it is poſſible to accompany that impriſonment with ſuch circumſtances of cloſe reſtraint, and other hardſhips, which I forbear to expreſs, as may make an impriſonment for that ſhort time, as great a puniſhment, as a perpetual impriſonment in an ordinary manner.

3. The party may be impriſoned a long time before he ſhall come to be delivered by this Law; the place of his impriſonment may be in the furtheſt part of this Kingdom; the Judges always make the return of the *Habeas Corpus* anſwerable to the diſtance of the priſon from *Weſtminſter*; the Gaoler may neglect the return of the firſt proceſs, and then the party muſt procure an *Alias*, and the Gaoler may be then in ſome other imployment for the King, and excuſe the not returning the body upon that proceſs; and this may make the impriſonment for a year. And in the end no cauſe being returned, the party may be diſcharged; but in the mean time he ſhall have impriſonment, he ſhall never know the cauſe, he ſhall have no remedy for it, nor be able to queſtion any for injuſtice, which have not a juſtification, or excuſe by this Law.

4. The party may be impriſoned during his life, and yet there ſhall be no cauſe ever ſhewn. I will inſtance in this manner: a man may be committed to the furtheſt part of the Kingdom Weſtward; he obtains an *Habeas Corpus*; before the Gaoler receives the *Habeas Corpus*, or before he returns it, the priſoner by Warrant is removed from that priſon to another, it may be the furtheſt Northern part of the Realm. The firſt Gaoler returns the ſpecial matter, which will be ſufficient to free himſelf, and in like manner the priſoner may be tranſlated from one priſon to another, and his whole life ſhall be a peregrination, or wayfaring from one Gaol to another, and he ſhall never know the cauſe, nor be able to complain of any, who cannot defend their actions by this Bill.

5. If the priſoner be brought into the Court by *Habeas Corpus*, and no cauſe expreſſed, and thereupon he be inlarged, he may be partly committed again, and then his enlargement ſhall only make way for his commitment: and this may continue during his life, and he ſhall never know the cauſe; and this not remedied, but rather permitted by this Act.

And there are alſo ſome things remarkably conſiderable in this matter; the expence of the party in priſon; his fees to the Gaoler, his coſts in obtaining and proſecuting an *Habeas Corpus*, and his charges in removing himſelf, attended with ſuch as have the charge of his conduct: and that the priſoner muſt ſuſtain all this without ſatisfaction, or knowing the cauſe.

The only reaſon given by thoſe of the other opinion is, That it is requiſite, the King and Council ſhould have power to command the detainer of a man in priſon for ſome time, without expreſſing the cauſe; becauſe it is ſuppoſed, that the manifeſtation of the cauſe at firſt may prevent the diſcovery of a Treaſon. The reaſon is anſwered by the remedy propoſed; by this Act it being propoſed, that it ſhall be provided by this Bill, that upon our commitment, we may inſtantly have recourſe to the Chancery for an *Habeas Corpus*, returnable in that Court, which is always open; and that upon the receipt thereof, the Writ muſt be returned, and the cauſe thereupon expreſſed. If then this remedy be really the cauſe of commitment, it muſt partly appear; which contradicts the former reaſon of State.

And in my own opinion, we ought not only to take care, that the Subject ſhould be delivered out of priſon, but to prevent his impriſonment; the Statute of *Magna Charta*, and the reſt of the Acts, providing that no man ſhould be impriſoned, but by the Law of the Land. And although the King, or Council, as it hath been objected, by force may commit us without cauſe, notwithſtanding any Laws we can make; yet I am ſure without ſuch an Act of Parliament, ſuch commitment can have no legal colour, and I would be loth we ſhould make a Law to endanger ourſelves. For which reaſons I conceive, that there being ſo many ways to evade this Act, we ſhall be in a worſe caſe by it, than without it; as it provides no remedy to prevent our impriſonment without expreſſing the cauſe to be lawful, and adminiſters excuſes for continuing us in priſon, as I have before declared. And thus for providing for one particular out of reaſon of State, which poſſibly may fall out in an age or two, we ſhall ſpring a leak, which may ſink all our Liberties, and open a gap, through which *Magna Charta*, and the reſt of the Statutes, may iſſue out and vaniſh. I therefore conclude, that in my poor underſtanding (which I ſubmit to better Judgments), I had rather depend upon our former reſolutions, and the King's gracious declarations, than to paſs an Act in ſuch manner as hath been propoſed.

In concluſion, the Commons agreed to an anſwer to all the preceding meſſages, and preſented it to the King by the mouth of their Speaker.

The Speaker's Speech (*Sir* John Finch) *to the King, in anſwer to ſeveral Meſſages, in the Banqueting-Houſe*, May 5.

Moſt Gracious and Dread Sovereign,

YOUR Loyal and Obedient Subjects, the Commons now aſſembled in Parliament, by ſeveral meſſages from your Majeſty, and eſpecially by that your declaration delivered by the Lord-Keeper before both Houſes, have, to their exceeding great joy and comfort, received many ample expreſſions of your princely care and tender affections towards them, with a gracious promiſe and aſſurance, that your Majeſty will govern according to the Laws of this Realm, and ſo maintain all your Subjects, in the juſt freedom of their perſons, and ſafety of their eſtates, that all their Rights and Liberties may be by them enjoyed, with as much freedom and ſecurity in their time, as in any age heretofore by their Anceſtors, under the beſt of your Progenitors: For this ſo great a favour, enlarged by a comfortable intimation of your Majeſty's confidence in the proceedings of this Houſe, they do, by me, their Speaker, make a full return of moſt humble thanks to your Majeſty, with all dutiful acknowledgment of your grace and goodneſs herein extended unto them.

And whereas in one of thoſe meſſages delivered from your Majeſty, there was an expreſſion of your deſire to know, whether this Houſe would reſt upon your Royal word and promiſe, aſſuring them, that if they would, it ſhould be royally and really performed: As they again preſent their humble thanks for the ſeconding and ſtrengthening of your former Royal expreſſions, ſo in all humbleneſs they aſſure your Majeſty, that their greateſt confidence is, and ever muſt be, in your grace and goodneſs, without which, they well know, nothing they can frame or deſire, will be of ſafety or value to them; therefore are all humble ſuitors to your Majeſty, that your Royal heart will graciouſly accept and believe the truth of theirs, which they humbly preſent, as full of truth and confidence in your Royal word and promiſe, as ever Houſe of Commons repoſed in any of their beſt Kings.

True it is, they cannot but remember the publick truſt, for which they are accountable to preſent and future times; and their deſires are, That your Majeſty's goodneſs might, in fruit and memory, be the bleſſing and joy of Poſterity.

They ſay alſo, That of late, there hath been publick violation of the Laws, and the Subjects Liberties, by ſome of your Majeſty's Miniſters; and thence conceive, that no leſs than a publick remedy will raiſe the dejected hearts of your loving Subjects to a chearful ſupply of your Majeſty, or make them receive content in the proceedings of this Houſe.

From theſe conſiderations, they moſt humbly beg your Majeſty's leave to lay hold of that gracious offer of yours, which gave them aſſurance, that if they thought fit to ſecure themſelves in their Rights and Liberties, by way of Bill or otherwiſe, ſo it might be provided with due reſpect to God's honour, and the publick good, you would be graciouſly pleaſed to give way unto it. Far from their intentions it is, any way to encroach upon your Sovereignty or Prerogative; nor have they the leaſt thought of ſtretching or enlarging the Laws in any ſort, by any new interpretations or additions; the bounds of their deſires extend no further, than to ſome neceſſary explanation of that, which is truly comprehended within the juſt ſenſe and meaning of thoſe Laws, with ſome moderate proviſion for execution and performance, as in times paſt, upon like occaſion hath been uſed.

The way how to accompliſh theſe their humble deſires, is now in ſerious conſideration with them, wherein they humbly aſſure your Majeſty, they will neither loſe time, nor ſeek any thing of your Majeſty, but that they hope may be fit for dutiful and loyal Subjects to aſk, and for a gracious and juſt King to grant.

His Majeſty's Anſwer was delivered by the Lord-Keeper, Thomas *Lord* Coventry.

MR. Speaker, and you Gentlemen of the Houſe of Commons, his Majeſty has commanded me to tell you, that he expected an anſwer by your actions, and not delay by diſcourſe: ye acknowledge his truſt and confidence in your proceedings, but his Majeſty ſees not how you requite him by your confidence of his word and actions: for what need explanations, if ye doubted not the performance of the true meaning? for explanations will hazard an incroachment upon his Prerogative. And it may well be ſaid, What need a new Law to confirm an old, if you repoſe confidence in the declaration his Majeſty made by me to both Houſes? And yourſelves acknowledge, that your greateſt truſt and confidence muſt be in his Majeſty's grace and goodneſs, without which nothing that you can frame will be of ſafety, or available to you. Yet, to ſhew clearly the ſincerity of his Majeſty's intentions, he is content, that a Bill be drawn for a confirmation of *Magna Charta*, and the ſix other Statutes inſiſted upon for the Subjects Liberties, if ye ſhall chuſe that to be the beſt way; but ſo, as it may be without additions, paraphraſes, or explanations.

Thus, if you pleaſe, you may be ſecured from your needleſs fears, and this Parliament may have a happy wiſhed-for end; whereas by the contrary, if you ſeek to tie your King by new, and indeed impoſſible bonds, you muſt be accountable to God and your Country for the ill ſucceſs of this meeting: His Majeſty having given his Royal word, that you ſhall have no cauſe to complain hereafter; leſs than which, hath been enough to reconcile great Princes, and therefore ought much more to prevail between a King and his Subjects.

Laſtly, I am commanded to tell you, that his Majeſty's pleaſure is, That without further replies or meſſages, or other unneceſſary delays, you do what you mean to do ſpeedily, remembering the laſt meſſage, which his Majeſty ſent you by Secretary *Cook*, in point of time: his Majeſty always intending to perform his promiſe to his people.

NOtwithſtanding the intimation of his Majeſty's good pleaſure for a Bill, Mr. Secretary *Cook*, *Tueſday*, *May* 6, again preſſed the Houſe to rely upon the King's word, ſaying, That he had rather follow others, than begin to enter into this buſineſs: loſs of time hath been the greateſt complaint; the matter fallen now into conſideration, is, what way to take, whether to rely on his Majeſty's word, or on a Bill? If we will conſider the advantage we have in taking his Majeſty's word, it will be of the largeſt extent, and we ſhall chuſe that that hath moſt aſſurance; an Act of Par-

Parliament is by the conſent of the King and Parliament; but this aſſurance by word is, that he will govern us by the Laws; the King promiſes that, and alſo that they ſhall be ſo executed, that we ſhall enjoy as much freedom as ever. This contains many Laws, and a grant of all good Laws; nay, it contains a confirmation of thoſe very Laws, aſſurance, which binds further than the Law can: firſt, it binds his affection, which is the greateſt bond between King and Subject, and that binds his judgment alſo, nay, his honour, and that not at home, but abroad; the Royal word of a King is the ground of all treaty; nay, it binds his conſcience. This confirmation between both Houſes is in nature of a vow; for my part, I think it is the greateſt advantage to rely on his Majeſty's word. He further added, this debate was fitter to be done before the Houſe, and not before the Committee; and that it was a new courſe to go to a Committee of the whole Houſe.

Sir *John Elliott* replied, That the proceeding in a Committee is more honourable and advantageous to the King and the Houſe, for that way leads moſt to truth, and it is a more open way, and where every man may add his reaſon, and make anſwer upon the hearing of other men's reaſons and arguments.

This being the general ſenſe, the Houſe was turned into a Committee, to take into conſideration what was delivered to the King by the Speaker, and what was delivered to them by the Lord-Keeper, and all other meſſages, and the Committee was not to be bounded by any order: the key was brought up, and none were to go out without leave firſt aſked.

In the debate of this buſineſs at the Committee, ſome were for letting the Bill reſt: but Sir *Edward Coke*'s reaſons prevailed to the contrary. Was it ever known (ſaid he) that general words were a ſufficient ſatisfaction to particular grievances? Was ever a verbal declaration of the King *Verbum Regni?* When Grievances be, the Parliament is to redreſs them. Did ever Parliament rely on meſſages? They put up Petitions of their Grievances, and the King ever anſwered them: the King's anſwer is very gracious, but what is the Law of the Realm, that is the queſtion? I put no diffidence in his Majeſty, the King muſt ſpeak by a Record, and in particulars, and not in general: did you ever know the King's meſſage come into a Bill of Subſidies? All ſucceeding Kings will ſay, Ye muſt truſt me as you did my Predeceſſors, and truſt my meſſages; but meſſages of love never came into a Parliament. Let us put up a Petition of Right: not that I diſtruſt the King, but that I cannot take his truſt, but in a Parliamentary way.

On *Thurſday* 8 *May*, the Petition of Right was finiſhed, and the Clauſe of Martial Law was added unto it, and it was delivered to the Lords at a conference in the Painted Chamber for their concurrence; which conference was managed by Sir *Edward Coke*, who thus expreſſed himſelf: I pray your Lordſhips to excuſe us, for we have been till one of clock about the great buſineſs, and (bleſſed be God) we have diſpatch'd it in ſome meaſure, and before this time we were not able to attend your Lordſhips, but I hope that this will prove a great bleſſing to us. My Lords, I am commanded from the Houſe of Commons to expreſs their ſingular care and affection they have of concurrence with your Lordſhips, in theſe urging affairs and proceedings of this Parliament; both for the good of the Commonwealth, and principally for his Majeſty's. And this I may ſay in this particular, if we had hundreds of tongues, we were not able to expreſs this deſire which we have of that concurrence with your Lordſhips: but I will leave it without any further expreſſion. My Lords, it is evident what neceſſity there is, both in reſpect of yourſelves, and your Poſterities, to have good ſucceſs in this buſineſs. We have acquainted your Lordſhips with the reaſons and arguments, and after we have had ſome conference, we have received from your Lordſhips five propoſitions; and it behoves me to give your Lordſhips ſome reaſons why you have not heard from us before now; for in the mean time, as we were conſulting of this weighty buſineſs, we have received divers meſſages from our great Sovereign the King, and they conſiſted of five parts:

1. That his Majeſty would maintain all his Subjects in their juſt freedom, both of their perſons and eſtates.

2. That he will govern according to his Laws and Statutes.

3. That we ſhould find much confidence in his Royal word; I pray obſerve that.

4. That we ſhall enjoy all our Rights and Liberties, with as much freedom and liberty as ever any Subjects have done in former times.

5. That whether we ſhall think it fit, either by way of Bill or otherwiſe, to go on in this great buſineſs, his Majeſty would be pleaſed to give way to it.

Theſe gracious meſſages did ſo work upon our affections, that we have taken them into conſideration. My Lords, when we had theſe meſſages, (I deal plainly, for ſo I am commanded by the Houſe of Commons) we did conſider, what way we might go for our more ſecure way, nay, yours; we did think it the ſafeſt way to go in a Parliamentary courſe, for we have a maxim in the Houſe of Commons, and written on the walls of our Houſe, That old ways are the ſafeſt and ſureſt ways: And at laſt we fell upon that which we did think (if that your Lordſhips did conſent with us) it is the moſt ancient way of all, and that is, my Lords, *via fauſta*, both to his Majeſty, to your Lordſhips, and to ourſelves. For, my Lords, this is the greateſt Bond, that any Subject can have in Parliament, *Verbum Regis*, this is an high point of honour, but this ſhall be done by the Lords and Commons, and aſſented to by the King in Parliament; this is the greateſt obligation of all; and this is for the King's honour and our ſafety. Therefore, my Lords, we have drawn a form of a Petition, deſiring your Lordſhips to concur with us therein; for we come with an unanimous conſent of all the Houſe of Commons, and there is great reaſon your Lordſhips ſhould do ſo, for your Lordſhips are involved in the ſame condition, *Commune Periculum*. So I have done with the firſt part: And now I ſhall be bold to read that which we have ſo agreed on, and I ſhall deſire your Lordſhips leave that I may read it.

Here the Petition of Right was read; but we forbear to inſert it as yet, becauſe there were propoſitions for alteration; and it is not perfect, till the Royal aſſent be given to it.

From the eighth to the twelfth of *May*, all publick buſineſs was laid aſide. On *Monday* the twelfth, the Lords had a conference with the Commons, where the Lord-Keeper made this Speech:

Gentlemen of the Houſe of Commons,

MY Lords, having a moſt affectionate deſire to maintain that good concurrence, that in this Parliament and others have been of late between both Houſes, deſired this Conference, to acquaint you, how, and in what manner, they have proceeded in the Petition of Right that came from this Houſe, and to let you know, that as ſoon as they had received it, they, with all care and expedition they poſſibly could, addreſſed themſelves to conſider thereof; and after good time ſpent in Debate in the whole Houſe, they made a Committee to conſider, whether retaining the ſubſtance of the Petition, there might not be ſome words altered, or put in to make it more ſweet, to procure it a paſſable way to his Majeſty: we know this muſt be crowned by the King, and good muſt come to all the Kingdom by this courſe now taken. The Committee hath met, and hath propounded ſome ſmall matters to be altered in ſome few words, to make it paſſable, and not in ſubſtance. And the Lords having this reported from their Committee, and heard it read in their Houſe, reſolved of nothing till they have your conſent; yet they think it fitter to have it propounded to you, to conſider, whether there ſhould be any alteration or no, and how the propounded alterations may ſtand with your liking.

Concerning the commitment by the King and the Council, without expreſſing the cauſe, it was reſolved by the Lords to debate it this morning, and as ſoon as they ſhould have debated it, they purpoſed to have your concurrence with them before they reſolved it; but at the inſtant when they thought to have debated it, they received a Letter from his Majeſty, which, they conceive, will give a ſatisfaction to both Houſes in the main point. My Lords deſiring to keep that good concurrence begun, deſired to communicate that Letter unto you, that you might take the ſame into your conſiderations, as they mean to do themſelves: This Letter is to be read unto you.

To our Right Truſty and Well-beloved, the Lords Spiritual and Temporal of the Higher Houſe of Parliament.

Carolus Rex.

" WE being deſirous of nothing more than the advancement of the peace and proſperity of our People, have given leave to free Debate upon the higheſt points of our Prerogative Royal, which in the time of our Predeceſſors, Kings and Queens of this Realm, were ever reſtrained as matters that they would not have diſcuſſed; and in other things we have been willing ſo far to deſcend to the deſires of our good Subjects, as might fully ſatisfy all moderate minds, and free them from all juſt fears and jealouſies, which thoſe meſſages, which we have hitherto ſent into the Commons Houſe, will well demonſtrate unto the World. Yet we find it ſtill inſiſted upon, that in no caſe whatſoever, ſhould it never ſo nearly concern matters of State or Government, we, or our Privy-Council, have no power to commit any man without the cauſe ſhewed; whereas it often happens, that ſhould the cauſe be ſhewed, the ſervice itſelf would thereby be deſtroyed and defeated; and the cauſe alledged muſt be ſuch, as may be determined by our Judges of our Courts of *Weſtminſter*, in a legal and ordinary way of juſtice; whereas the cauſes may be ſuch, whereof the Judges have no capacity of judicature, nor rules of Law to direct and guide their judgment in caſes of that tranſcendent nature; which happening ſo often, the very intermitting the conſtant rule of Government, for ſo many ages, within this Kingdom practiſed, would ſoon diſſolve the very foundation and frame of our Monarchy. Wherefore, as to our Commons we have made fair propoſitions, which might equally preſerve the juſt Liberty of the Subject; ſo, my Lords, we have thought good to let you know, that without the overthrow of Sovereignty, we cannot ſuffer this power to be impeached; notwithſtanding, to clear our conſcience and juſt intentions, this we publiſh, That it is not in our heart, nor will we ever extend our Royal power, lent unto us from God, beyond the juſt rule of Moderation, in any thing which ſhall be contrary to our Laws and Cuſtoms, wherein the ſafety of our people ſhall be our only aim. And we do hereby declare our Royal pleaſure and reſolution to be, which, God willing, we ſhall ever conſtantly continue and maintain, That neither we, nor our Privy-Council, ſhall or will, at any time hereafter, commit or command to priſon, or otherwiſe reſtrain the perſon of any for not lending money to us, nor for any cauſe, which in our conſcience doth not concern the publick good and ſafety of us and our people; we will not be drawn to pretend any cauſe, wherein our judgment and conſcience is not ſatisfied with; which baſe thoughts, we hope, no man can imagine will fall into our Royal breaſt; and that in all caſes of this nature, which ſhall hereafter happen, we ſhall, upon the humble Petition of the Party, or addreſs of our Judges unto us, readily and really expreſs the true cauſe of their commitment or reſtraint, ſo ſoon as with conveniency and ſafety the ſame is fit to be diſcloſed and expreſſed. And that in all cauſes criminal of ordinary juriſdiction, our Judges ſhall proceed to the deliverance or bailment of the priſoner, according to the known and ordinary rules of the Laws of this Land, and according to the Statutes of *Magna Charta*, and thoſe other ſix Statutes inſiſted upon, which we do take knowledge ſtand in full force, and which we intend not to abrogate and weaken, againſt the true intention thereof. This we have thought fit to ſignify unto you, the rather to ſhorten any long Debate upon this great queſtion, the ſeaſon of the year being ſo far advanced, and our great occaſions of State not lending us many more days for longer continuance of this Seſſion of Parliament."

Given under our Signet at our Palace at Weſtminſter, 12 Maii, *the fourth year of our Reign.*

The ſame day the King's Letter was communicated to the Houſe of Commons, they laid it aſide, and Sir *Thomas Wentworth* ſaid, It was a Letter of Grace; but the people will only like of that which is done in a Parliamentary way: beſides, the debate of it would ſpend much time, neither was it directed

directed to the Houſe of Commons; and the Petition of Right would clear all miſtakes: For (ſaid he) ſome give it out, as if the Houſe went about to pinch the King's Prerogative. But the further debate of this matter took up ſeveral days.

May 17. The Lords propounded, at a conference, an addition to be made to the Petition of Right, which was delivered by the Lord-Keeper, to this purpoſe:

YOU the Knights, Citizens, and Burgeſſes of the Houſe of Commons, my Lords have commanded me to preſent unto you the ſingular care and affection they have to preſerve that correſpondency and order, which the two Houſes (both in this and former Parliaments, to the happineſs of this Kingdom) have heretofore enjoyed.

They command me alſo to let you know, that they have no leſs care and affection to bring that great buſineſs, *the Liberty of the Subject*, to an happy iſſue. And whereas at the laſt conference of both Houſes, there were ſome things propounded, that came from their Lordſhips, out of a deſire the Petition might have the eaſier paſſage with his Majeſty, not intending to alter in any manner the ſubſtance of the Petition; but it was then thought fit, that there was another part of the Petition, of as great importance and weight: my Lords, ſince the time of that conference, have imploy'd themſelves wholly to reduce the Petition to ſuch a frame and order, that may give both to you and them hope of acceptance.

And after many deliberations, and much advice taken, my Lords have reſolved to repreſent to you ſomething which they have thought upon, yet not as a thing concluſive to them or you; and according to their deſires (having mentioned it in the beginning) have held it fit to conclude of nothing, till that you be made acquainted with it, and that there may be a mature adviſement between you and them, ſo that there may be the happier concluſion in all their buſineſs.

This being the determination of the Lords, that nothing, that is now offered unto you, ſhould be concluſive, yet they thought it convenient to preſent it unto you.

This alteration (and not alteration, but addition) which they ſhall propound unto you, to be adviſed and conferred upon, which is no breach of the ſame, they think it meet, if it ſhall ſtand with your liking, to be put in the concluſion of the Petition which I ſhall now read unto you.

We preſent this our humble Petition to your Majeſty, with the care not only of preſerving our own Liberties, but with due regard to leave intire that Sovereign Power, wherewith your Majeſty is truſted for the Protection, Safety, and Happineſs of the People.

This is the thing the Lords do preſent unto you, the Subject of this conference, concerning the adding of this in the concluſion of the Petition; and as they know, that this is no ſmall thing, and that you cannot preſently give an anſwer to it; therefore they deſire you, that you do with ſome ſpeed conſider of it, and their Lordſhips will be ready this afternoon.

This addition produced ſeveral ſpeeches.

Mr. *Alford.*] Let us look (ſaid he) into the Records, and ſee what they are, what is *Sovereign Power? Bodin* ſaith, That it is free from any condition, by this we ſhall acknowledge a Regal, as well as a Legal Power: Let us give that to the King, that the Law gives him, and no more.

Mr. *Pymm.*] I am not able to ſpeak to this queſtion, I know not what it is: All our Petition is for the Laws of *England*, and this power ſeems to be another diſtinct power from the power of the Law. I know how to add Sovereign to his Perſon, but not to his Power: And we cannot leave to him a Sovereign Power, when we never were poſſeſſed of it.

Mr. *Hackwell.*] We cannot admit of thoſe words with ſafety, they are applicable to all the parts of our Petition: It is in the nature of a Saving, and by it we ſhall imply, as if we had incroached on his Prerogative; all the Laws we cite are without a Saving: and yet now after the violation of them we muſt add a Saving: I have ſeen divers Petitions, and where the Subject claimed a Right, there I never ſaw a Saving of this nature.

Sir *Edward Coke.*] This is *magnum in parvo*, this is propounded to be a concluſion of our Petition: It is a matter of great weight; and, to ſpeak plainly, it will overthrow all our Petition; it trenches to all parts of it: It flies at Loans, and at the Oath, and at Impriſonment, and Billeting of Soldiers; this turns all about again. Look into all the Petitions of former times, they never petitioned, wherein there was a ſaving of the King's Sovereignty: I know that Prerogative is part of the Law, but ſovereign Power is no Parliamentary word. In my opinion, it weakens *Magna Charta*, and all our Statutes; for they are abſolute, without any ſaving of ſovereign Power. And ſhall we now add it, we ſhall weaken the foundation of Law, and then the building muſt needs fall; let us take heed what we yield unto; *Magna Charta* is ſuch a fellow, that he will have no ſovereign. I wonder this ſovereign was not in *Magna Charta*, or in the confirmations of it: If we grant this, by implication we give a ſovereign power above all theſe Laws: power in Law, is taken for a power with force: The Sheriff ſhall take the power of the County, what it means here, God only knows. It is repugnant to our petition, that is a *Petition of Right*, grounded on Acts of Parliament. Our Predeceſſors could never endure a *ſalvo jure ſuo*, no more than the Kings of old could endure for the Church, *ſalvo honore Dei & Eccleſiæ*. We muſt not admit of it, and to qualify it, is impoſſible. Let us hold our privileges according to the Law; that power, that is above this, is not fit for the King and People to have it diſputed further. I had rather, for my part, have the prerogative acted, and I myſelf to lie under it, than to have it diſputed.

Sir *Thomas Wentworth.*] If we do admit of this addition, we ſhall leave the Subject worſe than we found him, and we ſhall have little thanks for our labour, when we come home: Let us leave all power to his Majeſty to puniſh malefactors; but our Laws are not acquainted with ſovereign power: we deſire no new thing, nor do we offer to trench on his Majeſty's prerogative; we muſt not recede from this petition, either in part or whole.

Mr. *Noye.*] To add a Saving, is not ſafe; doubtful words may beget ill conſtruction: and the words are not only doubtful words, but words unknown to us, and never uſed in any act or Petition before.

Mr. *Selden.*] Let us not go too haſtily to the queſtion. If there be any objections, let any propound them, and let others anſwer them as they think good. I will not touch the reaſons already given. The ſum of this addition is, that our right is not to be ſubject to Loans or Impriſonment without cauſe, or martial law, but by ſovereign power. If it hath no reference to our Petition, what doth it here? I am ſure all others will ſay it hath reference, and ſo muſt we. How far it doth exceed all examples of former times, no man can ſhew me the like. I have made that ſearch that fully ſatisfies me, and I find not another beſides 28 *Ed.* I. We have a great many petitions and bills of parliament in all ages, in all which we are ſure no ſuch thing is added. That clauſe of the 28 *Edw.* I. it was not in the petition, but in the King's anſwer.

In *Magna Charta* there were no ſuch clauſes; the articles themſelves are to be ſeen in a library at *Lambeth*, in a book of that time, upon which the law was made. There was none in the Statutes in King *John*'s time, for theſe I have ſeen, there is no ſaving. In the articles of *confirmatio chartarum*, is a ſaving, *les ancients aids*, that is, for *file maryer, & pur fair fitz chivalier*, and for ranſom. And in the articles of King *John*, in the original charter, which I can ſhew, there thoſe three aids were named therein, and they were all known. In the 25 *Edw.* III. there is a petition againſt Loans, there is no ſaving, and ſo in others. As for that addition in the 28 *Edw.* I. do but obſerve the petitions after *Magna Charta*; as 5 *Edw.* III. they put up a petition: whereas in *Magna Charta* it is contained, that none be impriſoned but by due proceſs of law; thoſe words are not in *Magna Charta*, and yet there is no ſaving. And ſo in the 28 *Edw.* III. and 36, 37, and 42 of *Edw.* III. all which paſs by petition, and yet there is no ſaving in them. And there are in them other words that are not in *Magna Charta*, and yet no ſaving. For that that Mr. Speaker ſaid to the King, it was our heart, and ever ſhall be; but we then ſpoke of the King's prerogative by itſelf, and we are bound to ſay ſo: but ſpeaking of our rights, ſhall we ſay we are not to be impriſoned, ſaving but by the King's ſovereign power? Say my Lands, without any title, be ſeized in the King's hand, and I bring a petition of right, and I go to the King, and ſay, I do by no means ſeek your Majeſty's right and title; and after that, I bring a petition or *monſtrance de droit*, ſetting forth my own right and title, and withal ſet down a ſaving, that I leave intire his Majeſty's right, it would be improper. It was objected, that in the 28 of *Edw.* I. in the end of *articuli ſuper chartas*, which was a confirmation of *Magna Charta*, and *Charta de Foreſta*, in the end there is a clauſe, *ſavant le droit & ſignior*; the words are extant in that roll that is now extant, but the original roll is not extant.

In the 25 *Edw.* I. there was a confirmation of the Charter; in the 27 *Edw.* I. the Parliament was called, and much ſtir there was about the Charter, and renewing the Articles, but then little was done. In 28 *Edw.* I. the Commons by petition or bill, did obtain the liberties and articles at the end of the Parliament; they were extracted out of the roll, and proclaimed abroad. The addition was added in the proclamation: In the bill there was no *ſavant*, but afterwards it was put in; and to prove this, it is true, there is no Parliament-roll of that year, yet we have hiſtories of that time. In the library at *Oxford*, there is a journal of a parliament of that very year, which mentions ſo much; alſo in the publick library at *Cambridge*, there is a manuſcript that belonged to an Abbey, it was of the ſame year 28 *Edw.* I. and it mentions the parliament and the petitions, and *articulos quos petierunt ſic confirmaverat rex ut in fine adderet, Salvo jure coronæ regis*; and they came by proclamation in *London*. When the people heard this clauſe added in the end, they fell into execration for that addition, and the great Earls that went away ſatisfied from the Parliament, hearing of this, went to the King, and afterwards it was cleared at the next Parliament. Now there is no Parliament-roll of this at that time, only in one roll in the end of *Edw.* III. there is a roll, that recites not the Parliament bill, but the Statute that was the effect of the roll, that was proclaimed.

The Lords afterwards, at a conference, tendered reaſons to fortify their addition; which were briefly reported by the Lord Keeper:

THAT the Lords were all agreed to defend and maintain the juſt liberties of the Subject, and of the Crown; and that the word, *leave*, was debated amongſt them; and thereby they meant to give no new, but what was before: for the words, *Sovereign Power*, as he is a King, he is a Sovereign, and muſt have power; and he ſaid, the words were eaſier than the *Prerogative*. As for the word, *that*, which is a relative, and referred to *that power*, that is for the ſafety of the people; and this, ſaid he, can never grieve any man. Being thus publiſhed, it is not ſovereign power in general, but now in confutation of our reaſons, *Magna Charta* was not with a ſaving; but, ſaid he, you purſue not the words in *Magna Charta*, and therefore it needs an addition.

As for the 28 of *Edw.* III. he ſaid, there was a ſaving; and an ill expoſition cannot be made of this, and both Houſes have agreed it in ſubſtance already; the Commons did it in a ſpeech delivered by the Speaker, and that we ſay we have not a thought to incroach on the King's ſovereignty; and why may you not add it in your petition?

Upon this report, Mr. *Maſon* ſpake his opinion in manner following:

IN our Petition of Right to the King's Majeſty, we mention the laws and ſtatutes, by which it appear'd, That no tax, loan, or the like, ought to be levied by the King, but by common aſſent in Parliament: that no freeman ought to be impriſoned but by the law of the land; that no freeman ought to be compelled to ſuffer ſoldiers in his houſe. In the petition we have expreſſed the breach of theſe laws, and deſire we may not ſuffer the like; all which we pray as our rights and liberties.

The Lords have propoſed an addition to this Petition, in theſe words:

We humbly preſent this Petition to your Majeſty, not only with a care of our own Liberties, but with a due regard to leave entire that Sovereign Power *where-*

wherewith your Majeſty is intruſted for the protection, ſafety, and happineſs of your people.

And whether we ſhall conſent unto this addition, is the ſubject of this day's diſcourſe: and becauſe my Lord-Keeper, at the laſt conference, declared their Lordſhips had taken the words of the petition apart, I ſhall do ſo too. The word, *leave*, in a petition, is of the ſame nature as *ſaving* in a grant, or act of parliament: when a man grants but part of a thing, he ſaves the reſt; when he petitions to be reſtored but to part, he leaveth the reſt: then in the end of our petition, the word, *leave*, will imply, that ſomething is to be left of that, or at leaſt with a reference to what we deſire.

The word, *intire*, is very conſiderable; a Conqueror is bound by no Law, but hath power *dare leges*, his Will is a Law; and although *William* the Conqueror, at firſt, to make his way to the Crown of *England* the more eaſy, and the poſſeſſion of it more ſure, claimed it by title; but afterwards when there were no powerful pretenders to the Crown, the title of conqueſt (to introduce that abſolute power of a Conqueror) was claimed, and that Statute of *Magna Charta*, and other Statutes mentioned in our petition, do principally limit that power. I hope it is as lawful for me to cite a Jeſuit, as it is for Dr. *Manwaring* to falſify him; *Suares*, in his firſt book, *de Legibus*, *cap.* 17. delivered his opinion in theſe words, *Amplitudo & reſtrictio poteſtatis Regum circa ea quæ per ſe mala vel injuſta non ſunt, pendet ex arbitrio hominum & ex ambigua conventione vel pacto inter reges & regnum.* And he farther expreſſeth his opinion, That the King of *Spain* was ſo abſolute a Monarch, that he might lawfully impoſe tribute without conſent of his people, until about two hundred years ſince, when it was concluded between him and his people, that without conſent of his people by proxies, he ſhould not impoſe any tribute. And *Suares*'s opinion is, That by that agreement, the Kings of *Spain* are bound to impoſe no tribute without conſent.

And this agreement that author calls a reſtraining of that ſovereign power; the Statutes then mentioned in our Petition, reſtraining that abſolute power of a Conqueror: if we recite thoſe Statutes, and ſay, we leave the ſovereign power intire, we do take away that reſtraint which is the virtue and ſtrength of thoſe Statutes, and ſet at liberty the claim of the ſovereign power of a Conqueror, which is to be limited and reſtrained by no laws: this may be the danger of the word, *intire*.

The next word delivered by the Lords as obſervable, is the particle, *That*; becauſe it was ſaid, that all ſovereign power is not mentioned to be left, but only (that) with which the King is truſted for our protection, ſafety, and happineſs: But I conceive this to be an exception of all ſovereign power; for all ſovereign power in a King, is for the protection, ſafety, and happineſs of his people. If all ſovereign power be excepted, you may eaſily judge the conſequence, all Loans and Taxes being impoſed by colour of that ſovereign power.

The next word is, *Truſted*; which is very ambiguous, whether it be meant, truſted by God only as a Conqueror, or by the people alſo, as King, which are to govern alſo according to laws, *ex pacto*. In this point I will not preſume to adventure further; only I like it not, by reaſon of the doubtful expoſition it admits. I have likewiſe conſidered the propoſition itſelf, and therein I have fallen upon the dilemma, that this addition ſhall be conſtrued either to refer unto the petition, or not; if it doth refer unto the petition, it is merely uſeleſs and unneceſſary, and unbefitting the judgment of this grave and great aſſembly to add to a petition of this weight. If it hath reference unto it, then it deſtroys not only the virtue and ſtrength of our petition of Right, but our Rights themſelves; for the addition being referred to each part of the petition, will neceſſarily receive this conſtruction: That none ought to be compelled to make any Gift, Loan, or ſuch like charge, without common conſent, or Act of Parliament, unleſs it be by the ſovereign power, with which the King is truſted for the protection, ſafety, and happineſs of his people.

That none ought to be compelled to ſojourn or billet ſoldiers, unleſs by the ſame ſovereign power; and ſo of the reſt of the Rights contained in the petition: and then the moſt favourable conſtruction will be, that the King hath an ordinary prerogative, and by that he cannot impoſe Taxes, or impriſon; that is, he cannot impoſe Taxes at his Will to employ them as he pleaſeth: but that he hath an extraordinary and tranſcendent ſovereign power for the protection and happineſs of his people, and for ſuch purpoſe he may impoſe Taxes, or billet ſoldiers as he pleaſeth; and we may aſſure ourſelves, that hereafter all Loans, Taxes, and billetting of ſoldiers, will be ſaid to be for the protection, ſafety, and happineſs of the people. Certainly hereafter it will be conceived, That an Houſe of Parliament would not have made an unneceſſary addition to this Petition of Right; and therefore it will be reſolved, That the addition hath relation to the Petition, which will have ſuch operation as I have formerly declared; and I the rather fear it, becauſe the late Loan and Billetting have been declared to have been by ſovereign power for the good of ourſelves; and if it be doubtful whether this propoſition hath reference to the petition or not, I know not who ſhall judge whether Loans or Impriſonments hereafter be by that ſovereign power or not?

A Parliament, which is made a Body of ſeveral Writs, and may be diſſolved by one Commiſſion, cannot be certain to decide this queſtion. We cannot reſolve that the Judges ſhall determine the words of the King's Letter read in this Houſe, expreſſing the cauſe of commitment may be ſuch, that the Judges have not capacity of judicature, no Rules of Law to direct and guide their judgments in caſes of that tranſcendent nature; the Judges then, and the judgments, are eaſily conjectured. It hath been confeſſed by the King's Counſel, that the ſtatute of *Magna Charta* binds the King, and his ſovereign power cannot be divided from himſelf. If then the ſtatute of *Magna Charta* binds the King, it binds his ſovereign power. If to the petition theſe words be added, the expoſition muſt be, that the ſtatute of *Magna Charta* binds the King's ſovereign power; ſaving the King's ſovereign power, I ſhall endeavour to give ſome anſwer to the reaſons given by the Lords.

The firſt is, That it is the intention of both Houſes, to maintain the juſt liberty of the Subject, and not to diminiſh the juſt power of the King; and therefore the expreſſion of that intention in this petition, cannot prejudice us. To which I anſwer,

Firſt, That our intention was, and is, as we then profeſſed, and no man can aſſign any particular in which we have done to the contrary; neither have we any way tranſgreſſed in that kind in this petition: and if we make this addition to the petition, it would give ſome intimation, that we have given cauſe or colour of offence therein; which we deny: and which if any man conceive ſo, let him aſſign the particular, that we may give anſwer thereunto.

By our petition, we only deſire our particular Rights and Liberties to be confirmed to us; and therefore it is not proper for us in it to mention ſovereign power in general, being altogether impertinent to the matter of the petition.

There is a great difference between the words of the addition, and the words propoſed therein, *viz.* between juſt Power, which may be conceived to be limited by Laws, and ſovereign Power, which is ſuppoſed to be tranſcendent and boundleſs.

The ſecond reaſon delivered by their Lordſhips, was, That the King is ſovereign; that as he is ſovereign, he hath power, and that that ſovereign power is to be left: for my part, I would leave it ſo, as not to mention it; but if it ſhould be expreſſed to be left in this petition, as it is propoſed, it muſt admit ſomething to be left in the King of what we pray, or at leaſt admit ſome ſovereign power in his Majeſty, in theſe privileges which we claim to be our right, which would fruſtrate our petition, and deſtroy our right, as I have formerly ſhewed.

The third reaſon given for this addition, was, That in the ſtatute of *Articuli ſuper Chartas*, there is a ſaving of the *Right* and *Seigniory* of the Crown.

To which I give theſe anſwers: That *Magna Charta* was confirmed above thirty times, and a general ſaving was in none of theſe Acts of confirmation, but in this only; and I ſee no cauſe we ſhould follow one ill, and not thirty good precedents; and the rather, becauſe that ſaving produced ill effects, that are well known.

That ſaving was by Act of Parliament; the concluſion of which Act is, That in all thoſe caſes the King did will, and all thoſe that were at the making of that ordinance did intend, that the *Right* and *Seigniory* of the Crown ſhould be ſaved: by which it appears, that the ſaving was not in the Petition of the Commons, but added by the King; for in the petition, the King's will is not expreſſed.

In that Act the King did grant, and part with, to his people, divers rights belonging to his prerogative, as in the firſt chapter he granted, That the people might chuſe three men, which might have power to hear and determine complaints, made againſt thoſe that offended in any point of *Magna Charta*, though they were the King's Officers, and to fine and ranſom them. And in the 8, 12, and 19 Chapters of that Statute, the King parted with other prerogatives; and therefore there might be ſome reaſon of the adding of that Sovereign Power, by the King's Counſel: But in this petition, we deſire nothing of the King's Prerogative, but pray the enjoying of our proper and undoubted rights and privileges; therefore there is no cauſe to add any words, which may imply a ſaving of that which concerns not the matter in the petition.

The fourth reaſon given by their Lordſhips, was, That by the mouth of our Speaker, we have this Parliament declared, That it was far from our intention to incroach upon his Majeſty's prerogative, and that therefore it could not prejudice us, to mention the ſame reſolution in an addition to this Petition.

To which I anſwer, That that declaration was a general anſwer to a meſſage from his Majeſty to us, by which his Majeſty expreſſed that he would not have his prerogative ſtraitened by any new explanation of *Magna Charta*, or the reſt of the Statutes: and therefore that expreſſion of our Speaker's was then proper, to make it have reference to this petition, there being nothing therein contained, but particular rights of the Subject, and nothing at all concerning his Majeſty's prerogative.

Secondly, That anſwer was to give his Majeſty ſatisfaction of all our proceedings in general, and no man can aſſign any particular, in which we have broken it; and this Petition juſtifies itſelf, that in it we have not offended againſt the proteſtation: And I know no reaſon, but that this declaration ſhould be added to all our Laws we ſhall agree on this Parliament, as well as to this petition.

The laſt reaſon given, was, That we have varied in our petition from the words of *Magna Charta*; and therefore it was very neceſſary that a ſaving ſhould be added to this petition.

I anſwer, that in the Statute 5 *E.* III. 25 *E.* III. 28 *E.* III. and other Statutes, with which *Magna Charta* is confirmed: The words of the Statute of explanation differ from the words of *Magna Charta* itſelf; the words of ſome of the Statutes of explanation, being, *That no man ought to be apprehended, unleſs by indictment, or due proceſs of Law*; and the other Statutes differing from the words of *Magna Charta*, in many other particulars, and yet there is no ſaving in thoſe Statutes, much leſs ſhould there be any in a *Petition of Right*. Theſe are the anſwers I have conceived to the reaſons of their Lordſhips, and the expoſition, I apprehend, muſt be made of the propoſed words, being added to our petition. And therefore, I conclude, that, in my opinion, we may not conſent to this addition, which I ſubmit to better judgments.

The Commons afterwards appointed Mr. *Glanvile* and Sir *Henry Martin* to manage another conference to be had with the Lords, concerning the ſaid matter, and to clear the ſenſe of the Commons in that point: The one argued the legal, the other the rational part.

Mr. Glanvile's *Speech in a full Committee of both Houſes of Parliament*, May 23, *in the Painted Chamber at* Weſtminſter.

MY Lords, I have in charge, from the Commons Houſe of Parliament (whereof I am a Member) to expreſs this day before your Lordſhips ſome part of their clear ſenſe, touching one point that hath occurred in the great debate, which hath ſo long depended in both Houſes.

I ſhall not need many words to induce or ſtate the queſtion, which I am to handle in this free conference. The ſubject matter of our meeting is well known to your Lordſhips, I will therefore only look ſo far back upon it, and ſo far recollect ſummarily the proceedings it hath had, as may be requiſite to preſent clearly to your Lordſhips conſiderations, the nature and conſequence of the particular wherein I muſt inſiſt.

Your Lordſhips may be pleaſed to remember, now that the Commons in this Parliament have framed a petition to be preſented to his Majeſty, a petition of Right rightly compoſed, relating nothing but truth, deſiring nothing but juſtice; a petition juſtly occaſioned, a petition neceſſary and fit for theſe times, a petition founded upon ſolid and ſubſtantial grounds, the Laws and Statutes of this Realm, ſure rocks to build upon; a petition bounded within due limits, and directed upon right ends, to vindicate ſome lawful and juſt Liberties of the free Subjects of this Kingdom from the prejudice of violations paſt, and to ſecure them from future innovations.

And becauſe my following diſcourſe muſt reflect chiefly, if not wholly, upon the matter of this petition, I ſhall here crave leave ſhortly to open to your Lordſhips the diſtinct parts whereof it doth conſiſt, and thoſe are four.

The firſt concerns levies of monies, by way of Loans or otherwiſe, for his Majeſty's ſupply; declaring, that no man ought, and praying that no man hereafter be compelled to make or yield any gift, loan, benevolence, tax, or ſuch like charge, without common conſent by Act of Parliament.

2. The ſecond is concerning that liberty of perſon, which rightfully belongs to the free Subjects of this Realm, expreſſing it to be againſt the tenure of the Laws and Statutes of the land, that any Freeman ſhould be impriſoned without cauſe ſhewed; and then reciting how this Liberty, amongſt others, hath lately been infringed, it concludeth with a juſt and neceſſary deſire, for the better clearing and allowance of this privilege for the future.

3. The third declareth the unlawfulneſs of billetting or placing Soldiers or Mariners, to ſojourn in free Subjects houſes againſt their wills, and prayeth remedy againſt that grievance.

4. The fourth and laſt aimeth at redreſs touching Commiſſions, to proceed to the trial and condemnation of offenders, and cauſing them to be executed and put to death by the Law Martial, in times and places, when and where, if by the Laws and Statutes of the Land they had deſerved death, by the ſame Laws and Statutes alſo they might, and by none other ought to be, adjudged and executed.

This petition, the careful Houſe of Commons, not willing to omit any thing pertaining to their duties, or which might advance their moderate and juſt ends, did heretofore offer up unto your Lordſhips conſideration, accompanied with an humble deſire, That in your nobleneſs and juſtice, you would be pleaſed to join with them in preſenting it to his Majeſty, that ſo coming from the whole body of the Realm, the Peers and People, to him that is the Head of both, our gracious Sovereign, who muſt crown the work, or elſe all our labour is in vain; it might, by your Lordſhips concurrence and aſſiſtance, find the more eaſy paſſage, and obtain the better anſwer.

Your Lordſhips, as your manner is in caſes of ſo great importance, were pleaſed to debate and weigh it well, and thereupon you propounded to us ſome few amendments (as you termed them) by way of alteration, alledging, that they were only in matters of form, and not of ſubſtance; and that they were intended to no other end, but to ſweeten the petition, and make it the more paſſable with his Majeſty.

In this the Houſe of Commons cannot but obſerve, that fair and good reſpect which your Lordſhips have uſed in your proceedings with them, by your concluding or voting nothing in your Houſe, until you had imparted it unto them; whereby our meetings about this buſineſs have been juſtly ſtiled free conferences, either party repairing hither diſengaged to hear and weigh the other's reaſons, and both Houſes coming with a full intention, upon due conſideration of all that can be ſaid on the other ſide, to join at laſt in reſolving and acting that which ſhall be found moſt juſt and neceſſary for the honour and ſafety of his Majeſty and the whole Kingdom.

And touching thoſe propounded alterations, which were not many, your Lordſhips cannot but remember, that the Houſe of Commons have yielded to an accommodation, or change of their petition in two particulars; whereby they hope your Lordſhips have obſerved, as well as you may, they have not been affected unto words and phraſes, nor overmuch abounding in their own ſenſe; but rather willing to comply with your Lordſhips in all indifferent things.

For the reſt of your propoſed amendments, if we do not miſconceive your Lordſhips, as we are confident we do not, your Lordſhips, of yourſelves, have been pleaſed to relinquiſh them with a new overture, for one only clauſe to be added in the end or foot of the petition, whereby the work of this day is reduced to one ſimple head, whether that clauſe ſhall be received or not?

This yielding of the Commons in part unto your Lordſhips, of other points by you ſomewhat inſiſted upon, giveth us great aſſurance, that our ends are one; and putteth us in hope, that, in concluſion, we ſhall concur, and proceed unanimouſly to ſeek the ſame ends, by the ſame means.

The clauſe propounded by your Lordſhips to be added to the petition, is this:

We humbly preſent this petition to your Majeſty, not only with a care for preſervation of Liberties, but with a due regard to leave intire that Sovereign Power, wherewith your Majeſty is intruſted for the protection, ſafety, and happineſs of your People.

A clauſe ſpecious in ſhew, and ſmooth in words, but in effect and conſequence moſt dangerous, as I hope to make moſt evident: however, coming from your Lordſhips, the Houſe of Commons took it into their conſiderations, as became them, and apprehending upon the firſt debate, that it threatened ruin to the whole petition, they did heretofore deliver ſome reaſons to your Lordſhips, for which they then deſired to be ſpared from admitting it.

To theſe reaſons, your Lordſhips offered ſome anſwers at the laſt meeting; which having been faithfully reported to our Houſe, and there debated as was requiſite for a buſineſs of ſuch weight and importance, I muſt ſay truly to your Lordſhips, yet with due reverence to your opinions, the Commons are not ſatisfied with your arguments; and therefore they have commanded me to recollect your Lordſhips reaſons for this clauſe, and in a fair reply to let you ſee the cauſes why they differ from you in opinion.

But before I come to handle the particulars wherein we diſſent from your Lordſhips, I will in the firſt place take notice yet a little further, of that general wherein we all concur; which is, that we deſire not (neither do your Lordſhips) to augment or dilate the Liberties and Privileges of the Subjects beyond the juſt and due bounds, nor to encroach upon the limits of his Majeſty's Prerogative Royal. And as in this, your Lordſhips at the laſt meeting expreſſed clearly your own ſenſes, ſo were your Lordſhips not miſtaken in collecting the concurrent ſenſe and meaning of the Houſe of Commons; they often have proteſted they do, and ever muſt proteſt, That theſe have been, and ſhall be the bounds of their deſires, to demand and ſeek nothing but that which may be fit for dutiful and loyal Subjects to aſk, and for a gracious and juſt King to grant: for as they claim by Laws ſome Liberties for themſelves, ſo do they acknowledge a Prerogative, a high and juſt Prerogative belonging to the King, which they intend not to diminiſh. And now, my Lords, being aſſured, not by ſtrained inferences, or obſcure collections, but by the expreſs and clear declarations of both Houſes, that our ends are the ſame; it were a miſerable unhappineſs, if we ſhould fail in finding out the means to accompliſh our deſires.

My Lords, the heads of thoſe particular reaſons which you inſiſted upon the laſt day, were only theſe:

Firſt, you told us, that the word [leave] was of ſuch a nature, that it could give no new thing to his Majeſty.

2. That no juſt exception could be taken to the words [Sovereign Power]; for that as his Majeſty is a King, ſo he is a Sovereign; and as he is a Sovereign, ſo he hath power.

3. That the ſovereign power mentioned in this clauſe is not abſolute, or indefinite, but limited and regulated by the particle [that]; and he word [ſubſequent] which reſtrains it to be applied only for protection, ſafety, and happineſs of the people, whereby ye inferred, there could be no danger in the allowance of ſuch power.

4. That this clauſe contained no more in ſubſtance, but the like expreſſions of our meanings in this petition, which we had formerly ſignified unto his Majeſty by the mouth of Mr. Speaker, that we no way intended to incroach upon his Majeſty's ſovereign power or prerogative.

5. That in our petition we have uſed other words, and of larger extent, touching our Liberties, than are contained in the ſtatutes whereon it is grounded: In reſpect of which inlargement, it was fit to have ſome expreſs, or implied ſaving, or narrative, declaratory for the King's ſovereign power, of which narrative you alledge this clauſe to be.

Laſtly, Whereas the Commons, as a main argument againſt the clauſe, had much inſiſted upon this, that it was unprecedented, and unparliamentary in a petition from the Subject, to inſert a ſaving for the Crown; your Lordſhips brought for inſtance to the contrary, the two Statutes of the 25 *E.* I. commonly called *confirmatio chartarum*, and 28 *E.* I. known by this name of *Articuli ſuper Chartas*; in both which Statutes there are ſavings for the King.

Having thus reduced to your Lordſhips memories, the effects of your own reaſons; I will now, with your Lordſhips favour, come to the points of our reply, wherein I moſt humbly beſeech your Lordſhips to weigh the reaſons which I ſhall preſent, not as the ſenſe of myſelf, the weakeſt Member of our Houſe, but as the genuine and true ſenſe of the whole Houſe of Commons, conceived in a buſineſs there debated with the greateſt gravity and ſolemnity, with the greateſt concurrence of opinions, and unanimity that ever was in any buſineſs maturely agitated in that Houſe. I ſhall not, peradventure, follow the method of your Lordſhips recollected reaſons in my anſwering to them, nor labour to urge many reaſons. It is the deſire of the Commons, that the weight of their arguments ſhould recompenſe (if need be) the ſmallneſs of their number. And, in concluſion, when you have heard me through, I hope your Lordſhips ſhall be enabled to collect clearly, out of the frame of what I ſhall deliver, that in ſome part or other of my diſcourſe there is a full and ſatisfactory anſwer given to every particular reaſon or objection of your Lordſhips.

The reaſons that are now appointed to be preſented to your Lordſhips, are of two kinds, legal and rational, of which thoſe of the former ſort are allotted to my charge; and the firſt of them is thus:

The clauſe now under queſtion, if it be added to the petition, then either it muſt refer or relate unto it, or elſe not; if it have no ſuch reference, is it not clear that it is needleſs and ſuperfluous? And if it have ſuch reference, is it not clear, that then it muſt needs have an operation upon the whole petition, and upon all the parts of it?

We cannot think that your Lordſhips would offer us a vain thing; and therefore taking it for granted, that if it be added, it would refer to the petition; let me beſeech your Lordſhips to obſerve with me, and with the Houſe of Commons, what alteration and qualification of the ſame it will introduce.

The petition of itſelf, ſimply, and without this clauſe, declareth abſolutely the rights and privileges of the Subject, in divers points; and among the reſt touching the levies of monies, by way of Loans or otherwiſe, for his Majeſty's ſupply, That ſuch loans and other charges of the like nature, by the Laws and Statutes of this Land, ought not to be made or laid without common conſent by Act of Parliament: But admit this clauſe to be annexed with reference (to the petition), and it muſt neceſſarily conclude and have this expoſition, That Loans and the like charges (true it is, ordinarily) are againſt the Laws and Statutes of the Realm, *unleſs they be warranted by ſovereign Power*, and that they cannot be commanded or raiſed without aſſent of Parliament, *unleſs it be by ſovereign Power:* What were this but to admit a ſovereign Power in the King above the Laws and Statutes of the Kingdom?

Another part of this petition is, That the free Subjects of this Realm ought not to be impriſoned without cauſe ſhewed: But by this clauſe a ſovereign Power will be admitted, and left intire to his Majeſty, ſufficient to controul the force of Law, and to bring in this new and dangerous interpretation, That the free Subjects of this Realm ought not by Law to be impriſoned without cauſe ſhewed, *unleſs it be by ſovereign Power.*

In a word, This clauſe, if it ſhould be admitted, would take away the effect of every part of the petition, and become deſtructive to the whole: for thence will be the expoſition touching the billetting of Soldiers and Mariners in Freemen's houſes againſt their wills; and thence will be the expo-

expoſition touching the times and places for execution of the Law Martial, contrary to the Laws and Statutes of the Realm.

The ſcope of this petition, as I have before obſerved, is not to amend our caſe, but to reſtore us to the ſame ſtate we were in before; whereas, if this clauſe be received, inſtead of mending the condition of the poor Subjects, whoſe Liberties of late have been miſerably violated by ſome Miniſters, we ſhall leave them worſe than we found them; inſtead of curing their wounds, we ſhall make them deeper. We have ſet bounds to our deſires in this great buſineſs, whereof one is not to diminiſh the Prerogative of the King, by mounting it too high; and if we bound ourſelves on the other ſide with this limit, not to abridge the lawful privileges of the Subject, by deſcending beneath that which is meet, no man, we hope, can blame us.

My Lords, as there is mention made in the additional *clauſe of ſovereign Power*, ſo is there likewiſe of a truſt repoſed in his Majeſty, touching the uſe of ſovereign Power.

The word *Truſt* is of great latitude and large extent, and therefore ought to be well and warily applied and reſtrained, eſpecially in the caſe of a King: there is a truſt inſeparably repoſed in the perſons of the Kings of *England*, but that truſt is regulated by Law. For example, when Statutes are made to prohibit things not *mala in ſe*, but only *mala quia prohibita*, under certain forfeitures and penalties, to accrue to the King, and to the informers that ſhall ſue for the breach of them; the Commons muſt and ever will acknowledge a regal and ſovereign prerogative in the King, touching ſuch Statutes, that it is in his Majeſty's abſolute and undoubted power, to grant diſpenſations to particular perſons, with the clauſes of *non obſtante*, to do as they might have done before thoſe Statutes, wherein his Majeſty conferring grace and favour upon ſome, doth not do wrong to others. But there is a difference between thoſe Statutes, and the Laws and Statutes whereon the petition is grounded: by thoſe Statutes the Subject has no intereſt in the penalties, which are all the fruit ſuch Statutes can produce, until by ſuit or information commenced he become intitled to the particular forfeitures: whereas the Laws and Statutes mentioned in our petition are of another nature; there ſhall your Lordſhips find us rely upon the good old Statute, called *Magna Charta*, which declareth and confirmeth the antient common Laws of the Liberties of *England:* There ſhall your Lordſhips alſo find us to inſiſt upon divers other moſt material Statutes, made in the time of King *Edward* III. and *Edward* IV. and other famous Kings, for explanation and ratification of the lawful rights and privileges belonging to the Subjects of this Realm: Laws not inflicting penalties upon offenders, *in malis prohibitis*, but Laws declarative or poſitive, conferring or confirming, *ipſo facto*, an inherent right and intereſt of Liberty and Freedom in the Subjects of this Realm, as their birthrights and inheritance deſcendable to their heirs and poſterity; Statutes incorporate into the body of the Common Law, over which (with reverence be it ſpoken) there is no truſt repoſed in the King's *Sovereign Power*, or *Prerogative Royal*, to enable him to diſpenſe with them, or to take from his Subjects that birthright or inheritance which they have in their Liberties, by virtue of the Common Law and of theſe Statutes.

But if this clauſe be added to our petition, we ſhall then make a dangerous overture to confound this good deſtination touching what Statutes the King is truſted to controul by diſpenſations, and what not; and ſhall give an intimation to poſterity, as if it were the opinion both of the Lords and Commons aſſembled in this Parliament, that there is a truſt repoſed in the King, to lay aſide by his *ſovereign Power*, in ſome emergent caſes, as well the Common-Law, and ſuch Statutes as declare or ratify the Subjects liberty, or confer intereſt upon their perſons, as thoſe other penal ſtatutes of ſuch nature as I have mentioned before; which, as we can by no means admit, ſo we believe aſſuredly, that it is far from the deſire of our moſt gracious Sovereign, to affect ſo vaſt a truſt, which being tranſmitted to a ſucceſſor of a different temper, might enable him to alter the whole frame and fabrick of the Commonwealth, and to diſſolve that Government whereby this Kingdom hath flouriſhed for ſo many years and ages, under his Majeſty's moſt Royal Anceſtors and Predeceſſors.

Our next reaſon is, that we hold it contrary to all courſe of Parliament, and abſolutely repugnant to the very nature of a petition of Right, conſiſting of particulars, as ours doth, to clog it with a general *Saving* or Declaration, to the weakening of the Right demanded; and we are bold to renew with ſome confidence our allegation, that there can be no precedent ſhewed of any ſuch clauſe in any ſuch petitions in times paſt.

I ſhall inſiſt the longer upon this particular, and labour the more carefully to clear it, becauſe your Lordſhips were pleaſed the laſt day to urge againſt us the ſtatutes of 25 and 28 of *Edw.* I. as arguments to prove the contrary, and ſeemed not to be ſatisfied with that which in this point we had affirmed. True it is, that in thoſe ſtatutes there are ſuch *Savings* as your Lordſhips have obſerved; but I ſhall offer you a clear anſwer to them, and to all other *Savings* of like nature that can be found in any ſtatutes whatſoever.

Firſt, in the general, and then I ſhall apply particular anſwers to the particulars of thoſe two ſtatutes; whereby it will be moſt evident, that thoſe examples can no ways ſuit with the matter now in hand. To this end it will be neceſſary, that we conſider duly what that queſtion is, which indeed concerneth a petition, and not an Act of Parliament. This being well obſerved, by ſhewing unto your Lordſhips the difference between a petition for the Law, and the Law ordained upon ſuch a petition, and open truly and perſpicuouſly the courſe that was holden in framing of ſtatutes before 2 *Hen.* V. different from that which ever ſince then hath been uſed, and is ſtill in uſe amongſt us, and by noting the times wherein theſe ſtatutes were made, which was about one hundred years before 2 *Hen.* V. beſides the differences between theſe *Savings* and this clauſe; I doubt not but I ſhall give ample ſatisfaction to your Lordſhips, that the Commons, as well in this as in all their other reaſons, have been moſt careful to rely upon nothing but that which is moſt true and pertinent.

Before the ſecond year of King *Henry* V. the courſe was thus: when the Commons were ſuitors for a Law, either the Speaker of their Houſe by word of mouth from them, the Lords Houſe joining with them, or by ſome bill in writing, which was uſually called their petition, moved the King, to ordain Laws for the redreſs of ſuch miſchiefs or inconveniences, as were found grievous unto the people.

To theſe petitions the King made anſwer as he pleaſed, ſometimes to part, ſometimes to the whole, ſometimes by denial, ſometimes by aſſent, ſometimes abſolutely, and ſometimes by qualification. Upon theſe motions and petitions, and the King's anſwers to them, was the Law drawn up and ingroſſed in the Statute-Roll to bind the Kingdom; but this inconvenience was found in this courſe, that oftentimes the ſtatutes thus framed, were againſt the ſenſe and meaning of the Commons, at whoſe deſires they were ordained; and therefore in the 2 *Hen.* V. finding that it tended to the violation of their liberty and freedom, whoſe right it was, and ever had been, that no Law ſhould be made without their aſſent; they then exhibited a petition to the King, declaring their right in this particular: praying, that from thenceforth no Law might be made or ingroſſed as Statutes, by additions or diminutions to their motions or petitions, that ſhould change their ſenſe, or intent, without their aſſent; which was accordingly eſtabliſhed by Act of Parliament. Ever ſince then, the Right hath been, as the uſe was before, that the King taketh the whole, or leaveth the whole of all Bills or Petitions, exhibited for the obtaining of Laws.

From this courſe, and from the time when firſt it became conſtant and ſettled, we conclude ſtrongly, that it is no good argument, becauſe ye find *Savings* in Acts of Parliament before the ſecond of *Hen.* V. that thoſe *Savings* were before in the petitions that begat thoſe ſtatutes: for if the petitions for the two Loans ſo much inſiſted upon (which petitions, for any thing we know, are not now extant) were never ſo abſolute, yet might the King, according to the uſage of thoſe times, inſert the *Savings* in his anſwers; which paſſing from thence into the Statute-Roll, do only give ſome little colour, but are not proof at all that the petitions alſo were with *Savings*.

Thus much for the general; to come now to the particular ſtatute of 25 of *Edw.* I. which was a confirmation of *Magna Charta*, with ſome proviſion for the better execution of it, as Common Law, which words are worth the noting.

It is true, that Statute hath alſo a clauſe to this effect, That the King, or his Heirs, from thenceforth ſhould take no Aids, Taxes, or Priſage of his Subjects, but by common aſſent of all the Realm, ſaving the antient Aids and Priſage due and accuſtomed.

This *Saving*, if it were granted, (which is not, nor cannot be proved) that it was as well in the Petition as in the Act; yet can it no way imply, that it is either fit or ſafe, that the clauſe now in queſtion ſhould be added to our petition: for the nature and office of a *Saving*, or exception, is to exempt particulars out of a general, and to ratify the rule in things not exempted, but in no ſort to weaken or deſtroy the general rule itſelf.

The body of that Law was againſt all Aids, and Taxes, and Priſage in general, and was a confirmation of the Common Law, formerly declared by *Magna Charta*; the *Saving* was only of Aids and Priſage in particular, ſo well deſcribed and reſtrained by the words, *ancient and accuſtomed*, that there could be no doubt what could be the clear meaning and extent of that exception; for the King's Right to thoſe ancient Aids, intended by that Statute to be ſaved to him, was well known in thoſe days, and is not yet forgotten.

Theſe Aids were three; from the King's Tenants by Knights ſervice, due by the Common Law, or general cuſtom of the Realm: Aid to ranſom the King's Royal perſon, if unhappily he ſhould be taken priſoner in the wars: Aid to make the King's eldeſt ſon a Knight, and Aid to marry the King's eldeſt daughter once, but no more: and that thoſe were the only Aids intended to be ſaved to the Crown by that Statute, appeareth in ſome clearneſs by the Charter of King *John*, dated at *Running-Mead* the 15th of *June*, in the fifth year of his Reign, wherein they are enumerated with an excluſion of all other Aids whatſoever. Of this Charter I have here one of the Originals, whereon I beſeech your Lordſhips to caſt your eyes, and give me leave to read the very words which concern this point. Theſe words (my Lords) are thus: *Nullum ſcutagium vel auxilium ponatur in regno noſtro, niſi per commune conſilium regni noſtri, niſi ad corpus noſtrum redimendum, & primogenitum filium noſtrum militem faciendum, & ad filiam noſtram primogenitam ſemel maritandam, & ad hoc non fiat niſi rationabile auxilium.*

Touching priſage, the other thing excepted by this Statute, it is alſo of a particular right to the Crown ſo well known, that it needeth no deſcription, the King being in poſſeſſion of it by every day's uſage.

It is to take one tun of wine before the maſt, and another behind the maſt, of every ſhip bringing in above twenty tuns of wine, and here diſcharging them by way of Merchandiſe.

But our petition conſiſteth altogether in particulars, to which if any general *Saving*, or words amounting to one, ſhould be annexed, it cannot work to confirm things not excepted, which are none, but to confound things included, which are all the parts of the petition; and it muſt needs beget this dangerous expoſition, that the Rights and Liberties of the Subject, declared and demanded by this petition, are not theirs abſolutely, but *ſub modo*; not to continue always, but only to take place, when the King is pleaſed not to exerciſe that *ſovereign Power*, wherewith, this clauſe admitted, he is truſted for the protection, ſafety, and happineſs of his people. And thus that birthright and inheritance, which we have in our Liberties, ſhall by our own aſſents be turned into a mere tenancy at will and ſufferance.

Touching the Statute of 28 *Edw.* I. *Articuli ſuper Chartas*, the ſcope of that Statute, among other things, being to provide for the better obſerving and maintaining of *Magna Charta*, hath in it nevertheleſs two *Savings* for the King; the one particular, as I take it, to preſerve the antient priſage, due and accuſtomed, as of wines and other goods; the other general, ſeigniory of the Crown in all things.

To theſe two *Savings*, beſides the former anſwers, which may be for the moſt part applied to this Statute as well as to the former, I add theſe further anſwers: the firſt of theſe two *Savings*, is of the ſame priſage of wines, which is excepted in the 25 *Edw.* I. but in ſome more clearneſs; for that here the word (*wines*) is expreſsly annexed to the word (*priſage*) which I take for ſo much to be in expoſition of the former Law: And albeit theſe words (*and of other goods*) be added, yet do I take it to be but a particular *Saving*, or exception, which being qualified with the words (*antient, due, and accuſ-*

accuſtomed) is not very dangerous, nor can be underſtood of Priſage or Levies upon Goods of all Sorts at the King's Will and Pleaſure; but only of the old and certain Cuſtoms upon Wool, Woolfels, and Leather, which were due to the Crown, long before the making of this Statute.

For the latter of the two *ſavings* in this Act, which is of the more unuſual Nature, and ſubject to the more Exception; it is indeed general, and if we may believe the concurrent Relations of the Hiſtories of thoſe Times, as well thoſe that are now printed, as thoſe that remain only in Manuſcripts, it gave Diſtaſte from the Beginning, and wrought no good Effect, but produced ſuch Diſtempers and Troubles in the State, as we wiſh may be buried in perpetual Oblivion; and that the like *ſaving* in theſe and future Times may never breed the like Diſturbance: For from hence aroſe a Jealouſy, that *Magna Charta*, which declared the ancient Right of the Subject, and was an abſolute Law in itſelf, being now confirmed by a latter Act, with this Addition of a general *ſaving*; for the King's Right in all Things by the *ſaving* was weakened, and that made doubtful, which was clear before. But not to depart from our main Ground, which is, that *ſavings* in old Acts of Parliament, before the 2 *H.* V. are no Proof that there were the like *ſavings* in the Petitions for thoſe Acts; let me obſerve unto your Lordſhips, and ſo leave this Point, that albeit this Petition, whereon this Act of 28 *Ed.* I. was grounded, be periſhed; yet hath it pleaſed God, that the very Frame and Context of the Act itſelf, as it is drawn up, and entered upon the Statute-roll, and printed in our Book, doth manifeſtly import, that this *ſaving* came in by the King's Anſwer, and was not in the original Petition of the Lords and Commons; for it cometh in at the End of the Act after the Words *(le Roy le veut)* which commonly are the Words of the Royal Aſſent to an Act of Parliament. And though they be mixed and followed with other Words, as though the King's Counſel, and the reſt who were preſent at the making of this Ordinance, did intend the ſame *ſaving*; yet is not that concluſive, ſo long as by the Form of thoſe Times, the King's Anſwer working upon the Materials of the Petition, might be conceived by ſome to make the Law effectual, though varying from the Frame of the Petition.

The next Reaſon which the Commons have commanded me to uſe, for which they ſtill deſire to be ſpared from adding this Clauſe to their Petition, is this: This offenſive Law of 28 *E.* I. which confirmed *Magna Charta*, with a *ſaving*, reſted not long in Peace, for it gave not that Satisfaction to the Lords or People, as was requiſite they ſhould have in a Caſe ſo nearly concerning them: And therefore about thirty-three or thirty-four of the ſame King's Reign, a latter Act of Parliament was made, whereby it was enacted, that all Men ſhould have their Laws, and Liberties, and free Cuſtoms, as largely and wholly as they had uſed to have at any time when they had them beſt; and if any Statutes had been made, or any Cuſtoms brought in to the contrary, that all ſuch Statutes and Cuſtoms ſhould be void.

This was the firſt Law which I call now to mind, that reſtored *Magna Charta* to the original Purity wherein it was firſt moulded, albeit it hath ſince been confirmed above twenty times more by ſeveral Acts of Parliament, in the Reigns of divers moſt juſt and gracious Kings, who were moſt apprehenſive of their Rights, and jealous of their Honours, and always without *ſavings*; ſo as if between 22 and 34 *Edw* I. *Magna Charta* ſtood blemiſhed with many *ſavings* of the King's Rights or Seigniory, which might be conceived to be above the Law; that Stain and Blemiſh was long ſince taken away, and cleared by thoſe many abſolute Declarations and Confirmations of that excellent Law which followed in after Ages, and ſo it ſtandeth at this day purged and exempted now from any ſuch *ſaving* whatſoever.

I beſeech your Lordſhips therefore to obſerve the Circumſtance of Time, wherein we offer this Petition to be preſented to your Lordſhips, and by us unto his Majeſty: Do we offer it when *Magna Charta* ſtands clogged with *ſavings?* No, my Lords, but at this Day, when latter and better Confirmations have vindicated and ſet free that Law from all Exceptions; and ſhall we now annex another and worſe *ſaving* to it, by an unneceſſary Clauſe in that Petition, which we expect ſhould have the Fruits and Effects of a Law? Shall we ourſelves relinquiſh or adulterate that, which coſt our Anceſtors ſuch Care and Trouble to purchaſe and refine? No, my Lords, but as we ſhould hold ourſelves unhappy, if we ſhould not amend the wretched Eſtate of the poor Subject, ſo let us hold it a Wickedneſs to impair it.

Whereas it was further urged by your Lordſhips, That to inſert this Clauſe into our Petition, would be no more than to do that again at your Lordſhips Motion and Requeſt, which we had formerly done by the Mouth of our Speaker; and that there is no Cauſe why we ſhould recede from that which ſo ſolemnly we have profeſſed: To this I anſwer and confeſs, it was then in our Hearts, and it is now, and ſhall be ever, not to encroach on his Majeſty's ſovereign Power. But I beſeech your Lordſhips to obſerve the different Occaſion and Reference of that Proteſtation, and of this Clauſe.

That was a general Anſwer to a general Meſſage, which we received from his Majeſty, warning us not to encroach upon his Prerogative; to which, like dutiful and loving Subjects, we anſwered at full, according to the Integrity of our own Hearts; nor was there any Danger in making ſuch an Anſwer to ſuch a Meſſage, nor could we anſwer more truly or more properly: But did that Anſwer extend to acknowledge a *ſovereign Power* in the King, above the Laws and Statutes mentioned in our Petition, or controul the Liberties of the Subjects, therein declared and demanded? No, my Lords, it hath no Reference to any ſuch Particulars; and the ſame Words which in ſome Caſes may be fit to be uſed, and were unmannerly to be omitted, cannot in other Caſes be ſpoken, but with Impertinency at the leaſt, if not with Danger. I have formerly opened my Reaſons, proving the Danger of this Clauſe, and am commanded to illuſtrate the Impertinency of adding it to the Petition by a familiar Caſe, which was put in our Houſe by a learned Gentleman, and of my own Robe: The Caſe is this, Two Manours or Lordſhips lie adjoining together, and perchance intermixed, ſo as there is ſome difficulty to diſcern the true Bounds of either; as it may be touching the Confines where the Liberty of the Subject, and the Prerogative of the Crown do border each upon the other; to the one of the Manours the King hath clear right, and is in actual Poſſeſſion of it, but the other is the Subject's. The King being miſinformed, that the Subject hath intruded upon his Majeſty's Manour, aſketh his Subject, whether he doth enter upon his Majeſty's Manour, or pretendeth any Title to it, or any Part of it. The Subject being now juſtly occaſioned, maketh Anſwer truly to the King, that he hath not intruded, nor will intrude upon his Majeſty's Manour, nor doth make any Claim or Title to it, or any Part of it. This Anſwer is proper and fair; nay, it were unmannerly and ill done of the Subject not to anſwer upon this Occaſion. Afterwards the King, upon Colour of ſome double or ſingle Matter of Record, ſeizeth into his Highneſs's Hands, upon a pretended Title, the Subject's Manour: The Subject then exhibiteth his Petition of Right to his Majeſty, to retain Reſtitution of his own Manour, and therein layeth down Title to his own Manour only: Were it not improper and abſurd in this Caſe for him to tell the King, that he did not intend to make any Claim or Title to his Majeſty's Manour, which is not queſtioned? Doubtleſs it were. This Caſe, rightly applyed, will fit our Purpoſe well, and notably explain the Nature of our Petition.

Why ſhould we ſpeak of leaving entire the *King's Sovereign Power*, whereon we encroach not, while we only ſeek to recover our own Liberties and Privileges, which have been ſeized upon by ſome of the King's Miniſters? If our Petition did trench actually upon his Majeſty's Prerogative, would our ſaying, that we intended it not, make the thing otherwiſe than the Truth?

My Lords, there needeth no Proteſtation or Declaration to the contrary of that which we have not done; and to put in ſuch a Clauſe, cannot argue leſs than a fear in us, as if we had invaded it: which we hold ſacred, and are aſſured, that we have not touched either in our Words or in our Intentions. And touching your Lordſhips Obſervation upon the Word *(leave)*, if it be not a proper Word to give any new thing to the King, ſure we are, it is a Word dangerous in another Senſe; for it may amount, without all queſtion, to acknowledge an old Right of *ſovereign Power* in his Majeſty, above thoſe Laws and Statutes whereon only our Liberties are founded; a Doctrine which we moſt humbly crave your Lordſhips Leave freely to proteſt againſt. And for your Lordſhips proffering, that ſome *ſaving* ſhould be requiſite for Preſervation of his Majeſty's *ſovereign Power*, in reſpect our Petition runneth in larger Words than our Laws and Statutes whereon we ground it; what is this but a clear Confeſſion by your Lordſhips, that this Clauſe was intended by you to be that *ſaving?* For other *ſaving* than this we find not tendered by you: And if it be ſuch a *ſaving*, how can it ſtand with your Lordſhips other Arguments, that it ſhould be of no other Effect than our former Expreſſion to his Majeſty by the Mouth of our Speaker? But I will not inſiſt upon Collections of this Kind; I will only ſhew you the Reaſons of the Commons, why this Petition needeth no ſuch ſaying, albeit the Words of theſe Statutes be exceeded in the declaratory Part of our Petition: thoſe things that are within the Equity and true Meaning of a Statute, are as good Laws as thoſe which are contained in the expreſs Letter, and therefore the Statutes of the 42 *Ed.* III. 36 *H.* III. *Rot. Par. N.* 12. and other the Statutes made in this Time of King *Edw.* III. for the Explanation of *Magna Charta*, which hath been ſo often vouched in this Parliament, though they differ in Words from *Magna Charta*, had no *ſaving* annexed to any of them, becauſe they enacted more than was contained in effect in that good Law, under the Words, *per legale judicium parium ſuorum, aut per legem terræ*; which by theſe latter Laws are expounded to import, that none ſhould be put to anſwer without Preſentment, or Matter of Record, or by due Proceſs, or Writ Original: and if otherwiſe, it ſhould be void, and holden for Error.

It hath not been yet ſhewn unto us from your Lordſhips, that we have in any of our Expreſſions or Applications ſtrained or miſapplied any of the Laws or Statutes whereon we do inſiſt; and we are very confident and well aſſured, that no ſuch miſtaking can be aſſigned in any Point of our Petition now under queſtion: If therefore it do not exceed the true Senſe and Conſtruction of *Magna Charta* in the ſubſequent Laws of Explanation, whereon it is grounded, what Reaſon is there to add a *ſaving* to this Petition more than to thoſe Laws; ſince we deſire to tranſmit the Fruits of theſe our Labours to Poſterity, not only for the Juſtification of ourſelves, in Right of our preſent and their future Liberties, but alſo for a brave Expreſſion and perpetual Teſtimony of that Grace and Juſtice, which we aſſure ourſelves we ſhall receive in his Majeſty's ſpeedy and clear Anſwer? This is the Thing we ſeek for, and this is the Thing we hoped for, and this is the Thing only will ſettle ſuch an Unity and Confidence betwixt his Majeſty and us, and raiſe ſuch a Chearfulneſs in the Hearts of all his loving Subjects, as will make us proceed unanimouſly, and with all Expedition to ſupply him for his great Occaſions in ſuch Meaſure, and in ſuch Way, as may make him ſafe at home, and feared abroad.

Sir *Henry Martin.* My Lords, the Work of this Day, wherein the Houſe of Commons hath employed the Gentleman that ſpoke laſt, and myſelf, was to reply to the Anſwer, which it hath pleaſed the Lord-Keeper to make to thoſe Reaſons, which we had offered to your Lordſhips Conſideration, in Juſtification of our Refuſal, not to admit into our Petition the Addition commended by your Lordſhips. Which Reaſons of ours, ſince they have not given ſuch Satisfaction as we deſired, and well hoped, as by the Lord-Keeper's Anſwer appeared; it was thought fit, for our better Order and Method in replying, to divide the Lord-Keeper's Anſwer into two Parts, a legal and a rational: The Reply to the legal your Lordſhips have heard, myſelf comes intruſted to reply to the rational, which alſo conſiſted of two Branches, the firſt deduced from the whole Context of the additional Clauſe, the ſecond enforced out of ſome Part.

In the firſt were theſe Reaſons, That the ſame deſerved our Acceptance. Firſt, as ſatisfactory to the King; ſecondly, to your Lordſhips; thirdly, agreeable to what ourſelves had often proteſted, and profeſſed expreſsly by the Mouth of our Speaker.

I muſt confeſs theſe Motives were weighty and of great Force; and therefore, to avoid miſunderſtanding and miſconceit, which otherwiſe might be taken againſt the Houſe of Commons upon the Refuſal of the propounded Addition, it is neceſſary to ſtate the Queſtion rightly, and to ſet down the true Difference between your Lordſhips and us. Now, indeed, there is no Difference or Queſtion between your Lordſhips and us, concerning this additional Clauſe in the Nature and Quality of a Propoſition. For ſo conſidered, we ſay it is moſt true, and to be received and embraced by us, *in toto & qualibet parte & qualibet ſyllaba*; yea, and were that the Queſtion, we ſhould add to the Addition, and inſtead of due regard, ſay, we have had, have, and ever will have, a ſpecial and ſingular regard,

where to leave entire Sovereign Power. But this were to intimate, as if we had firſt cropt, and then left it; but our Regard was to acknowledge and confeſs it ſincerely, and to maintain it conſtantly, even to the hazard of our goods and lives, if need be.

To which purpoſe your Lordſhips may be pleaſed to remember that ſtrict oath every Member of our Houſe hath taken this very ſeſſion, in theſe words: *I* (A. B.) *do utterly teſtify and declare in my conſcience, That the King's Highneſs is the ſupreme ſovereign Governour of this Realm in all cauſes, &c. and to my utmoſt power will aſſiſt and defend all Juriſdictions, Privileges, Preheminences and Authorities, granted or belonging to the King's Highneſs, or united or annexed to the imperial Crown of this Realm, &c.*

So that your Lordſhips need not to borrow from our proteſtations any exhortations to us, to entertain a writing in aſſiſtance of the King's ſovereign Power, ſince we ſtand obliged by the moſt ſacred bond of a ſolemn oath, to aſſiſt and defend the ſame, if cauſe or occaſion ſo required. So that the only queſtion between your Lordſhips and us, is, whether this clauſe ſhould be added to our petition, and received into it as part thereof? Which to do; your Lordſhips reaſons have not perſuaded us, becauſe ſo to admit it, were to overthrow the fabrick and ſubſtance of our Petition of Right, and to annihilate the right pretended by us, and the petition itſelf in effect: For theſe words being added to our Petition, *viz.* "We humbly preſent "this petition, *&c.* with due regard to leave entire your ſovereign Pow-"er, *&c.*" do include manifeſtly an exception to our Petition; and an exception being of the nature of the thing whereunto it is an exception, *exceptio eſt de regula*, muſt of neceſſity deſtroy the Rule or Petition, ſo far as to the caſe excepted; *Exceptio firmat regulam in caſibus non exceptis, in caſibus exceptis deſtruit regulam.* Then this conſtruction followeth upon our petition thus inlarged, that after we have petitioned, that no freeman ſhould be compelled by impriſonment to lend or contribute money to his Majeſty without his aſſent in Parliament, nor receive, againſt his will, Soldiers into his Houſe, or undergo a commiſſion of Martial Law for Life or Member in time of peace; we ſhould add, Except his Majeſty be pleaſed to require our moneys, and impriſon us for not lending, and ſend Soldiers into our Houſes, and execute us by Martial Law, in time of peace, by virtue of his ſovereign Power: which conſtruction, as it followeth neceſſarily upon this enlargement, ſo it concludeth againſt our right in the premiſſes, and utterly fruſtrateth all our petition; neither may it ſeem ſtrange, if this clauſe additional (which of itſelf is in quality of a propoſition we confeſs) being added to our petition (which alſo is true) ſhould overthrow the very frame and fabrick of it, ſeeing the Logicians take knowledge of ſuch a fallacy, called by them, *Fallacia à bene diviſis ad mala conjuncta*. *Horace* the Poet giveth an inſtance to this purpoſe, in a Painter, who when he had painted the head of a man according to art, would then join to it the neck of a horſe, and ſo marr the one and the other; whereas each by itſelf might have been a piece of right good workmanſhip.

The ſecond branch of my Lord-Keeper's rational part was enforced out of the laſt words of this addition, by which his Lordſhip ſaid, that they did not leave intire all ſovereign Power, but that wherewith his Majeſty is truſted, for the protection, ſafety, and happineſs of the people; as if his Lordſhip would infer, that ſovereign Power wherewith, *&c.* in this place to be *Terminum diminuentem*, a term of diminution or qualification, and in that conſideration might induce us to accept it. But under his Lordſhip's correction, we cannot ſo interpret it: For firſt we are aſſured, that there is no ſovereign Power wherewith his Majeſty is truſted, either by God, or Man, but only that which is for the protection, ſafety, and happineſs of his people; and therefore, that limitation can make no impreſſion upon us: but we conceive it rather in this place to have the force *Termini adaugentis*, to be a term of important advantage againſt our petition, a term of reſtriction, and that whereſoever his Majeſty's ſovereign Power ſhould be exerciſed upon us in all or any the particulars mentioned in the Petition, we ſhould, without further enquiry, ſubmit thereunto, as aſſuming and taking it *prò conceſſo*, it conduced to our ſafety and happineſs, *&c.* Since therefore (as the petition is now conceived) it carrieth the form and face of a picture, which repreſenteth to the life the preſſures and grievances of the people, with the eaſy remedies; and therefore we hope that his Majeſty, caſting upon it a gracious eye, will compaſſionate his poor loyal Subjects, and afford a comfortable anſwer.

I do humbly praiſe your Lordſhips not to marr or blemiſh the grace and face of this picture with this unneceſſary addition; and unneceſſary I prove it to be, according to that rule, *Expreſſio ejus quod tacite ineſt nihil operatur*. And ſovereign Power, in caſes where it hath place, and ought to be uſed, is always neceſſarily underſtood, and though not expreſſed, yet ſupplied by reaſonable intendment, or by the opinion of all learned men.

And therefore it neither is nor can be by us expreſly included, eſpecially in this petition, where the addition thereof would make ſuch a confuſion of the whole ſenſe and ſubſtance.

The King's ſovereign Power and Prerogative is always able to ſave itſelf; and if it were not, we muſt, without this addition, ſave it to our utmoſt powers, if we will ſave our oath, and ſave ourſelves. The true ſtate of the cauſe thus ſtanding between your Lordſhips and us, the Houſe of Commons doth not a little marvel upon what grounds your Lordſhips are ſo earneſt to urge upon them this addition to be inſerted into their petition; they nothing doubt, but the ſame proceeded out of a ſollicitude and fear, which your Lordſhips have, leſt otherwiſe the ſimple and abſolute paſſage of this petition might be conſtrued hereafter in prejudice of his Majeſty's ſovereign Power: And this your Lordſhips ſollicitude and fear proceedeth from your love, as the Poet ſaith,

Res eſt ſolliciti plena timoris Amor.

But I humbly pray your Lordſhips to examine with us, the grounds of this your ſollicitude and fear; which grounds muſt needs be laid either upon the words of the petition, or the intention of the petitioners.

Upon the words there is no poſſibility to lay them, for therein is no mention made of the ſovereign Power; and were the words doubtful, as thus, We pray the like things be not done hereafter, under pretext of your Majeſty's ſovereign Power; yet in reſpect of the proteſtations preceding, concomitant and ſubſequent to the petition, ſuch doubtful words ought reaſonably to be interpreted only of ſuch ſovereign Power as was applicable to the caſes wherein it was exerciſed; and of ſuch ſovereign Power as ſhould be juſtly practiſed. But there are no ſuch doubtful words, and therefore it followeth, that your Lordſhips fear and ſollicitude muſt be grounded upon the intention of the petitioners. Now your Lordſhips will know, that the Houſe of Commons is not ignorant, that in a Seſſion of Parliament, though it continue ſo many weeks, as this hath done days, yet there is nothing *prius & poſterius*, but all things are held and taken as done at one time. If ſo, what a ſtrange collection was this, that at the ſame time the Houſe of Commons ſhould oblige themſelves, by a fearful adjuration, to aſſiſt and defend all privileges and prerogatives belonging to the King, and at the ſame time by a petition (cautiouſly conveyed) endeavour or intend to diveſt and deprive the King of ſome prerogatives belonging to his Crown? If therefore ſuch fear and ſollicitude can neither be grounded upon the words of the petition, nor intention of the petitioners, I humbly pray your Lordſhips to lay them aſide. As we do believe that the propoſition of this addition from your Lordſhips was not only excuſable, but commendable, as proceeding from your Love; ſo now having heard our reaſons, your Lordſhips would reſt ſatisfied, that our refuſal to admit them into our petition, proceedeth from the conſcience of the integrity and uprightneſs of our own hearts, that we in all this petition have no ſuch end to abate or diminiſh the King's juſt prerogative. And ſo much in reply to that rational part, whereby my Lord-Keeper laboured to perſuade the entertainment of this addition.

This being done, it pleaſed the Houſe of Commons to inſtruct and furniſh me with certain reaſons, which I ſhall uſe to your Lordſhips, to procure your abſolute conjunction with us in preſenting this petition; which albeit I cannot ſet forth according to their worth, and the inſtructions given me by the Houſe, yet, I hope, their own weight will ſo preſs down into your Lordſhips conſciences and judgments, that without farther ſcruple, you will chearfully vouchſafe to accompany this petition with your right noble preſence.

A perſonis. The firſt argument wherewith I was commanded to move your Lordſhips, was drawn from the conſideration of the perſons, which are petitioners, the *Houſe of Commons*; a Houſe, whoſe temper, mildneſs, and moderation in this Parliament hath been ſuch, as we ſhould be unthankful and injurious to Almighty God, if we ſhould not acknowledge his good hand upon us, upon our tongues, upon our hearts, procured, no doubt, by our late ſolemn and publick Humiliation and Prayers.

This moderation will the better appear, if, in the firſt place, it may be remembered, in what paſſion and diſtemper many Members of this Houſe arrived thither, what boſoms, what pockets full of complaints and lamentable grievances the moſt part brought thither, and thoſe every day renewed by letters and packets from all parts and quarters: You know the old proverb, *Ubi dolor ibi digitus, ubi amor ibi oculus*: it is hard to keep our fingers from often handling the parts ill affected; but yet our moderation overcame our paſſion, our diſcretion overcame our affection.

This moderation alſo will the better appear, if in the ſecond place it be not forgotten, how our anceſtors and predeceſſors carried themſelves in Parliaments, when upon lighter provocations, leſs would not ſerve their turns, but new ſevere commiſſions to hear and determine offences againſt their Liberties, publick eccleſiaſtical curſes, or excommunications againſt the authors or actors of ſuch violations, accuſations, condemnations, executions, baniſhments. But what have we ſaid all this Parliament? We only look forward, not backward: we deſire amendment hereafter, no man's puniſhment for aught done heretofore; nothing written by us in blood, nay, not one word ſpoken againſt any man's perſon in diſpleaſure. The concluſion of our petition is, that we may be better intreated in time to come: and doth not this moderate petition deſerve your Lordſhips chearful conjunction, *ex congruo & condigno?* If a worm being trodden upon, could ſpeak, a worm would ſay, Tread upon me no more, I pray you: Higher we riſe not, lower we cannot deſcend; and thus much we think in modeſty may well be ſpoken in our own commendation, thence to move your Lordſhips to vouchſafe us your noble company in this petition without ſurcharging it with this addition.

A tempore. Our next argument is drawn *a tempore*, from the unſeaſonableneſs of the time. The Wiſeman ſaith, *There is a time for all things under the Sun*; *Tempus ſuum*. And if, in the Wiſeman's judgment, a word ſpoken in its due time be precious as Gold and Silver, then an unſeaſonable time detracts as much from the thing or word done or ſpoken: We hold (under your favours) that the time is not ſeaſonable now for this addition. It is true, that of itſelf, ſovereign Power is a thing always ſo ſacred, that to handle it otherwiſe than tenderly, is a kind of Sacrilege, and to ſpeak of it otherwiſe than reverently, is a kind of Blaſphemy. But every vulgar capacity is not ſo affected the moſt part of men; nay, almoſt all men, judge and eſteem all things, not according to their own intrinſick virtue and quality, but according to their immediate effects and operations, which the ſame things have upon them. Hence it is, that Religion itſelf receiveth more or leſs credit or approbation, as the teachers or profeſſors are worſe or better; yea, if God himſelf ſend a very wet harveſt or ſeed-time, men are apt enough to cenſure divine Power. The ſovereign Power hath not now, for the preſent, the ancient amiable aſpect, in reſpect of ſome late ſad influences; but by God's grace it will ſoon recover.

To intermix with this petition any mention of ſovereign Power, *rebus ſic ſtantibus*, when angry men ſay, ſovereign Power hath been abuſed, and the moſt moderate wiſh it had not been ſo uſed; we hold it not ſeaſonable, under your Lordſhips correction.

A loco. Our next Argument is drawn *a loco:* we think *the Place* where your Lordſhips would have this addition inſerted, viz. in the petition, no convenient or ſeaſonable place. Your Lordſhips will eaſily believe, that this petition will run through many hands, every man will be deſirous to ſee and to read what their Knights and Burgeſſes have done in Parliament upon their complaints, what they have brought home for their five Subſidies: If, in peruſing of this petition, they fall upon the mention of ſovereign Power, they preſently fall to arguing, and reaſoning, and deſcanting, what ſovereign Power is, what is the Latitude, whence the Original, and where the bounds? with many ſuch curious and captious queſtions; by which courſe, ſovereign Power is little advanced or advantaged: for I have ever been of opinion, that it is then beſt with ſovereign Power, when it is had in tacit veneration, not when it is profaned by publick hearings or examinations.

Our laſt Argument is drawn from our *Duty* and *Loyalty* to his Majeſty, in conſideration whereof, we are fearful at this time to take this addition into our petition, leſt we ſhould do his Majeſty herein ſome diſſervice: with your Lordſhips, we make the great Council of the King and Kingdom; and tho' your Lordſhips, having the happineſs to be near his Majeſty, know other things better, yet certainly the ſtate and condition of the ſeveral parts for which we ſerve, their diſpoſitions and inclinations, their apprehenſions, their fears and jealouſies, are beſt known unto us. And here I pray your Lordſhips to give me leave to uſe the figure called *Reticentia*, that is, to inſinuate and intimate more than I mean to ſpeak. Our chief and principal end in this Parliament, is, to make up all rents and breaches between the King and his Subjects, to draw them, and knit them together, from that diſtance, whereof the world abroad takes too much notice, to work a perfect union and reconciliation. How unproperly and unapt at this time this addition will be in reſpect of this end, we cannot but foreſee, and therefore ſhun it; and do reſolve, that it is neither agreeable to the perſons of ſuch Counſellors, of whom we are, nor anſwerable to that love and duty which we owe to his Majeſty, to hazard an end of ſuch unſpeakable conſequence, upon the admittance of this addition into our petition, whereof (as we have ſhewed) the omiſſion at this time can by no means harm the King's prerogative, the expreſſion may produce manifold inconveniencies. And therefore, ſince the admittance of your Lordſhips addition into our petition is incoherent and incompatible with the body of the ſame; ſince there is no neceſſary uſe of it for the ſaving of the King's Prerogative; ſince the moderation of our petition deſerveth your Lordſhips chearful conjunction with us; ſince this addition is unſeaſonable for the time, and inconvenient in reſpect of the place where your Lordſhips would have it inſerted; and laſtly, may prove a diſſervice to his Majeſty; I conclude with a moſt affectionate prayer to your Lordſhips, to join with the Houſe of Commons, in preſenting this petition unto his Sacred Majeſty, as it is, without this addition.

Monday, 26*th of* May, *the Lord Keeper made this Speech at a Conference.*

Gentlemen,

YE that are Knights, Citizens and Burgeſſes of the Houſe of Commons, I have many times this Parliament, by command from my Lords, declared the great zeal and affection which my Lords have to maintain and nouriſh the good concurrence and correſpondency which hath hitherto continued between both Houſes, that there might be a happy iſſue in this great buſineſs, for the common good of the King and Kingdom. Now that which I have to ſay this day from my Lords, is, to let you know, this fair proceeding is not a profeſſion of words only, but really and indeed concerning the petition, which hath been long in agitation, as the weight of the cauſe required. Since the laſt conference, my Lords have taken it into their ſerious and inſtant conſideration, and at length are fallen upon a reſolution, which I am to acquaint you with.

The Lords have unanimouſly agreed with you *in omnibus*, and have voted, that they will join with you in your petition, with the only alteration of the word [*means*] to be put inſtead of the word [*pretext*;] and for the word [*unlawful*] to be put out, and in place thereof to add [*not warrantable* by the laws and ſtatutes of the Realm]. Which two alterations yourſelves conſented unto.

So that concerning this buſineſs there remains nothing now, but that having the petition in your hands, ye will (if ye have not already) vote it as they have done, and ſo prepare it for his Majeſty; and my Lords will take order, that the King be moved for a ſpeedy acceſs to preſent the ſame to his Majeſty.

And, after ſome pauſe, he ſaid, There reſts one thing which my Lords have commanded me to add, That in regard this petition toucheth upon certain charges raiſed by the Lords Lieutenants, and other perſons, many times for good uſe, for the ſervice and ſafety of the Kingdom; that ye take it into your care and conſideration, and to provide a law for aſſeſſing of ſuch charges, as the occaſion of the time ſhall require.

The Lords and Commons being thus happily accorded, the petition, with the aforeſaid amendments, was read in the Houſe two ſeveral times together: then it was voted upon the queſtion, and that it ſhould be ingroſſed, and read the third time, and the Houſe to ſit in the afternoon till it was ingroſſed, and read, and ordered to be preſented to the King; to which there was not a negative vote.

Wedneſday, 28 *May*, the Lords and Commons had a conference about the manner of delivery of the petition; and Sir *Ed. Coke* reported, that their Lordſhips were agreed, That no addition or preface be uſed to the King, but that the petition be preferred to his Majeſty by command of the Lords and Commons; and his Majeſty be deſired, that to content his people, he would be pleaſed to give his gracious anſwer in full Parliament.

Monday, 2*d* June, *the King came to the Parliament, and ſpake thus in brief to both Houſes:*

Gentlemen,

I AM come hither to perform my duty; I think no man can think it long, ſince I have not taken ſo many days in anſwering the petition, as you ſpent weeks in framing it: and I am come hither to ſhew you, that as well in formal things as in eſſential, I deſire to give you as much content as in me lies.

After this, the Lord Keeper ſpake as followeth:

MY Lords, and you the Knights, Citizens, and Burgeſſes of the Houſe of Commons, his Majeſty hath commanded me to ſay unto you, that he takes it in good part, that in conſideration of ſettling your own Liberties, you have generally profeſſed in both Houſes, that you have no intention to leſſen or diminiſh his Majeſty's Prerogative; wherein as you have cleared your own intentions, ſo now his Majeſty comes to clear his, and to ſubſcribe a firm league with his people, which is ever likely to be moſt conſtant and perpetual, when the conditions are equal, and known to be ſo: theſe cannot be in a more happy eſtate, than when your Liberties ſhall be an ornament and a ſtrength to his Majeſty's Prerogative, and his Prerogative a defence of your Liberties; in this his Majeſty doubts not, but both he and you ſhall take a mutual comfort hereafter; and, for his part, he is reſolved to give an example, in the uſing of his power for the preſervation of your Liberties, that hereafter ye ſhall have no cauſe to complain. This is the ſum of that which I am to ſay to you from his Majeſty: and that which farther remains, is, that you here read your own petition, and his Majeſty's gracious anſwer.

The Petition exhibited to his Majeſty by the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, concerning divers Rights and Liberties of the Subjects.

To the King's moſt Excellent Majeſty.

I. *HUmbly ſhew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, that whereas it is declared and enacted by a Statute made in the time of the Reign of* K. Edward *the Firſt, commonly called,* Statutum de Tallagio non concedendo **, that no tallage or aid ſhall be laid or levied, by the King or his Heirs, in this Realm, without the good will and aſſent of the Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other the Freemen of the Commonalty of this Realm: and by authority of Parliament holden in the five-and-twentieth year of the Reign of King* Edward *the Third †, it is declared and enacted, That from thenceforth no perſon ſhall be compelled to make any Loans to the King againſt his will, becauſe ſuch Loans were againſt reaſon, and the Franchiſe of the Land; and by other § Laws of this Realm it is provided, that none ſhould be charged by any charge or impoſition, called a* Benevolence, *nor by ſuch like charge; by which the Statutes before-mentioned, and other the good Laws and Statutes of this Realm, your Subjects have inherited this freedom, that they ſhould not be compelled to contribute to any tax, tallage, aid, or other like charge, not ſet by common conſent in Parliament.*

II. *Yet nevertheleſs, of late, divers Commiſſions, directed to ſundry Commiſſioners in ſeveral Counties, with inſtructions, have iſſued; by means whereof your people have been in divers places aſſembled, and required to lend certain ſums of money unto your Majeſty, and many of them, upon their refuſal ſo to do, have had an oath adminiſtered unto them, not warrantable by the Laws or Statutes of this Realm, and have been conſtrained to become bound to make appearance, and give attendance before your Privy-Council, and in other places; and others of them have been therefore impriſoned, confined, and ſundry other ways moleſted and diſquieted. And divers other charges have been laid and levied upon your people in ſeveral Counties, by Lords Lieutenants, Deputy Lieutenants, Commiſſioners for muſters, Juſtices of Peace, and others, by command and direction from your Majeſty, or your Privy-Council, againſt the Laws and free Cuſtoms of this Realm.*

III. *And whereas alſo by the Statute called* ‖, The great Charter of the Liberties of England, *it is declared and enacted, That no Freeman may be taken or impriſoned, or be diſſeiſed of his Freehold or Liberties, or his free Cuſtoms, or be outlawed or exiled, or in any manner deſtroyed, but by the lawful judgment of his Peers, or by the Law of the Land.*

IV. *And in the eight-and-twentieth year of the Reign of King* Edward *the Third* **, *it was declared and enacted by authority of Parliament, that no man, of what eſtate or condition he be, ſhould be put out of his Land or Tenements, nor taken, nor impriſoned, nor diſherited, nor put to death, without being brought to anſwer by due proceſs of Law.*

V. *Nevertheleſs, againſt the tenor of the ſaid Statutes* ††, *and other the good Laws and Statutes of your Realm, to that end provided, divers of your Subjects have of late been impriſoned, without any cauſe ſhewed; and when for their deliverance they were brought before your Juſtices, by your Majeſty's Writs of* Habeas Corpus, *there to undergo and receive as the Court ſhould order, and their keepers commanded to certify the cauſes of their detainer; no cauſe was certified, but that they were detained by your Majeſty's ſpecial Command, ſignified by the Lords of your Privy-Council, and yet were returned back to ſeveral priſons, without being charged with any thing to which they might make anſwer according to the Law.*

[*The ſixth, ſeventh, eighth, and ninth Clauſes, relating to billeting of Soldiers and martial Law, are not here inſerted.*]

X. *They do therefore humbly pray your moſt excellent Majeſty* §§, 1. *That no man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax, or ſuch like charge, without common conſent by Act of Parliament; 2. and that none be called to make anſwer, or take ſuch oath, or to give attendance, or be confined, or otherwiſe moleſted or diſquieted concerning the ſame, or for refuſal thereof: 3. and that no Freeman in any ſuch manner as is before-mentioned, be impriſoned or detained.*

XI. *All which they moſt humbly pray of your moſt excellent Majeſty, as their Rights and Liberties, according to the Laws and Statutes of this Realm: and that your Majeſty would alſo vouchſafe to declare, that the awards, doings, and proceedings, to the prejudice of your people, in any of the premiſſes, ſhall not be drawn hereafter into conſequence or example: and that your Majeſty would be alſo graciouſly pleaſed, for the further comfort and ſafety of your people, to declare your Royal will and pleaſure, that in the things aforeſaid, all your Officers and Miniſters ſhall ſerve you, according to the Laws and Statutes of this Realm, as they tender the Honour of your Majeſty, and the Proſperity of this Kingdom.* [See Statutes at large, 3, 4 *Car.* I.]

Which petition being read the 2*d* of *June*, 1628. the King's anſwer was thus delivered by the Lord Keeper:

The King willeth, that right be done according to the Laws and Cuſtoms of the Realm; and that the Statutes be put in due execution, that his Subjects may have no cauſe to complain of any wrong or oppreſſions, contrary to their juſt Rights and Liberties: to the preſervation whereof, he holds himſelf in conſcience as well obliged, as of his Prerogative.

On *Tueſday*, *June* 3. the King's anſwer was read in the Houſe of Commons, and ſeemed not full enough, in regard of ſo much expence of time and labour, as had been imployed in contriving the petition.

June 3. *A Meſſage was brought from the King by the Speaker,*

THAT his Majeſty having, upon the petition, exhibited by both Houſes, given an anſwer full of juſtice and grace, for which we and our poſterity have juſt cauſe to bleſs his Majeſty, it is now time

* 34 *Edw.* I. † 25 *Edw.* III. *Rot. Parl.* § 1 *Edw.* III. 6. 11 *R.* II. 9. 38 *Edw.* III. 9. 42 *Edw.* III. 3. 17 *Ric.* II. 6. §§ 25 *Edw.* I. 6. 1 *R.* III. 2. ‖ 9 *Hen.* III. 29. ** 28 *Edw.* III. 3. †† 37 *Edw.* III. 18.

to grow to a concluſion of the Seſſion; and therefore his Majeſty thinks fit to let you know, that as he doth reſolve to abide by that anſwer, without further change or alteration, ſo he will Royally and Really perform unto you what he hath thereby promiſed: and further, that he reſolves to end this Seſſion upon *Wedneſday* the 11*th* of this month. And therefore wiſheth, that the Houſe will ſeriouſly attend thoſe buſineſſes, which may beſt bring the Seſſion to a happy concluſion, without entertaining new matters; and ſo huſband the time, that his Majeſty may with the more comfort bring us ſpeedily together again: at which time, if there be any further grievances not contained, or expreſſed in the petition, they may be more maturely conſidered than the time will now permit.

Another Meſſage was brought from his Majeſty by the Speaker, Thurſday 5*th of* June.

HIS Majeſty wiſhed them to remember the Meſſage he laſt ſent them, by which he ſet a day for the end of this Seſſion, and he commanded the Speaker to let them know, that he will certainly hold that day prefix'd without alteration; and becauſe that cannot be, if the Houſe entertain more buſineſs of length, he requires them, that they enter not into, or proceed with any new buſineſs, which may ſpend greater time, or which may lay any ſcandal or aſperſion upon the State-government or Miniſters thereof.

Sir *Robert Philips*, upon this occaſion, expreſſed himſelf thus: I perceive, that towards God, and towards man, there is little hope, after our humble and careful endeavours, ſeeing our ſins are many and ſo great: I conſider my own infirmities, and if ever my paſſions were wrought upon, that now this Meſſage ſtirs me up eſpecially; when I remember with what moderation we have proceeded, I cannot but wonder to ſee the miſerable ſtraight we are now in: What have we not done, to have merited? Former times have given wounds enough to the people's Liberty, we came hither full of wounds, and we have cured what we could; and what is the return of all but miſery and deſolation? What did we aim at, but to have ſerved his Majeſty, and to have done that which would have made him Great and Glorious? If this be a fault, then we are all criminous. What ſhall we do, ſince our humble purpoſes are thus prevented, which were not to have laid any aſperſion on the Government, ſince it tended to no other end, but to give his Majeſty true information of his and our danger? And to this we are enforced out of a Neceſſity of duty to the King, our Country, and to Poſterity; but we being ſtopped, and ſtopped in ſuch manner, as we are enjoined, ſo we muſt now leave to be a Council. I hear this with that grief, as the ſaddeſt Meſſage of the greateſt loſs in the world. But let us ſtill be wiſe, be humble; let us make a fair Declaration to the King.

Sir *John Elliot.*] Our ſins are ſo exceeding great, that unleſs we ſpeedily return to God, God will remove himſelf further from us; ye know with what affection and integrity we have proceeded hitherto to have gained his Majeſty's heart, and out of a neceſſity of our duty, were brought to that courſe we were in: I doubt, a miſrepreſentation to his Majeſty hath drawn this mark of his diſpleaſure upon us: I obſerve in the Meſſage, amongſt other ſad particulars, it is conceived, that we were about to lay ſome aſperſions on the Government; give me leave to proteſt, that ſo clear were our intentions, that we deſire only to vindicate thoſe diſhonours to our King and Country, *&c.* It is ſaid alſo, as if we caſt ſome aſperſions on his Majeſty's Miniſters; I am confident no Miniſter, how dear ſoever can—

Here the Speaker ſtarted up from the ſeat of the Chair, apprehending Sir *John Elliot* intended to fall upon the Duke, and ſome of the Miniſters of State; and ſaid, There is a command laid upon me, that I muſt command you not to proceed. Whereupon Sir *John Elliot* ſate down.

Sir *Dudley Diggs.*] I am as much grieved as ever. Muſt we not proceed? Let us ſit in ſilence, we are miſerable, we know not what to do.

Hereupon there was a ſilence in the Houſe for a while, which was broken by Sir *Nathaniel Rich*, in theſe words:

Sir *Nathaniel Rich.*] We muſt now ſpeak, or for ever hold our peace; for us to be ſilent when King and Kingdom are in this calamity, is not fit. The queſtion is, Whether we ſhall ſecure ourſelves by ſilence, yea or no? I know it is more for our own ſecurity, but it is not for the ſecurity of thoſe for whom we ſerve; let us think on them: ſome inſtruments deſire a change, we fear his Majeſty's ſafety, and the ſafety of the Kingdom, I do not ſay we now ſee it; and ſhall we now ſit ſtill and do nothing, and ſo be ſcattered? Let us go together to the Lords, and ſhew our dangers, that we may then go to the King together.

Others ſaid, that the Speech lately ſpoken by Sir *John Elliot*, had given offence (as they feared) to his Majeſty.

Whereupon the Houſe declared, *That every Member of the Houſe is free from any undutiful Speech, from the beginning of the Parliament to that day; and ordered, that the Houſe be turned into a Committee, to conſider what is fit to be done for the ſafety of the Kingdom; and that no man go out upon pain of going to the* Tower. But before the Speaker left the Chair, he deſired leave to go forth; and the Houſe ordered that he may go forth, if he pleaſe. And the Houſe was hereupon turned into a Grand Committee; Mr. *Whitby* in the Chair.

Mr. *Wandesford.*] I am as full of grief as others, let us recollect our *Engliſh* Hearts, and not ſit ſtill, but do our duties: two ways are propounded, to go to the Lords, or to the King; I think it is fit we go to the King, for this doth concern our Liberties, and let us not fear to make a Remonſtrance of our Rights; we are his Counſellors. There are ſome men which call evil good, and good evil, and bitter ſweet; Juſtice is now called popularity and faction.

Sir *Edward Coke.*] We have dealt with that duty and moderation that never was the like, *Rebus ſic ſtantibus*, after ſuch a violation of the Liberties of the Subject; let us take this to heart. In 30 *E.* III. were they then in doubt in Parliament to name men that miſled the King? They accuſed *John de Gaunt*, the King's Son, and Lord *Latimer*, and Lord *Nevil*, for miſadviſing the King, and they went to the *Tower* for it; now when there is ſuch a downfal of the State, ſhall we hold our tongues? How ſhall we anſwer our duties to God and men? 7 *H.* IV. *Parl. Rot. numb.* 31, & 32. 11 *H.* IV. *numb.* 13. there the Council are complained of, and are removed from the King; they mewed up the King, and diſſuaded him from the common good; and why are we now retired from that way we were in? Why may we not name thoſe that are the cauſe of all our evils? In 4 *H.* III. & 27 *E.* III. & 13 *R.* II. the Parliament moderated the King's Prerogative; and nothing grows to abuſe, but this Houſe hath power to treat of it. What ſhall we do? Let us palliate no longer; if we do, God will not proſper us. I think the Duke of *Buckingham* is the cauſe of all our miſeries; and till the King be informed thereof, we ſhall never go out with honour, or ſit with honour here; that man is the grievance of grievances: let us ſet down the cauſes of all our diſaſters, and all will reflect upon him. As for going to the Lords, that is not *via Regia*; our Liberties are now impeached, we are concerned; it is not *via Regia*, the Lords are not participant with our Liberties.

Mr. *Selden* adviſed, That a Declaration be drawn under four Heads: 1. To expreſs the Houſe's dutiful carriage towards his Majeſty. 2. To tender their Liberties that are violated. 3. To preſent what the purpoſe of the Houſe was to have dealt in. 4. That that great perſon. *viz.* the *Duke*, fearing himſelf to be queſtioned, did interpoſe and cauſe this diſtraction. All this time, (ſaid he) we have caſt a mantle on what was done laſt Parliament; but now being driven again to look on that man, let us proceed with that which was then well begun, and let the charge be renewed that was laſt Parliament againſt him, to which he made an anſwer, but the particulars were ſufficient, that we might demand judgment on that anſwer only.

In concluſion, the Houſe agreed upon ſeveral Heads for a Remonſtrance. But the Speaker (who, after he had leave to go forth, went privately to the King) brought this Meſſage:

That his Majeſty commands for the preſent they adjourn the Houſe till to-morrow morning, and that all Committees ceaſe in the mean time. And the Houſe was accordingly adjourned.

At the ſame time the King ſent for the Lord-Keeper to attend him preſently; the Houſe of Lords was adjourned *ad libitum*. The Lord-Keeper being returned, and the Houſe reſumed, his Lordſhip ſignified his Majeſty's deſire, that the Houſe and all Committees be adjourned till to-morrow morning

Friday, 6*th of* June, *Mr. Speaker brings another Meſſage from the King.*

IN my ſervice to this Houſe I have had many undeſerved favours from you, which I ſhall ever with all humbleneſs acknowledge, but none can be greater than that teſtimony of your confidence yeſterday ſhewed unto me, whereby I hope I have done nothing, or made any repreſentation to his Majeſty, but what is for the honour and ſervice of this Houſe; and I will have my tongue cleave to my mouth, before I will ſpeak to the diſadvantage of any Member thereof: I have now a Meſſage to deliver unto you;

Whereas his Majeſty underſtanding, that you did conceive his laſt Meſſage to reſtrain you in your juſt Privileges, theſe are to declare his intentions, That he had no meaning of barring you from what hath been your Right, but only to avoid all ſcandals on his Council and Actions paſt, and that his Miniſters might not be, nor himſelf, under their names, taxed for their Counſel unto his Majeſty, and that no ſuch particulars ſhould be taken in hand, as would aſk a longer time of conſideration than what he hath already prefixed, and ſtill reſolves to hold; that ſo, for this time, Chriſtendom might take notice of a ſweet parting between him and his people: Which if it fall out, his Majeſty will not be long from another meeting, when ſuch grievances (if there be any) at their leiſure and convenience may be conſidered.

Mr. Speaker proceeded:

I will obſerve ſomewhat out of this Meſſage; ye may obſerve a great inclination in his Majeſty to meet in this Houſe. I was bold yeſterday to take notice of that liberty ye gave me to go to his Majeſty: I know there are none here but did imagine whither I went, and but that I knew you were deſirous and content that I ſhould leave you, I would not have deſired it: give me leave to ſay, This Meſſage bars you not of your Right in matter, nay, not in manner; but it reacheth to his Counſels paſt, and for giving him counſel in thoſe things which he commanded.

The Houſe of Lords likewiſe received this Meſſage by the Lord-Keeper.

MY Lords, his Majeſty takes notice, to your great advantage, of the proceedings of this Houſe upon the hearing of his Majeſty's Meſſage yeſterday; he accounts it a fair reſpect, that ye would neither agree on any Committee, or ſend any Meſſage to his Majeſty, though it were in your own hearts, but yield yourſelves to his Majeſty's Meſſage, and defer your own reſolutions till you meet again at the time appointed by his Majeſty. Yet his Majeſty takes it in extreme good part to hear what was in your heart, and eſpecially that you were ſo ſenſible of the inconvenience that might enſue upon the breach of this Parliament: which if it had happen'd or ſhall hereafter happen, his Majeſty aſſures himſelf, that he ſhall ſtand clear before God and men of the occaſion.

But his Majeſty ſaith, Ye had juſt cauſe to be ſenſible of the danger, conſidering how the ſtate of Chriſtendom now ſtands in reſpect of the multitude and ſtrength of our enemies, and weakneſs on our part. All which his Majeſty knows very exactly, and in reſpect thereof, called this Parliament; the particulars his Majeſty holds it needleſs to recite, eſpecially to your Lordſhips, ſince they are apparent to all men: neither will it be needful to reiterate them to his Majeſty, whoſe cares are moſt attentive upon them, and the beſt remedy that can be thought on therein, is, if his Subjects do their parts. Therefore his Majeſty gives you hearty thanks, and bid me tell you, that nothing hath been more acceptable to him all the time of this Parliament, than this dutiful and diſcreet carriage of your Lordſhips, which he profeſſeth hath been a chief motive to his Majeſty, to ſuſpend thoſe intentions that were not far from a reſolution.

Sir

Sir *Robert Philips* aſſumed the debate, upon the Meſſage delivered by the Speaker, and ſaid; I riſe up with a diſpoſition, ſomewhat in more hope of comfort than yeſterday; yet, in regard of the uncertainty of Counſels, I ſhall not change much. In the firſt place, I muſt be bold without flattering, a thing not incident to me, to tell you (Mr. Speaker) you have not only at all times diſcharged the duty of a good Speaker, but of a good man; for which I render you many thanks.

Another reſpect touching his Majeſty's anſwer to our petition; firſt, if that anſwer fall out to be ſhort, I free his Majeſty, and I believe his reſolution was to give that which we all expected: but in that, as in others, we have ſuffered, by reaſon of interpoſed perſons between his Majeſty and us. But this day is by intervenient accidents diverted from that, but ſo, as in time we go to his Majeſty: therefore let us remove thoſe jealouſies in his Majeſty of our proceedings, that by ſome men overgrown have been miſrepreſented. We have proceeded with temper, in confidence of his Majeſty's goodneſs to us, and our fidelity to him; and if any have conſtrued, that what we have done hath been out of fear, let him know we came hither Freemen, and will ever reſolve to endure the worſt; and they are poor men that make ſuch interpretations of Parliaments. In this way and method we proceeded, and if any thing fall out unhappily, it is not King *Charles* that adviſed himſelf, but King *Charles* miſadviſed by others, and miſled by miſ-ordered Counſel; it becomes us to conſider what we were doing, and now to adviſe what is fit to be done. We were taking conſideration of the State of the Kingdom, and to preſent to his Majeſty the danger he and we are in, if ſince any man hath been named in particular, (though I love to ſpeak of my betters with humility) let him thank himſelf and his Counſels, but thoſe neceſſary jealouſies give us occaſion to name him; I aſſure myſelf we ſhall proceed with temper, and give his Majeſty ſatisfaction, if we proceed in that way. His Majeſty's Meſſage is now explanatory in point of our Liberties, that he intends not to bar us of our Rights, and that he would not have any aſperſion caſt on the Counſels paſt; let us preſent to his Majeſty ſhortly and faithfully, and declare our intentions, that we intend not to lay any aſperſions upon him, but out of a neceſſity to prevent the imminent dangers we are ſurrounded with, and to preſent to him the affairs at home and abroad, and to deſire his Majeſty, that no interpoſition or miſ-information of men in fault may prevail, but to expect the iſſue that ſhall be full of duty and loyalty.

The Commons ſent a Meſſage to the Lords, that they would join in an humble requeſt to the King, that a clear and ſatisfactory anſwer be given by his Majeſty in full Parliament to the Petition of Right; whereunto the Lords did agree.

June the ſeventh, the King came to the Lords Houſe, and the Houſe of Commons were ſent for. And the Lord-Keeper preſented the humble Petition of both Houſes, and ſaid,

MAY it pleaſe your moſt excellent Majeſty, the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, taking into conſideration that the good intelligence between your Majeſty and your people doth much depend upon your Majeſty's anſwer unto their Petition of Right formerly preſented; with unanimous conſent do now become moſt humble Suitors unto your Majeſty, that you would be graciouſly pleaſed to give a clear and ſatisfactory anſwer thereunto in full Parliament.

Whereunto the King replied,

The anſwer I have already given you was made with ſo good deliberation, and approved by the judgments of ſo many wiſe men, that I could not have imagined but it ſhould have given you full ſatisfaction; but to avoid all ambiguous interpretations, and to ſhew you that there is no doubleneſs in my meaning, I am willing to pleaſe you as well in words as in ſubſtance; read your petition, and you ſhall have an anſwer that I am ſure will pleaſe you.

The petition was read, and this anſwer was returned: *Soit droit fait come il eſt deſire par le petition.* *C. R.*

This I am ſure (ſaid his Majeſty) is full, yet no more than I granted you in my firſt anſwer; for the meaning of that was to confirm all your Liberties, knowing, according to your own proteſtations, that you neither mean nor can hurt my Prerogative. And I aſſure you, my maxim is, that the People's Liberties ſtrengthen the King's Prerogative, and the King's Prerogative is to defend the People's Liberties.

You ſee how ready I have ſhewed myſelf to ſatisfy your demands, ſo that I have done my part; wherefore, if this Parliament have not a happy concluſion, the ſin is yours, I am free from it.

Whereupon the Commons returned to their own Houſe with unſpeakable joy, and reſolved ſo to proceed as to expreſs their thankfulneſs.

The King's Meſſage to the Lower Houſe, by Sir Humfrey May, *10th of June* 1628.

HIS Majeſty is well pleaſed that your Petition of Right, and his Anſwer, be not only recorded in both Houſes of Parliament, but alſo in all the Courts of *Weſtminſter*; and that his pleaſure is, it be put in print for his honour, and the content and ſatisfaction of his people, and that you proceed cheerfully to ſettle buſineſſes for the good and reformation of the Commonwealth.

June 26. The Speaker being ſent for to the King at *Whitehall*, came not into the Houſe till about nine a-clock. And after prayers, the Remonſtrance concerning tunnage and poundage being ingroſſed, was a reading in the Houſe; and while it was a reading, the King ſent for the Speaker and the whole Houſe, and the King made a Speech as followeth:

IT may ſeem ſtrange, that I came ſo ſuddenly to end this Seſſion; before I give my aſſent to the Bills. I will tell you the cauſe, though I muſt avow, that I owe the account of my actions to God alone. It is known to every one, that a while ago the Houſe of Commons gave me a Remonſtrance; how acceptable, every man may judge; and for the merit of it, I will not call that in queſtion, for I am ſure no wiſe man can juſtify it.

Now, ſince I am truly informed that a ſecond Remonſtrance is preparing for me to take away the profit of my tunnage and poundage, one of the chief maintenances of my Crown, by alledging I have given away my Right thereto by my anſwer to your petition:

This is ſo prejudicial unto me, that I am forced to end this Seſſion ſome few hours before I meant, being not willing to receive any more Remonſtrances, to which I muſt give a harſh anſwer. And ſince I ſee, that even the Houſe of Commons begins already to make falſe conſtructions of what I granted in your petition, leſt it be worſe interpreted in the Country, I will now make a Declaration concerning the true intent thereof.

The profeſſion of both Houſes in the time of hammering this petition, was no way to trench upon my Prerogative, ſaying, they had neither intention or power to hurt it. Therefore it muſt needs be conceived, that I have granted no new, but only confirmed the antient Liberties of my Subjects. Yet to ſhew the clearneſs of my intentions, that I neither repent, nor mean to recede from any thing I have promiſed you, I do here declare myſelf, That thoſe things which have been done, whereby many have had ſome cauſe to ſuſpect the Liberties of the Subjects to be trenched upon, which indeed was the firſt and true ground of the petition, ſhall not hereafter be drawn into example for your prejudice; and from time to time, in the word of a King, ye ſhall not have the like cauſe to complain. But as for tunnage and poundage, it is a thing I cannot want, and was never intended by you to aſk, nor meant by me, I am ſure, to grant.

To conclude, I command you all that are here to take notice of what I have ſpoken at this time, to be the true intent and meaning of what I granted you in your petition; but eſpecially you, my Lords the Judges, for to you only, under me, belongs the interpretation of Laws: for none of the Houſes of Parliament, either joint or ſeparate, (what new Doctrine ſoever may be raiſed) have any power either to make or declare a Law without my conſent.

Then the Lord Keeper ſaid, It is his Majeſty's pleaſure that this Seſſion now end, and that the Parliament be prorogued till the 20*th* of *October* next.

In the following Seſſions, *viz. Wedneſday, January 21ſt*, it was ordered that Mr. *Selden* and others ſhould ſee if the *Petition of Right* and his Majeſty's anſwer thereunto were inrolled in the Parliament Rolls, and the Courts at *Weſtminſter*, as his Majeſty ſent them word the laſt Seſſion they ſhould be; and alſo in what manner they were entered; which was done accordingly: and Mr. *Selden* made report to the Houſe, that his Majeſty's Speech made the laſt day of the Seſſion in the Upper Houſe is alſo entered by his Majeſty's command.

Hereupon Mr. *Pym* moved, that the debate hereof ſhould be deferred till *Tueſday* next, by reaſon of the fewneſs of the Houſe.

Sir *John Elliot.*] This which is now mentioned, concerns the honour of the Houſe, and the Liberty of the Kingdom; it is true, it deſerves to be deferred till there be a full Houſe, but it is good to prepare things. I find it is a great point; I deſire a ſelect Committee may enter into conſideration thereof, and alſo how other Liberties of the Kingdom be invaded. I find in the country *the Petition of Right* printed indeed, but with an anſwer that never gave any ſatisfaction: I deſire a Committee may conſider thereof, and preſent it to the Houſe, and that the Printer be ſent for, to give ſatisfaction to the Houſe, by what warrant it was printed. Which was ordered.

Mr. *Selden.*] For this Petition of Right, it is known how lately it hath been violated ſince our laſt meeting; the Liberties for life, perſon and freehold, how they have been invaded; and have not ſome been committed, contrary to that? Now we, knowing theſe invaſions, muſt take notice of it. For Liberties, for State, we know of an order made in the *Exchequer*, that a Sheriff was commanded not to execute a replevin, and men's goods are taken and muſt not be reſtored. Whereas no man ought to loſe life, or limb, but by Law; hath not one lately loſt his ears (meaning *Savage*) that was cenſured in the *Star-Chamber* by an arbitrary ſentence and judgment? Next, they will take away our arms, and then our lives. Let all ſee we are ſenſible of theſe cuſtoms creeping upon us: let us make a juſt preſentation hereof to his Majeſty.

Norton the King's Printer was brought to the Bar, and aſked by what warrant the additions to the Petition were printed? He anſwered, that there was a warrant (as he thought) from the King himſelf. And being aſked whether there were not ſome copies printed without additions, he anſwered, there were ſome, but they were ſuppreſſed by warrant.

Sir *John Elliot* deſired ſome clearer ſatisfaction might be made, and that he might anſwer directly by what warrant. Whereupon he was called in again: who ſaid, he did not remember the particular, but ſure he was there was a warrant.

Mr. *Selden* reported from the Committee concerning the printing of the Petition of Right, that there were printed 1500 without any addition at all, which were publiſhed in the time of the laſt Parliament: but ſince the Parliament, other copies have been printed, and theſe ſuppreſt and made waſte paper; which the Printer did, as he ſaid, by command from Mr. *Attorney*, which he received from his Majeſty. And the Printer further ſaid, That the *Attorney* was with the Lord Privy-Seal at *Whitehall*, and there delivered unto the Printer ſundry papers, with divers hands to them, and on the backſide was endorſed thus, *We will and command you, that theſe copies be printed.*

Which put an end to this grand affair.

XVII. *Pro-*

XVII. Proceedings againſt *William Stroud*, Eſq; *Walter Long*, Eſq; *John Selden*, Eſq; and others, on an *Habeas Corpus*, in *Banco Regis*. 1629. 5 *Car.* I.

ON *February* 23*d*, the Houſe of Commons being upon the debate of the buſineſs of the cuſtomers, who had ſeized goods belonging to Mr. *Rolls*, a Member of the Houſe, diſſolved themſelves into a grand Committee, and at laſt reſolv'd,

That Mr. Rolls, *a Member of the Houſe, ought to have privilege of perſon and goods; but the command of the King is ſo great, that they leave it to the Houſe.*

After which, the King's meſſage, in juſtification of the farmers and officers of the cuſtoms, was taken into conſideration; which occaſioned warm debates, and the Speaker being moved to put the queſtion then propos'd, refus'd to do it, and ſaid, *That he was otherwiſe commanded by the King.*

Then ſaid Mr. *Selden*, *Dare not you, Mr.* Speaker, *put the Queſtion when we command you? If you will not put it, we muſt ſit ſtill; thus we ſhall never be able to do any thing. They that come after you, may ſay, They have the King's command not to do it. We ſit here by the command of the King under the Great Seal, and you are, by his Majeſty, ſitting in this Royal Chair, before both Houſes, appointed for our Speaker; and now you refuſe to perform your Office.*

Hereupon the Houſe (in ſome heat) adjourned till *Wedneſday* next.

On *Wedneſday* the 25th of *February*, both Houſes, by his Majeſty's command, were adjourned until *Monday* morning the 2d of *March*.

Monday the 2d of *March*, the Commons met, and urged the Speaker to put the Queſtion; who ſaid, *I have a command from the King to adjourn till* March *the* 10*th*; *and put no Queſtion.* And endeavouring to go out of the Chair, was notwithſtanding held by ſome Members (the Houſe foreſeeing a diſſolution) till a proteſtation was publiſhed in the Houſe; 1. Againſt Popery and Arminianiſm. 2. Againſt tunnage and poundage not granted by Parliament. 3. If any Merchant yield or pay tunnage and poundage not granted by Parliament, he ſhould be reputed a betrayer of the Liberties of *England*.

Hereupon the King ſent for the Serjeant of the Houſe; but he was detained, the door being lock'd: Then he ſent the Gentleman-Uſher of the Lords Houſe, with a meſſage; and he was refuſed admittance, till the ſaid Votes were read. And then in much confuſion the Houſe was adjourned to the 10*th* of *March*. Nevertheleſs his Majeſty, by Proclamation, dated the 2*d* of *March*, declares the Parliament to be diſſolved.

(Though the Proclamation was not publiſhed till the 10th) and the day following, (the 3*d*) Warrants were directed from the Council to *Denzil Holles*, Eſq; Sir *Miles Hobart*, Sir *John Elliot*, Sir *Peter Hayman*, *John Selden*, *William Coriton*, *Walter Long*, *William Stroud*, *Benjamin Valentine*, Eſqrs; commanding their perſonal appearance on the morrow. At which time, Mr. *Holles*, Sir *John Elliot*, Mr. *Coriton*, Mr. *Valentine* appearing, and refuſing to anſwer out of Parliament what was ſaid and done in Parliament, were committed cloſe priſoners to the *Tower*; and Warrants were given (the Parliament being ſtill in being) for the ſealing up of the Studies of Mr. *Holles*, Mr. *Selden*, and Sir *John Elliot*. But Mr. *Long* and Mr. *Stroud* not then, nor for ſome time after appearing, a Proclamation iſſued forth for the apprehending of them.

The King purpoſing to proceed againſt the Members of the Houſe of Commons, who were committed to priſon by him in the *Star-Chamber*, cauſed certain queſtions to be propoſed to the Judges upon the 25*th* of *April*.

Whereupon all the Judges met at *Serjeants-Inn* by command from his Majeſty, where Mr. Attorney propoſed certain queſtions concerning the offences of ſome of the Parliament-men committed to the *Tower*, and other priſons: At which time, one queſtion was propoſed and reſolved, *viz. That the Statute of* 4. H. VIII. *intitled*, An Act concerning *Richard Strode*, *was a particular Act of Parliament, and extended only to* Richard Strode, *and to thoſe perſons that had joined with him to prefer a Bill to the Houſe of Commons concerning Tinners: And although the Act be private, and extendeth to them alone, yet it was no more than all other Parliament-men, by privilege of the Houſe, ought to have*, viz. *Freedom of Speech concerning thoſe matters debated in Parliament by a Parliamentary courſe.*

The reſt of the queſtions Mr. Attorney was wiſhed to ſet down in writing againſt another day.

Upon *Monday* following, all the Judges met again, and then Mr. Attorney propoſed theſe queſtions:

1. *Whether if any Subject hath received probable information of any Treaſon or treacherous attempt or intention againſt the King or State, that Subject ought not to make known to the King, or his Majeſty's Commiſſioners, when thereunto he ſhall be required, what information he hath received, and the grounds thereof; to the end the King being truly informed, may prevent the danger? And if the ſaid Subject in ſuch caſe ſhall refuſe to be examined, or to anſwer the queſtions which ſhall be demanded of him for further inquiry and diſcovery of the truth, whether it be not a high contempt in him, puniſhable in the Star-Chamber, as an offence againſt the general Juſtice and Government of the Kingdom?*

Sol. The reſolution and anſwer of all the Juſtices, That it is an offence puniſhable as aforeſaid, ſo that this do not concern himſelf, but another, nor draw him to danger of Treaſon or Contempt by his anſwer.

2. *Whether it be a good anſwer or excuſe, being thus interrogated, and refuſing to anſwer, to ſay*, That he was a Parliament-man when he received the information, and that he ſpake thereof in the Parliament-houſe: and therefore the Parliament being now ended, he refuſed to anſwer to any ſuch queſtions but in the Parliament-houſe, and not in any other place?

Sol. To this the Judges, by advice privately to Mr. Attorney, gave this anſwer, That this excuſe being in nature of a Plea, and an errour in judgment, was not puniſhable, until he were over-ruled in an orderly manner to make another anſwer; and whether the party were brought in *Ore tenus*, or by information, for this Plea he was not to be puniſhed.

3. *Whether a Parliament-man, committing an offence againſt the King or Council not in a Parliament way, might, after the Parliament ended, be puniſhed or not?*

Sol. All the Judges, *una voce*, anſwered, he might, if he be not puniſhed for it in Parliament; for the Parliament ſhall not give privilege to any *contra morem Parliamentarium*, to exceed the bounds and limits of his place and duty. And all agreed, That regularly he cannot be compelled out of Parliament to anſwer things done in Parliament in a Parliamentary courſe; but it is otherwiſe where things are done exorbitantly, for thoſe are not the acts of a Court.

4. *Whether if one Parliament-man alone ſhall reſolve, or two or three ſhall covertly conſpire to raiſe falſe ſlanders and rumours againſt the Lords of the Council and Judges, not with intent to queſtion them in a legal courſe, or in a Parliamentary way, but to blaſt them, and to bring them to hatred of the people, and the Government in contempt, be puniſhable in the Star-Chamber after the Parliament is ended?*

Sol. The Judges reſolve, That the ſame was puniſhable out of Parliament, as an offence exorbitant committed in Parliament, beyond the office, and beſides the duty of a Parliament-man.

There was another queſtion put by Mr. Attorney, viz.

Whether if a man in Parliament, by way of digreſſion, and not upon any occaſion ariſing concerning the ſame in Parliament, ſhall ſay, The Lords of the Council and the Judges had agreed to trample upon the Liberty of the Subject, and the Privileges of Parliament, he were puniſhable or not?

The Judges deſired to be ſpared to make any anſwer thereunto, becauſe it concerned themſelves in particular *.

The

* *Nalſon* in his Collections, Vol. II. p. 374, ſays, There were ſeveral queſtions propos'd to the three Chief-Judges about matters in Parliament, to which they gave theſe anſwers; which being ſomething different from what is above, are here inſerted.

Quære I. *Whether a Parliament-man, offending the King criminally or contemptuouſly in the Parliament-houſe (and not then puniſhed), may not be puniſhed out of Parliament?*

Anſwer. We conceive, That if a Parliament-man, exceeding the privilege of Parliament, do criminally or contemptuouſly offend the King in the Parliament-houſe (and not there puniſhed) may be puniſhed out of Parliament.

Quære II. *Whether the King, as he hath the power of calling and diſſolving a Parliament, have not alſo an abſolute power to cauſe it to be adjourned at his pleaſure?*

Anſwer. We conceive, That the King hath the power of commanding of adjournments of Parliaments, as well as of calling, proroguing and diſſolving of Parliaments: But for the manner thereof, or the more particular anſwer to this, and the next ſubſequent queſtion, we refer ourſelves to the precedents of both Houſes.

Quære III. *Whether, if the King do command an adjournment to be made, he hath not alſo power to command all further proceedings in Parliament to ceaſe at that time?*

Quære IV. *Whether it be not a high contempt in a Member of the Houſe, contrary to the King's expreſs commandment, contemptuouſly to oppoſe the adjournment?*

Anſwer. The King's expreſs commandment being ſignified for an adjournment, if any after that ſhall contemptuouſly oppoſe it, further, or otherwiſe than the privilege of the Houſe will warrant; this we conceive to be a great Contempt.

Quære V. *Whether, if a few Parliament-men do conſpire together, to ſtir up ill affections in the People againſt the King, and the Government, and to leave the Parliament with ſuch a looſe, and by words or writings put it in execution, and this not puniſhed in Parliament, it be an offence puniſhable out of Parliament?*

Anſwer. We conceive this offence to be puniſhable out of Parliament.

Quære VI. *Whether, if ſome Parliament-men ſhall conſpire together to publiſh papers containing falſe and ſcandalous rumours againſt the Lords of the Privy-Council, or any one or more of them, not to the end to queſtion them in a legal or Parliamentary way, but to bring them into hatred of the People, and the Government into Contempt, and to make diſcord between the Lords and Commons; is not this an offence puniſhable out of Parliament?*

Anſwer. We conceive this alſo to be an offence puniſhable out of Parliament.

Quære VII. *If two or three or more of the Parliament ſhall conſpire to defame the King's Government, and to deter his Subjects from obeying or aſſiſting the King; of what nature this offence is?*

Anſwer. The nature and quality of this offence will be greater or leſſer, as the circumſtances ſhall fall out, upon the truth of the fact.

Quære VIII. *Can any privilege of the Houſe warrant a tumultuous Proceeding?*

Anſwer. We humbly conceive, that an earneſt, though a diſorderly and confuſed proceeding in ſuch a multitude, may be called tumultuous, and yet the privilege of the Houſe may warrant it.

We in all humbleneſs are willing to ſatisfy your Majeſty's Command, but until the particulars of the fact do appear, we can give no directer anſwers than before.

And particularly as to the ſecond Quære, about the King's power of adjourning as well as calling and diſſolving of Parliaments, theſe following Parliamentary precedents were given in.

Mercur. 4. *Aprilis*, 1 *Jac. Seſſ.* 1. Mr. Speaker pronounceth his Majeſty's pleaſure of adjourning the Houſe till the 11*th* of *April* (and it was ſo done).

Jovis 18 *Dec.* 1606. The Lords by their Meſſengers ſignified the King's Pleaſure, that the Seſſion ſhould be adjourned till the 10*th* of *February* following.

Upon this Meſſage Mr. Speaker adjourned the Houſe according to his Majeſty's ſaid Pleaſure.

Martis 31 *Martii* 1607. The Speaker delivered the King's Pleaſure, that the Houſe ſhould be adjourned till *Monday* the 20*th* of *April* following.

Mercurii 20 *Maii* 1607. Mr. Speaker ſignified the King's Pleaſure about nine o'Clock to adjourn the Houſe till the 27*th* of the ſame month.

And the 27*th* of *May*, he being challenged for adjourning without the privity of the Houſe, he excuſeth it, and ſaith, as the Houſe had power to adjourn themſelves, ſo the King had a ſuperior power, and by his command he did it.

The next day Mr. *Attorney* put the Judges another Caſe.

It is demanded of a Parliament-man, being called *Ore tenus*, before the Court of *Star-Chamber*, being charged, that he did not ſubmit himſelf to examination for ſuch things as did concern the King and the Government of the State, and were affirmed to be done by a third perſon, and not by himſelf; if he confeſſes his hand to that refuſal, and make his excuſe, and plead becauſe he had privilege of Parliament;

Whether the Court will not over-rule this Plea as erroneous, and that he ought to make a further anſwer?

Anſ. It is the juſteſt way for the King and the Party not to proceed *Ore tenus*, becauſe it being a point in Law, it is fit to hear Counſel before it be over-ruled; and upon an *Ore tenus*, by the Rules of *Star-Chamber*, Counſel ought not to be admitted; and that it would not be for the honour of the King, nor the ſafety of the Subject, to proceed in that manner.

[But the King dropped the Proceedings againſt them in the *Star-Chamber*.]

Paſch. 5 *Car.* upon an *Habeas Corpus* of this Court to bring the body of *William Stroud*, Eſq. with the cauſe of his impriſonment, to the Marſhal of the *King's Bench*; it was returned in this manner:

That Mr. William Stroud *was committed under my cuſtody by virtue of a certain Warrant under the hands of twelve the Lords of the Privy-Council of the King.* The tenour of which Warrant followeth in theſe words:

You are to take knowledge, That it is his Majeſty's pleaſure and commandment, that you take into your cuſtody the body of William Stroud, *Eſq; and keep him cloſe priſoner till you ſhall receive other order, either from his Majeſty, or this Board: for ſo doing, this ſhall be your Warrant.* Dated this 2*d* of *April*, 1629. And the direction of the Warrant was, *To the Marſhal of the* King's Bench, *or his Deputy.*

He is alſo detained in priſon by virtue of a Warrant under his Majeſty's hand; the tenour of which Warrant followeth in theſe words:

C. R.

Whereas you have in your cuſtody the body of William Stroud, *Eſq. by Warrant of our Lords of our Privy-Council, by our ſpecial command, you are to take notice, that this Commitment was for notable Contempts by him committed againſt our Self and our Government, and for ſtirring up Sedition againſt us; for which you are to detain him in your cuſtody, and to keep him cloſe priſoner, until our pleaſure be further known concerning his deliverance.*

Given at *Greenwich*, the 7*th* of *May*, 1629. in the fifth year of our Reign.

The direction being, *To the Marſhal of our Bench* for the time being, *& hæ ſunt cauſæ captionis & detentionis prædicti* Gulielmi Stroud.

And upon another *Habeas Corpus* to the Marſhal of the Houſhold, to have the body of *Walter Long*, Eſq. in Court, it was returned according as the return of Mr. *Stroud* was.

Mr. *Aſk*, of the *Inner-Temple*, of Counſel for Mr. *Stroud*; and Mr. *Maſon* of *Lincoln's-Inn*, of Counſel for Mr. *Long*; argued againſt the inſufficiency of the Return.

Mr. *Aſk*. That the Return was inſufficient. The Return conſiſts upon two Warrants, bearing ſeveral dates, which are the cauſes of the taking and detaining of the priſoner. For the firſt Warrant, which is of the Lords of the Council, that is inſufficient: becauſe no cauſe is ſhewn of his commitment, which is expreſly againſt the reſolution of the Parliament, and their Petition of Right, in the time of this King, which now is, to which he had likewiſe given his aſſent; ſo his taking by virtue of the ſaid Warrant is wrongful. And for the ſecond Warrant, it is inſufficient alſo, and that notwithſtanding it be the King's own; for the King himſelf cannot impriſon any man, as our Books are, to wit, 16 *H.* VI. *F. Monſtrance de faits.* 1. *H.* VII. 4. *Huſſey* reports it to be the opinion of *Markham*, in the time of *Edw.* IV. and *Forteſcue* in his Book, *de laudibus Legum Angliæ*, *cap.* 18. And the reaſon given, is, becauſe no action of falſe impriſonment lies againſt the King, if the impriſonment be wrongful; and the King cannot be a wrong doer. The Statute of *Magna Charta* is, That no Freeman be impriſoned but by the Law of the Land. And it appears by theſe Books, that it is againſt the Law of the Land that the King ſhould impriſon any one.

2. Admit that this be only a ſignification and notification given by the King himſelf, of the commitment of the priſoner; yet it ſeems that that ſignification is of no force, 1. Becauſe the words are general and uncertain———*for notable contempts.*———There are in the Law many contempts of ſeveral natures; there are contempts againſt the Common Law, againſt the Statute Law; contempts in words, geſtures, or actions. And it appears not to the Court of what nature theſe contempts were.——— *Notable*———Every contempt which is made to the King is notable.——— *Againſt our Government*——Contempt which is committed in a Court of Record or Chancery, is a contempt againſt the Government of the King, to wit, becauſe they diſobey the King when he commands them by his Writs, *Coke* 8. 60. *a. Beecher's* Caſe. The laſt words of the Return are, ——*For ſtirring up of ſedition againſt us*----which words likewiſe are indefinite and general. I find not the word *Sedition* in our Books, but taken adjectively, as ſeditious Books, ſeditious News, *&c.* In the Statute of the 1*ſt* and 2*d Phil.* and *Mary*, *cap.* 3. the words are, *If any perſon ſhall be convicted*, &c. *for ſpeaking*, &c. *any falſe, ſeditious, or ſlanderous news, ſaying of tales of the Queen*, &c. *he ſhall loſe his ears, or pay* 100l. There the penalty impoſed upon ſuch ſedition is but a fine. *Coke* 4. Lord *Cromwel's* Caſe, *p.* 13. where ſedition is defined to be *ſeorſum itio*, when a man takes a courſe of his own. And there it is ſaid, that the words,---*maintain ſedition againſt the Queen's proceedings*----ſhall be expounded according to the coherence of all the words, and the intent of the parties. So that it is plain, that there is a ſedition that is only fineable, and which is no cauſe of impriſonment without Bail: And what the ſedition is that is here intended, cannot be gathered out of the words, they are ſo general.----- *againſt Us*---thoſe words are redundant, for every ſedition is againſt the King.

Upon the generality and incertainty of all the words in the Return, he put theſe Caſes: 18 *E.* III. A man was indicted, *quia furatus eſt equum*, and doth not ſay, *Felonicè*, and therefore ill. 29 *Aſſ.* 45. A man was indicted that he was *communis latro*, and the indictment held vicious, becauſe too general. So here the offences are returned generally. But there ought to be ſomething individual, *Coke* 5. 57. *Specot's* Caſe, *quia ſchiſmaticus inveteratus*, is no good cauſe for the Biſhop to refuſe a Clerk, for it is too general, and there are ſchiſms of divers kinds. 38 *E.* III. 2. Becauſe the Clerk is *criminoſus*, it is no good cauſe for the Biſhop to refuſe him. 8 and 9 *Eliz. Dy.* 254. The Biſhop of *N.* refuſeth one, becauſe he was a haunter of taverns, &c. for which, and divers other crimes, he was unfit; held that the laſt words are too general and incertain. 40 *E.* III. 6. In the tender of a marriage, and refuſal of the heir, he ought to alledge a certain cauſe of refuſal, whereupon iſſue may be taken. *Coke* 8. 68. *Trollop's* Caſe, to ſay, That the plaintiff is excommunicated for divers contumacies, ſhall not diſable him, without ſhewing ſome cauſe in ſpecial of the excommunication, upon which the Court may judge whether it were juſt or no: ſo here. And he concluded with a Caſe that was reſolved, *Hill.* 33 *Eliz. Peak* and *Paul* the Defendants ſaid of the Plaintiff, Thou art a mutinous and ſeditious man, and maintaineſt ſedition againſt the Queen; and the words adjudged not actionable.

Mr. *Maſon* (afterwards Recorder of *London*) moved alſo, That the Return was inſufficient. For the firſt Warrant, That he was committed by command of the King, ſignified by the Privy-Council, I will not argue that, becauſe it was claimed as an ancient Right pertaining to the Subject in the Petition of Right, whereto the King himſelf hath given his conſent. For the ſecond Warrant, the Return is,------*for ſtirring up ſedition againſt us and our Government.* Sedition is not any determined offence within our Law; our Law gives definitions or deſcriptions of other offences, to wit, of Treaſon, Murder, Felony, &c. but there is no crime in our Law called Sedition. It is defined by a *Civilian* to be *Seditio*, or *Seceſſio, cum pars Reipublicæ contra partem inſurgit*; ſo that Sedition is nothing but diviſion. *Bracton* and *Glanvile* have the word *Seditio* generally. Before the Statute of 25 *E.* III. *cap.* 2. it was not clear enough what thing was Treaſon, what not; by which Statute it is declared what ſhall be called Treaſon, and that the Judges ſhall not declare any thing to be Treaſon, that is not contained within the ſaid Statute, but it ſhall be declared only by Parliament. And that Statute ſpeaks not of Sedition, nor the Statute of 1 *H.* IV. *cap.* 10. which makes ſome things Treaſon, which are not contained within the ſaid Statute of 25 *E.* III. The Statute of 1 *E.* VI. *cap.* 12. takes away all intervenient Statutes, which declared new Treaſons; and the ſaid Act declares other things to be Treaſon, but mentions not Sedition. Sedition is the quality of an offence, and is oftentimes taken adverbially, or adjectively. To raiſe tumults or treſpaſſes is Sedition, *Trin.* 21 *E.* III. *rot.* 23. *B. R. Garbart's* Caſe; a man was indicted, becauſe in the high-ſtreet he took *J. S.* there, being in hoſtile manner, and uſurped over him royal power, which is manifeſt Sedition; and there it was but an indictment of treſpaſs. *Mich.* 20 *E.* I. *rot.* 27. One that was Surveyor of the wood-work for the King, was indicted for ſtealing of timber, and detaining wages (*ridding* Carpenters wages) by one that was but a boy; and this is there termed Sedition, and yet it was but a petty felony. *Mich.* 42 *E.* III. *rot.*65. *B. R. R. Pope* was appealed by the wife of *J. S.* becauſe he feloniouſly and ſeditiouſly murdered *J. S.* and *ſeditiouſly* was there put in, becauſe it was done privily. By which caſes it appears, that Sedition is not taken as a ſubſtantive, ſo that it may be applied to treaſon, treſpaſs, or other offences. By the Statute of 2 *H.* IV. *cap.* 15. there is a puniſhment inflicted for the raiſing of ſeditious doctrine, and yet no puniſhment could have been inflicted for it until the ſaid Statute; and yet it was ſeditious, as well before the ſaid Statute as after. And this appears alſo by the Statute of 1*ſt* and 2*d* of *Philip* and *Mary*, *cap.* 3. which hath been cited. The Statute 13 *Eliz. cap.* 2. recites, that divers ſeditious and evil-diſpoſed perſons, *&c.* obtained bulls of reconciliation from the Pope, which offence was made Treaſon by the ſaid Statute, (for it was not before, and yet there was ſedition) and by the ſaid Statute, the aiders and abettors are but in the caſe of *Premunire.* By the Statute of 13 *Eliz. cap.* 1. for the avoiding of contentious and ſeditious titles to the Crown, it is enacted by the ſaid Statute, That he that ſhall declare the ſucceſſor of the King, ſhall forfeit the moiety of his goods, *&c.* ſo that the ſaid offence, although it be ſeditious, is not treaſon by the Common Law, nor is it made treaſon by the Statute of 25 *E.* III. nor by the Statute of 13 *Eliz.* By the Statute of 23 *Eliz. cap.* 2. he that ſpeaks ſeditious or ſlanderous news of the Queen ſhall loſe his ears, or pay 200*l.* and the ſecond offence is made felony. The Statute of 35 *Eliz. cap.* 1. is againſt ſeditious ſectaries, which abſent themſelves from the Church; they are to be puniſhed 10*l.* by the month. Out of all which Statutes it may be collected, that the word *Sedition* is taken variouſly, according to the ſubject in hand. And *Coke* 4. 13. Lord *Cromwel's* Caſe, *Seditious* is referred to doctrine. There are offences more high in their nature than Sedition, which were not treaſon, unleſs ſo declared by Act of Parliament. Every rebellious Act is Sedition, yet if ſuch Acts be not within the Statute of 25 *E.* III. they are not treaſon. 17 *R.* II. *cap.* 8. Inſurrection of villeins and others is made treaſon; which proves, that before this Act it was not treaſon. And this Act of 17 *R.* II. is repealed by the Statute of 1 *H.* IV. By the Statute of 3 and 4 *E.* VI. *cap.* 5. to aſſemble people to alter the Laws, is made treaſon, if they continue together an hour after Proclamation made. This aſſembly of people was Sedition at the Common Law; and the very aſſembly, if they after diſſolve upon Proclamation made, is not treaſon by the ſaid Statute. By the Statute of 14 *Eliz.cap.*1. it is made felony, maliciouſly and rebelliouſly to hold from the Queen any Caſtles, *&c.* but becauſe this relates not to the Statute of 25 *E.* III. it is not treaſon. 2. It ſeems clearly, that this caſe is within the Petition of Right, in which *Magna Charta*, and the Statutes of 25 and 28 *E.* III. are recited. The grievance there was, that divers have been impriſoned without any cauſe ſhewed, to which they might make anſwer according to the law. And upon this return, nothing appears to be objected to which he might anſwer. It appears not what that Act, which is called *Sedition*, was. This is

Veneris 30 *Martii* 1610. His Majeſty's Pleaſure to adjourn from *Tueſday* till *Monday* ſevennight,

11 *July.* The King by Commiſſion adjourneth the Lords Houſe. Meſſengers ſent to the Commons. They ſend by Meſſengers of their own to the Lords, that they uſe to adjourn themſelves.

The Commiſſion is ſent down, Mr. *Speaker* adjourneth the Houſe till the firſt of *Auguſt.*

26 *Febr.* 4 *Car.* Mr. *Speaker* ſignifieth his Majeſty's Pleaſure, that the Houſe be preſently adjourned till *Monday* next, and in the mean time all Committees and other proceedings to ceaſe.

And thereupon Mr. *Speaker* in the name of the Houſe adjourned the ſame accordingly.

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the very grief intended to be remedied by this Statute: to this he cannot anſwer according to Law. It appears not whether this were a ſeditious Act, treſpaſs, or ſlander, or what it was at all. The words are,——*Sedition againſt the King*;——this helps not, for every offence is againſt the King, againſt his Crown and Dignity; that which diſturbs the Commonwealth is againſt the King; ſeditious Doctrine is ſedition againſt the King, as is before ſaid. In 28 *H.* VI. *vide proſtrat. fol.* 19. the Lords and Commons deſire the King, that *William de la Pool* may be committed for divers Treaſons, and ſundry other heinous crimes; and the petition held not good, becauſe too general: whereupon they exhibit particular Articles againſt him. And therefore upon the whole matter prayed, that Mr. *Long* might be diſcharged from his impriſonment.

On another day, *Berkley* and *Davenport*, the King's Serjeants, argued for the King, that this Return was ſufficient in Law to detain them in priſon. *Berkley* began, and ſaid, That the caſe is new, and of great weight and conſequence; and yet, under favour, the Prerogative of the King, and the Liberty of the Subject, are not mainly touched therein; for the caſe is not ſo general as it hath been made, but particular upon this particular return. The Liberty of the Subject is a tender point, the right whereof is great, juſt, and inviolable. The Prerogative of the King is an high point, to which every Subject ought to ſubmit. I intend not to make any diſcourſe of the one or the other, I will only remember what the King hath determined upon them both, in his ſpeech which he made upon the Petition of Right; to wit, that the People's Liberties ſtrengthen the King's Prerogative, and that the King's Prerogative is to defend the People's Liberties. This may ſettle the hearts of the people concerning their Liberty. The way which I intend to treat in my Argument, is, to anſwer the objections and reaſons which have been made, and to give ſome reaſons, whereby this Return ſhall be ſufficient.

The objections which have been made are reducible to four heads:

1. By what the Priſoner here ſhall be ſaid to be committed and detained.
2. That this Commitment is againſt the Petition of Right.
3. That the cauſe which is here returned is general and incertain.
4. That the offences mentioned in the Return are but fineable; and therefore, notwithſtanding them, the party is bailable.

For the firſt, it hath been objected, That the Commitment here was by the Lords of the Privy-Council, and the ſignification of this cauſe is by the King himſelf. But I ſay, that there is a further matter in the Return; for the Lords of the Council do it by the command of the King, and they only purſue this command. I will not diſpute whether the Lords of the Council have power to commit an offender or no, it is common in experience, 33 *H.* VI. 28. *Poigne*'s caſe is expreſs in it. And in the Petition of Right it is admitted, that they may commit. And this is not alledged there for a grievance, but the grievance there, was, becauſe the particular charge of commitment was not ſhewed. Some Books have been objected to prove, that the King, though in perſon, cannot commit any perſon; 16 *H.* VI. *F. Monſtrance de faits* 182. But the authority of that Book vaniſheth, if the caſe be put at large, which was in treſpaſs for cutting of trees. The Defendant ſaid, That the place where, *&c.* is parcel of the Manor of *D.* whereof the King is ſeized in Fee, and the King commands us to cut. And the opinion of the Court was, that this is no plea, without ſhewing a ſpecialty of the command of the King. And there the whole Court ſays, That if the King command me to arreſt a man, whereby I arreſt him, he ſhall have treſpaſs or impriſonment againſt me, altho' it be done in the preſence of the King. That the following words are to be underſtood, that the principal caſe was of one command of the King by word, and then ſuch command by word to arreſt a man is void. And 1 *H.* VII. 4. was objected; *Huſſey* ſays, that *Markham* ſaid to King *Edw.* IV. that he cannot arreſt a man for ſuſpicion of Treaſon or Felony, becauſe if he do wrong, the party cannot have his action. To this I ſay, That the Book there is to be underſtood of a wrongful arreſt, for there it is ſpoken of an action of falſe impriſonment; and a wrongful arreſt cannot be made by the King.

2. It ſtands not with the dignity of the King to arreſt any man. *Coke*, 4. 73. The King makes a leaſe for years, rendering rent, with condition of re-entry for non-payment; he ſhall take advantage of the condition without any demand; and the reaſon there given, is, that a *decorum* and conveniency might be obſerved. So it is not befitting for the King in perſon to arreſt any man, but the King may command another to do it. *Bracton lib.* 2. *de acquirendo rerum Dominio, fol.* 55. ſays, That the Crown of the King is to do juſtice and judgment, and *facere pacem*, without which the Crown itſelf cannot ſubſiſt. Several conſtructions are to be made upon thoſe ſeveral words,——and the laſt words——*facere pacem*——imply, that the King hath a coercive power. *Britton f.* 1. amongſt the *Errata*. The King ſaid, Becauſe we are not ſufficient in perſon to do every thing, we divide the charge into many parts. We are the people's Juſtice, and a Juſtice implies one that hath power to do Juſtice in every kind, to wit, by impriſonment, or otherwiſe. 20 *H.* VII. 7 *Coke* 11. 85. it is ſaid, That the King is the Chief-Juſtice. And *Lambert*, in his *Juſtice of Peace, fol.* 3. ſays, That in ancient hiſtories, the Chief-Juſtice of *England* is called *Capitalis Juſticiarius & Prima Juſticia*, after the King in *England*. So that the King hath the ſame power of Juſtice, as the Chief-Juſtice had. This impriſonment here, which is before conviction for any offence, is not uſed toward the Subject as impriſonment for any fault, but is rather an arreſt or reſtraint to avoid further inconveniencies. 14 *H.* VII. 8. A Juſtice of Peace may arreſt men riotouſly aſſembled, for prevention of further miſchief. And the Book alſo ſays, That he may leave his ſervants there to arreſt men, for ſafeguard of the Peace. It is a caſe well known, that if a houſe be ſet on fire, every man may pull down the next houſe, for prevention of a greater miſchief; ſo it ſeems concerning the Incendiaries of State, they ought to be reſtrained and ſuppreſt, leſt others ſhould be ſtirred up by them to the ſame combuſtion. 22. *Aſſ.* 56. and 22 *E.* IV. 45. in falſe impriſonment the Defendant juſtifies, becauſe the Plaintiff was mad and out of his wits, and that he had done ſome harm, and that he had bound and beat him to avoid further harm, which might have happened by his madneſs; and the juſtification was held good. So is it in matter of Government; to avoid commotions, the King ought to uſe his coercive power againſt thoſe that are enraged. The objection was, that this courſe was againſt the Petition of Right. But I anſwer, That this caſe is out of the words of that petition; the words of the petition were,—Whereas by the Statute called, the great Charter, and by the Statute of 28 *E.* III. no Freeman may be taken or impriſoned;—yet againſt the tenour of the ſaid Statute, *&c.* divers of your Subjects have of late been impriſoned, without any cauſe ſhewed; and when for their deliverance, *&c.* they were brought before the Juſtices by Writs of *Habeas Corpus*, there to undergo and receive as the Court ſhould order, and their Keepers commanded to certify the cauſe of their detainer, and no cauſe was certified, but that they were detained by your Majeſty's ſpecial command, ſignified by the Lords of your Council; and yet were returned back to ſeveral priſons, without being charged with any thing to which they might make anſwer according to Law. Theſe laſt words are obſervable,——without being charged with any thing to which they might make anſwer——theſe words do not refer to the return of the *Habeas Corpus*; for the cauſe returned therein cannot be traverſed, 9 *H.* VI. 54. but the Court took it as true. But the ſetting forth of the cauſe, and the anſwer to the ſame cauſe, is to be upon other proceedings, to wit, upon the Indictment for the offence, or otherwiſe. And there is a great difference between the return of a Writ to which a man may anſwer, and the return of an *Habeas Corpus*, 10 *E.* IV. *&.* 3 *H.* VII. 11. are, that if the Sheriff return *Reſcous*, all certainties of every circumſtance ought to be ſhewed; becauſe it is fitting, that a thing certain be brought into judgment. And upon ſhewing of the grievance, as above, the Petition is, that no Freeman, in any ſuch manner as before is mentioned, be impriſoned or detained; *ſuch*, and it hath relation to ſuch impriſonment, which is mentioned in the premiſſes. And impriſonment mentioned in the Premiſſes of the Petition, is, where no cauſe at all was mentioned; then where any cauſe is ſhewed, is out of the Petition, and that *ſuch* is the word relative, appears by *Coke* 11. 62. where many caſes are put to the ſame purpoſe, which ſee.

The third objection was, That the Return was general and uncertain. The Counſel on the other ſide had divided the words of the Return, but that is to offer violence thereto; for an expoſition ſhall not be made by fractions, but upon the whole matter. For the firſt words,—*notable contempts*—it hath been ſaid, that the addition of the word *notable* is but to make a flouriſh: But I ſay, That *notable* is not the emphaſis of the Return, but it only expreſſeth the nature of the offence; and yet *notable* is a word obſervable by itſelf in the Law, and implies, that the thing is known and noted. By 27 *E.* I. Sheriffs ſhall be puniſhed, that let notorious offenders to bail; and by the Statute of 4 *H.* IV. *cap.* 3. a notorious or common Thief ſhall not make his purgation: and 26 *E.* III. 71. in a treſpaſs for falſe impriſonment, the Defendant ſaid, That the Plaintiff came into the Town of *Huntington*, and becauſe he was ſeen in the company of *R. de Thorby*, who was a notorious Thief, he, as Bailiff of *Huntington*, took him upon ſuſpicion. I confeſs, that—*for contempts*—is general, yea, it is *genus generaliſſimum*, and within the Petition of Right; but the words are,——*againſt ourſelf*.——It hath been ſaid, that this might be by irreverent words or geſtures.——*And our Government*——it hath been ſaid, that this might be by contempt to the King's Writ, or by *Retraxit*, as *Beecher's* caſe is. To this I anſwer, that thoſe words which are ſpoken to one purpoſe, ought not to be wreſted to another; and this is againſt the common meaning of the words. *Coke* 4. Thou art a murderer, the Defendant ſhall not afterwards explain it to be a murderer of Hares, for the higheſt murder is intended. So here, the higheſt Government is intended.

4. It hath been objected, that——*for ſtirring up of ſedition againſt us*——may perhaps be but an offence fineable: but thoſe words joined with the former words, ſhew this to be an offence of the higheſt nature; ſedition is a ſpecial contempt. And although ſedition in itſelf may be but a general offence, yet here it is,——*ſedition againſt us and our Government*——which makes it particular. It hath been confeſſed by one, that argued on the other ſide, that there is a general in a particular. *Coke* 4. *p.* 75. *Holland*'s caſe, there is the moſt general, and there is a general in particular, as the State Eccleſiaſtical. *Thirdly*, There is more particular, as the Colleges, Deans, and Chapters. This being in a caſe of Return upon *Habeas Corpus*, no preciſe certainty is required. In an Indictment, a certainty of all circumſtances is requiſite; in Pleading, a certainty is required; in Counts, a more preciſe certainty; in Bars, a certainty to a common intent is enough. There is not ſuch preciſe certainty required here as in Indictment or Count, becauſe the party ought to anſwer unto them; nor ſo much certainty required in this as in a Bar. And the Return is not incertain; for, as it is ſaid in *Plowden* 202. and 193. a thing is incertain, where it may be taken indifferently one way or the other. But where the intendment the one way exceeds the intendment the other way, it is not uncertain as it is here. The words are,——*for notable contempts againſt us and our Government, and for ſtirring up of ſedition againſt us*——here is a certainty of intendment one way. There are many Writs which are more uncertain than this Return here is, and yet good. The Writ concerning the taking of an Apoſtate is general, *quod ſpreto habitu ordinis*; and yet there are more ſorts of Apoſtacies. In the Writ concerning the amoving of a Leper, the words are general, and yet it appears by *F. N. B.* that there are two kinds of Lepers, one outward, and the other inward; and for the latter, the Writ concerning amoving a Leper. So the Writs concerning the burning of an Heretick, and concerning the burning of an Ideot, are general; and yet there are ſundry kinds of Hereticks and Ideots alſo. But it hath been objected, that *Sedition* is not a law-term, nor known in the Law, of which the Judges can take no notice; but the words to expreſs offences of this nature, are Murder, Treaſon, Felony, *&c.* and that no Indictment of ſedition generally was ever ſeen. To this I anſwer, perhaps it is true, that no Indictment was ever ſeen made, becauſe the form of an Indictment is preciſe; words of art are required therein, as appears in *Dyer* 69. 261. *Coke* 4. *p.* 39. *Vaux*'s caſe; yet in 5. *E.* VI. *Dyer* 69. it is ſaid, that *Furatus* implies *felonice cepit*, altho' the contrary hath been objected. In a Return, words by periphraſis are ſufficient. The Warrant of a Juſtice of Peace to apprehend *J. S.* becauſe of prepenſe malice, *interfecit J. D.* is good enough, although there wants the word *murdravit*. In 5 *R.* II. *F. Trial* 54. *Belknap* ſays, That a miſcreant ſhall forfeit his land. Out of which it may be gathered, that a man may be indicted for miſcreancy. And it ſeems likewiſe, that an Indictment of ſedition may be good, for in

ſome caſes it is Treaſon. I agree, *Peake*'s caſe, which hath been objected, that for theſe words [*ſeditious fellow*] no action lies, and ſo is, *Coke* 4. 19. becauſe thoſe words do not import an Act to be done, but only an inclination to do it; but if a man ſay ſuch words of another, which import that he hath made ſedition, they are actionable, as it was reſolved in *Phillips*'s and *Badby*'s caſe, 24 *Eliz. Coke* 4. 19. *Thou haſt made a ſeditious Sermon, and moved the people to ſedition this day*, adjudged actionable. So in the Lord *Cromwel*'s, *Coke* 4. 12, 13. the action would have lain for thoſe words, *You like of thoſe that maintain ſedition againſt the Queen's proceedings*, if there had not been another matter in the caſe. I agree, the caſe of 21 *E.* III. Sir *John Garbyol*'s caſe, and 42 *E.* III. for in thoſe caſes, ſedition was only taken adjectively, and ſhews an inclination only to do a ſeditious Act; and in ſuch ſenſe, ſedition may be applied to other offences than Treaſon. In 31 *E.* I. *f. Gard.* 157. *Gardein* in *Socage* made feofment of land which he had in ward, this is forfeiture, ſays the Book, for the Treaſon which he did to the ward; ſo there, one thing is called Treaſon, which is only a breach of truſt. In an appeal of *Mayhem*, it is *felonicè*, and yet 6 *H.* VII. 1. it is not Felony; but Felony is there only put to expreſs the heinouſneſs of the offence; it is, as it were, a Felony. The Statute of 2 *H.* IV. 1 *Mar.* 13 *Eliz.* 35 *Eliz.* 17 *R.* II. 3 & 4 *E.* VI. 14 *Eliz.* which have been objected, have the word *ſedition*, but not applicable to this caſe. *Bracton* in his Book *de Corona*, ſays, *ſi quis, &c.* If any by raſh attempt, plotting the King's death, ſhould act, or cauſe any to act, to the ſedition of the Lord the King, or of his army, it is Treaſon. And *Glanvile*, in as many words, ſays, That to do any thing in ſedition of the Kingdom, or of the army, is High-Treaſon. And *Britton, fol.* 16. it is High-Treaſon to diſinherit the King of the Realm, and ſedition tendeth to the diſinheritance of the King; for, as it hath been ſaid, *Seditio eſt quaſi ſeorſum-itio*, when the people are ſever'd from the King: or it is, *Separans à ditione*, when the people are ſever'd from the power of the King. And in this ſenſe ſedition is no ſtranger in our Law; and ſuch ſedition which ſevers the people from the King, is Treaſon.

But it hath been objected, That by the Statute of 25 *E.* III. the Parliament ought only to determine what is Treaſon, what not. To this I anſwer, That upon the ſaid Statute, the poſitive Law had always made explication and expoſition. *Br. Treaſon* 24. the words are *Compaſs or imagine the death of the King*; and there it is taken, that he that maliciouſly deviſeth how the King may come to death, by words or otherwiſe, and does an act to explain it, as, in aſſaying harneſs, this is Treaſon. 13 *El. Dy.* 298. Doctor *Story*'s caſe, he being beyond ſea, practiſed with a foreign Prince to invade the Realm, and held Treaſon, becauſe invaſion is to the peril of the Prince, and ſo within the Statute of 24 *E.* III. *Mar. Dy.* 144. The taking of the Caſtle of *Scarborough* was Treaſon in *Stafford*, by 30 *aſſ. p.* 19. which was preſently after the making of the Statute of 25 *E.* III. A man ought to have been hanged and drawn, that brought letters of Excommengement from the Pope, and publiſhed them in *England*: and it is to be noted, that at the ſame time there was no Statute to make it Treaſon, but upon conſtruction of the ſaid Statute of 25 *E.* III. though now it be made Treaſon by the Statute of 13 *Eliz.* if it be with intention to advance foreign Power. Perhaps the ſedition mentioned in this Return is High-Treaſon; and yet the King may make it an offence finable, for he may proſecute the offender in what courſe he pleaſeth; and if it be Treaſon, then the priſoners are not bailable by the Statute of *Weſtminſter*. But, ſuppoſe that it is but a finable offence, yet by the ſaid Statute, thoſe who are impriſoned for open and notorious naughtineſs, ſhall not be bailed; the ſame naughtineſs is there intended high and exorbitant offence.

2. It is fit to reſtrain the priſoners of their liberty, that the Commonwealth be not damnified. It is lawful to pull down a houſe, to prevent the ſpreading miſchief of fire; it is lawful to reſtrain a furious man. And by the 14 *H.* VII. a Juſtice of Peace may reſtrain a rout. Then the reſtraint of dangerous men to the Commonwealth is juſtifiable and neceſſary. 24 *E.* III. 33. *p.* 25. Sir *Thomas Figet* went armed in the Palace, which was ſhewed to the King's Council: wherefore he was taken and diſarmed before the Chief-Juſtice, and committed to the priſon, and he could not be bailed till the King ſent his pleaſure; and yet it was ſhewed, that the Lord of *T.* threatened him. Out of which caſe I obſerve two things: 1. That the Judge of this Court did cauſe a man to be apprehended, upon complaint made to the Council, that is, to the Lords of the Privy-Council. 2. That although he did nothing, he is not mainpernable until the King ſent his pleaſure, becauſe he was armed and furiouſly diſpoſed. So here. Wherefore I pray, that the priſoners may be ſent back again.

Davenport argued to the ſame intent and purpoſe, and therefore I will report his argument briefly.

1. He ſaid, That the Return here is ſufficient. The Counſel on the other ſide have made fractions of this Return, and divided it into ſeveral parts, whereas the genuine conſtruction ought to have been made upon the entire Return; for no violence ought to be offered to the Text. 7 *E.* IV. 20. In falſe impriſonment, the Defendant did juſtify, and alledged ſeveral reaſons of his juſtification; to wit, becauſe a man was killed, and that this was in the County of *S.* and that the common voice and fame was, that the Plaintiff was culpable. And this was held a good plea, although *Bryan* did there object, That the plea was double or treble; and the reaſon was, becauſe twenty cauſes of ſuſpicion make but one entire cauſe; and indiviſible unity in this ought not to be divided: ſo *Coke* 8. 66. *Crogate*'s caſe. In an action of treſpaſs, the Defendant juſtifies for ſeveral cauſes, and held good, becauſe upon the matter, all of them make but one cauſe. *Coke* 8. 1. 17, It is ſaid, That it is an unjuſt thing, unleſs the whole Law be looked into, to judge and anſwer, by propounding any one particular thereof; and if it be unjuſt in the expoſition of a Law, it is uncivil in a Return to make fractions of it, in the conſtruction thereof eſpecially, it being a Return for information, and not for accuſation.

2. Although the Counſel on the other ſide have taken this caſe to be within the Petition of Right, yet this is *Petitio principii*, to take that for granted which is the queſtion in debate. He ſaid, That he would not offer violence to the Petition of Right, to which the King had aſſented, and which ſhall really be performed. But the queſtion here is, whether this Return be within it? And the Judges are keepers, not maſters of this pledge; and it ſeems, that this Return is out of the letter and meaning of the ſaid Statute.

3. He ſaid, That this was the actual commitment of the Lords of the Privy-Council, and the habitual or virtual commitment of the King. [But becauſe upon theſe two matters he put no caſe, nor gave any reaſon, but what had been put or given in the argument of the grand *Habeas Corpus*, *Mich.* 3 *Caroli*, and afterwards in the Houſe of Commons; *(vide pag.* 115, *&c. ante)* which was reported to the Lords in the Painted Chamber, I have here omitted them.] And for the great reſpect which the Law gives to the commands of the King, he put theſe caſes: 7 *H.* III. attachment of waſte againſt the tenant in dower, and the waſte was aſſigned in the taking of Fiſh out of a pond, and the carrying them away: And the Defendant pleaded, That her ſecond Huſband, by the command of the Lord the King, took all the Fiſh out of the ſaid pond to the uſe of the Lord the King, and held a good juſtification; which proves, that the command of the King there to her Huſband, excuſed her of the ſaid waſte. And yet it is clear, that a tenant in dower is liable to an action of waſte, for waſte done in the time of her ſecond Huſband: but contrary is it, where a woman is tenant for life, and took a Huſband, who made waſte and died, no action lies againſt the wife for that waſte. And *F. N. B.* 17 *A.* If the tenant *in præcipe* at the *grand cape* makes default, the King may ſend a Writ to the Juſtices, rehearſing that he was in his ſervice, *&c.* commanding them, that that default be not prejudicial to him; and this command of the King excuſeth his default, be the cauſe true or no.

4. For the particulars of the Return, it is——*for notable contempts againſt the Government*;—but as to that, it hath been ſaid, that the King hath ſundry Governments, to wit, Eccleſiaſtical, Political, *&c.* and it is not ſhewn againſt which of them. This is but a cavilling exception; they might as well have excepted to this Return, becauſe it is not ſhewn, that theſe contempts were after the laſt general pardon; that had been a better exception. The laſt words of the Return are,——*raiſing ſedition againſt us*;——but as to this, it has been ſaid, That *ſeditio* is not a word known in the Law, and is always taken either adverbially, or adjectively, and is not a ſubſtantive. To this he ſaid, That although it is not a ſubſtantive for the preſervation, yet it is a ſubſtantive for the deſtruction of a Kingdom. And he ſaid, That he found the word *ſeditio* in the Law, and the conſequent of it likewiſe, which *is ſeductio populi*. But it is not ever found to be taken in a good ſenſe, it's always ranked and coupled with Treaſon, Rebellion, Inſurrection, or ſuch like, as it appears by all thoſe Statutes which have been remembered on the other ſide. Therefore he prayed that the priſoners might be ſent back.

Trin. 5 *Car.* I. B. R.

THE firſt day of the Term, upon *Habeas Corpus* to Sir *Allen Apſley*, the Lieutenant of the *Tower*, to bring here the body of *John Selden*, Eſq; with the cauſe of detention; he returned the ſame cauſe as in Mr. *Stroud*'s caſe: and Mr. *Littleton* (afterwards Sir *Edward*, and Chief-Juſtice of the *Common-Pleas*, and Keeper of the Great Seal) of Counſel with him, moved, That the Return was inſufficient in ſubſtance; therefore he prayed that he might be bailed. It is true, that it is of great conſequence, both to the Crown of the King, and to the Liberty of the Subject. But, under favour, for the difficulty of Law contained in it, the caſe cannot be called grand. In my argument, I will offer nothing to the Court, but that which I have ſeen with theſe eyes, and that which in my underſtanding (which is much ſubject to miſtakes) can receive no ſufficient anſwer.

I will divide my argument into four ſeveral heads:

1. To point out thoſe matters which I think unneceſſary, and not conducible to the matter in queſtion.

2. I will conſider the Warrant of the Privy-Council in this caſe.

3. The Warrant of the King himſelf.

4. The objections which have been made by the contrary ſide, the ſtrength of them, and give anſwer to them.

For the firſt of theſe heads, 1. I will admit, that the King may commit a man. 2. That a man committed by the King is not repleviſable by the Sheriff, but he is bailable by this Court, notwithſtanding the Statute of *Weſtm.* 1. *C.* 15. And that he ſhall not be bailable, is againſt the Petition of Right; I will not diſpute it, for it is eſtabliſhed by the anſwer of the King to the ſaid petition. And the arguments made to this purpoſe in the ſaid Parliament, and in the Painted Chamber before both the Houſes, are recorded in Parliament, to which every one may reſort. But I will lay as a ground of my following argument, that as offences are of two natures, capital, or as treſpaſſes; ſo they are puniſhed in two manners, to wit, capitally, or by fine, or impriſonment. For the offences of the firſt nature, as Treaſons, and the like, impriſonment is impoſed upon the offender, only for cuſtody; but for miſdemeanors of the ſecond nature, impriſonment is impoſed upon him for a puniſhment. Then this is my ground, That no Freeman that is impriſoned, only for miſdemeanors before conviction, may be detained in priſon without bail, if it be offered, unleſs it be in ſome particular caſes, in which the contrary is ordained by any particular Statute.

2. For the Warrant of the Privy-Council, which ſignifies the pleaſure of the King to commit the priſoner; perhaps this was a good ground of the commitment, but it is no ground for the detaining of the priſoner without bail; and this the King himſelf hath acknowledged, as the ancient right of the Subject, in the Petition of Right; wherefore it is not now to be diſputed.

3. For the Warrant of the King, as it is certified by this Return, there is not any ſufficient cauſe contained within it, for the detaining of the priſoner in priſon; for the Law being, as I have declared above, that for a miſdemeanor before conviction, no Freeman may be impriſoned before conviction, without bail or mainprize, the ſole queſtion now is, if this return contain within it any capital offence; or if only a treſpaſs or miſdemeanor, and then the party is bailable: and for the diſquiſition hereof, I will conſider the Return, 1. As it is divided in ſeveral parts: 2. I will conſider all thoſe parts of it together. 1. As it is ſevered in parts. The firſt part of it, *for notable contempts by him committed againſt ourſelf and our Government*. For *contempts*, all contempts are againſt the King, mediately, or immediately, and againſt his Government. *Notable*, this is all one with notorious and manifeſt, as appears by the Statute of *Weſtm.* 1. *cap.* 15. and 26 *E.* III. 71. which hath been remembered. And *notable* is

but

but an emphatical expreſſion of the nature of the thing, and alters it not. [*Againſt us*] all riots, routs, batteries, and treſpaſſes, are againſt us, and againſt our Crown and Dignity; contempt againſt our Court of Juſtice is a contempt againſt us. But if the Return were made here, that he was committed for a contempt made in *Chancery*, the party ſhall be bailed, as it was reſolved in this Court in *Michael Apſley*'s caſe, and in *Ruſwell*'s caſe, 13 *Jac.* for the Return is too general. In it the nature of the offence ought to be expreſſed, that the Court may judge thereof. And *contempts* here is *individuum vagum:* therefore for them, before conviction, the party cannot be impriſoned without bail or mainprize.

The ſecond part of the Return is [*and for ſtirring up of ſedition againſt us*]: the other ſide ſaid, That *ſeditio* is ever taken in the worſe ſenſe: that is true. But hence it follows not, that the Party that commits it is not bailable. Every ſmall offence is taken in the worſt ſenſe, as the ſtealing of an Apple, and the like; but ſuch kind of offenders ſhall not be committed without bail. To examine the nature of this offence, which is called *ſedition*, it ought to be underſtood, as this Return is, either as Treſpaſs, or as High-Treaſon; for it cannot be intended to be Petty-Treaſon: for Petty-Treaſon is ſo called in reſpect of the offence done to any particular Subject; but in reſpect of the King, it is but as a Felony, therefore the Indictments for the ſame are felonioufly and traitorouſly. And here the words are,---*ſedition againſt us*---ſo of neceſſity it ought to be intended of an offence, that more immediately concerns the ſame King. For the diſcuſſing of this matter,

1. I will conſider in what ſenſe and ſignification this word *ſeditio* is uſed.
2. How it ſhall be expounded here by relation thereof to the King.
3. What ſenſe theſe words [*againſt us*] ſhall have here.

1. For ſedition; it is not found in the diviſion of offences in our Law, but as it is mingled and coupled with other offences. No Indictment of ſedition only was ever ſeen, nor can be ſhewn; routs, riots, and unlawful Aſſemblies, are much of the ſame nature with it, and do well expreſs the nature of ſedition. The *Engliſh* word is drawn from the word *ſeditio* in *Latin*, and the derivation of it is, as hath been obſerved, *Se-itio*, or *Seorſum-itio*; and the ſeditious (as one ſays) take a diverſion, and draw others: it is uſed in the Bible, in Poets, Hiſtories, and Orators, for tumult, or hurly-burly, or uproar, or confuſed noiſe,---*Seditioque recens dubioque ſuſurro, in Liv. lib. 2. cap.* 44. And in *Tacitus* it is taken for mutiny in an army, when the army is always repining at the Captain. In the *Italian* Language, which is the elder ſon of *Latin*, ſedition and diſcord is all one. *Numb. cap.* 20. 3. the *Latin* tranſlation is, *Verſi in ſeditione*; the *Engliſh* is, *chode*, or *murmured*. *Numb.* 26. 9. the *Latin* is, *In ſeditione Corah*; the *Engliſh* is, *In the Company of Corah*. *Numb.* 27. 3. the *Latin* is, *Nec fuit in ſeditione eorum*; the *Engliſh* is, *In the company or aſſembly of them*. *Judg.* 12. 1. the *Latin* Tranſlation is, *Facta eſt ergo ſeditio in Ephraim*; the *Engliſh* Tranſlation is, *The men of Ephraim gathered themſelves together*. In the New Teſtament, *Acts* 19. 40. *Seditio* in the *Latin* is tranſlated *uproar* or *meeting*. *Acts* 15. 2. *Facta eſt ergo ſeditio, &c.* and it is tranſlated *diſſenſion* and *diſputation*. *Acts* 24. 5. *Tertullus* the Orator accuſeth *Paul* for moving *ſedition*; and the ſubſequent words are, *A ring-leader of the ſect of the Phariſees*; ſo that his ſedition there was but a ſchiſm: and the words there are in a manner the very ſame with our's here; there it was, *for moving*; here, *for ſtirring of ſedition*. *Seditio*, as an approved Author ſays, imports *diſcordiam*, to-wit, when the members of one body fight one againſt another. The Lord of *St. Albans*, who was lately the Lord-Chancellor of *England*, and was a Lawyer and great Stateſman likewiſe, and well knew the acceptation of this word *ſedition* in our Law, hath made an eſſay of ſedition, and the title of the eſſay is, *Of Seditions and Tumults:* the whole eſſay deſerves the reading. (See *Bacon*'s Works, Vol. III. *p.* 320.) And there is a Prayer in the Litany,——*from ſedition and hereſy, &c.* So that here ſedition is taken as a kind of ſect.

This being the natural ſignification of the word, then the next labour ſhall be to ſee, if any thing in our Law croſs this expoſition. And it ſeems clearly, that there is not, 2 *H.* IV. *cap.* 15. And it is in the Parliament-roll, *numb.* 48. againſt *Lollards*, who at that time were taken as heretics, and ſays, That ſuch Preachers which excite and ſtir up to ſedition, ſhall be convented before the Ordinary, *&c.* There, ſedition is taken for diſſention and diviſion in doctrine. And this is not made Treaſon by the ſaid Statute, although the ſaid Statute be now repealed by the Statute of 25 *H.* VIII. *c.* 4. 1 and 2 *Phil. & Mar. c.* 3. which is in *Raſtal, News* 4 which is an act againſt ſeditious words and news of the King and Queen, which is a great miſdemeanour; and yet the puniſhment appointed to be inflicted by the ſaid Statute, is but the Pillory, or a fine of 100 *l.* And the ſaid Statute, by the Statute of 1 *Eliz. c.* 16. was extended to her alſo, which Statute now by her death is expired: which I pray may be obſerved, 13 *Eliz. cap.* 1. againſt thoſe, who ſeditiouſly publiſh who are the true heirs of the Crown, that they ſhall be impriſoned for a year, *&c.* And 13 *Eliz. c.* 2. the ſeditious bringing in of the Pope's Bulls is made Treaſon, which implies, that it was not ſo at the Common Law. 23 *Eliz. c.* 2. If any perſon ſhall deviſe, write, or print any Book, containing any falſe, ſeditious and ſlanderous matter, to the ſtirring up or moving of any rebellion, *&c.* every ſuch offence ſhall be judged felony. And in an Indictment upon the ſaid Statute (which ſee *Coke*'s *Entries, f.* 352, 353.) there are the words—*rebellionem & ſeditionem movere*; and yet it is but felony, 35 *Eliz. c.* 1. made againſt ſeditious ſectaries. Alſo there are certain Books and Authorities in Law, which expreſs the nature of this word ſedition, *Coke*'s 4 *Rep. p.* 13. the Lord *Cromwell*'s caſe. In an action for thoſe words [*you like of thoſe that maintain ſeditions againſt the Queen's proceedings*] the Defendant pleaded, That he intended the maintenance of a ſeditious ſermon; and this was adjudged a good plea and juſtification. From which it follows, that the ſeditious ſermon mentioned in the declaration, and the maintaining of ſedition againſt the Queen, is all of one ſignification; for if they might have been taken in a different ſenſe, the juſtification had not been good. *Philips* and *Badby*'s caſe, which is in *Coke*'s 4. *Rep. p.* 19. *a.* which was objected by Serjeant *Berkley*, makes ſtrongly for me; for there an action upon the caſe was brought by a perſon for thoſe words, *Thou haſt made a ſeditious ſermon, and moved the people to ſedition this day*. And although it were there adjudged, that the action lay, yet the reaſon of the judgment is obſervable, which was, becauſe the words ſcandalize the Plaintiff in his profeſſion; which imply, that if they had not ſcandalized him in his profeſſion, no action would have lain. And ordinary words, if they ſcandalize a man in his profeſſion, are actionable; as to ſay to a Judge, that he is a corrupt man; or to a Merchant, that he is a Bankrupt; although if they were ſpoken to another man, they would not bear an action. And although the Book ſay, that no Act followed there; yet if the matter objected had been treaſon, the very will had been puniſhable, and, by conſequence, a great ſlander. But it is obſerved, that words which imply an inclination only to ſedition, are not actionable, as, *ſeditious knave*; but inclination to treaſon is treaſon, therefore words which imply it are actionable. And alſo for divers words, an action upon the caſe will lie, which induce not treaſon or felony; as for calling a woman whore, by which ſhe loſeth her marriage, and ſuch like. Then ſedition is no offence in itſelf, but the aggravation of an offence; and no indictment (as I have ſaid afore) was ever ſeen of this ſingly by itſelf. *Trin.* 21 *E.* III. *rot.* 23. Sir *John Garbut*'s Caſe, which was put before by Mr. *Maſon*, the indictment was in prejudice of his Crown, and in manifeſt ſedition; and yet the offence there was but a robbery. It is true, that upon his arraignment he ſtood mute, therefore the Roll is, that he was put to penance, that is, to ſtrong and hard pain; and this proves, that it was not Treaſon; for if a man arraigned of Treaſon ſtand mute, yet the uſual judgment of Treaſon ſhall be given on him. And it is true alſo, that he cannot have his Clergy, becauſe *inſidiator viarum* was in the indictment; which if it was, outs the party of its Clergy, until the Statute of 4 *H.* IV. *cap.* 2. as is obſerved in *Coke*'s 11 *Rep. p.* 29. *Alexander Poulter*'s Caſe. And upon the ſame *Roll* of 21 *E.* III. there are four other indictments of the ſame nature, where *ſeditioſè* is contained in them. *Anno* 1585. Queen *Elizabeth* ſent a Letter (which I have ſeen by the hands of the noble Antiquary Sir *Robert Cotton*) to the Mayor of *London*, for the ſuppreſſing of divers ſeditious Libels which were publiſhed againſt her Princely Government; and yet in the concluſion of the Letter it appears, that they were only againſt the Earl of *Leiceſter*, and this was to be publiſhed only by Proclamation in *London*.

5 *H.* IV. *numb.* 11. and 13. the Earl of *Northumberland* preferred a Petition to the King in Parliament, in which he confeſſeth, that he had not kept his Majeſty's Laws as a liege Subject; and alſo confeſſeth the gathering of Power, and the giving of Liberties: wherefore he petitioned the worſhip of the King (for ſo are the words) for his grace. The King, upon this Petition, demanded the opinion of the Lords of Parliament, and of the Judges aſſiſtant, if any thing contained within the ſaid Petition were Treaſon, or no; and it was reſolved by them all, that nothing, as it is mentioned in the ſaid Petition, was Treaſon, but great Miſdemeanors; and yet truly, though not fully there mentioned, it was a great rebellion and inſurrection. But they adjudged according to the ſaid Petition, as you are now to judge upon the Return as it is made here. In *Mich.* 33 *Eliz. Cawdry*'s Caſe, *Coke*'s fifth Report, *p.* 1. Sedition and Schiſm were deſcribed; as Schiſm is a ſeparation from the unity of the Church, ſo Sedition is a ſeparation from the unity of the Commonwealth. And an Author ſays, That a ſeditious perſon differs from a Schiſmatick, becauſe the one oppoſeth the ſpiritual truth, the other the temporal: And as Schiſm of itſelf is not Hereſy, ſo Sedition without other adjuncts is not Treaſon. *Bracton, f.* 112, 113, 118. hath been objected, that he makes Sedition Treaſon: I will grant to them, *Hengham* alſo, who is to the ſame purpoſe: for in thoſe Books it is called, *Seditio Regis & Regni*. To them I anſwer, 1. That they are obſcure. For what ſignifies *ſeditio Regis*, or *tumultus Regis?* Shall it be the ſame thing in ſenſe with *ſeditio contra Regem?* It ſeems that the ſaid Authors neither remember Law nor Language. 2. Although they reckon Sedition amongſt the crime *læſæ Majeſtatis*, yet that is not to be regarded; for they are obſolete Authors, and are not eſteemed as Authors in our Law, as it is in *Pl.* 356. and *Coke* 8. 35. but they may be uſed for ornament, and they are good marks to ſhew to us how the Law was then taken, but not to declare how the Law is at this day; they are no binding authority; and if they be, yet we have them on our ſide likewiſe: For in his 14*th* Book, *Glanvile* ſays, That a man accuſed of ſuch a crime ſhall be bailed, and that the accuſer ſhall give pledges. And *Bracton* ſays, That if no accuſer appears, they ſhall be ſet at liberty. And *Hengham* reckons amongſt the crimes *læſæ Majeſtatis*, the breach of the Peace, and ſo does *Glanvile* alſo. *Fleta*, who was a follower of *Bracton*, and tranſcribes much *verbatim* out of him, calls Sedition, *Seductionem* of the Lord the King. And 12 *Edw.* I. the Statute of *Rutland*, which preſcribes Laws for *Wales*, enacts, that the Sheriff ſhall inquire in his turn, *de ſeductoribus Domini Regis*; and it is not apparent, whether he intended thoſe which ſeduce the King or his People. And in latter times, *Seditio* is called *Sedutio*. In the time of *Henry* the ſeventh, the Earl of *Northumberland*, being a great and potent Peer, and the King ſtanding in awe of him, cauſed him, with twenty-four others of great quality, to enter into an obligation of twenty thouſand pounds (which obligation is in the hands of Sir *Robert Cotton*) unto him, That if the ſaid Earl knew Treaſon, Sedution, Loſs, *&c.* to be intended to the King, that he ſhould reveal it. 3. Alſo *Crimen læſæ Majeſtatis*, which is the phraſe of the Civil Law, is more general than Treaſon; and the old Authors, which have been cited much, follow the Civil-Law, which hath this expreſſion; and Sedition by the Civil-Law is Treaſon. But it was reſolved 11 *R.* II. *n.* 14. we are not governed by the Civil-Law*. And the *Mirrour of Juſtices*, the principal copy whereof is in *Bennet-College* Library in *Cambridge*, and there is alſo a copy in *Lincoln's-Inn* Library; nor *Britton* in his Book, who writ in the name of the King, have not the word *Seditio* in them. And I affirm confidently, that there cannot be ſhewn any Record, Book, or Statute, after the making the Statute of 25 *Edw.* III. in which *Seditio* is taken as a capital offence. And yet the *Mirrour of Juſtices* reckons up ſeveral kinds of Treaſons, which he divides into Treaſons againſt the celeſtial or terreſtrial Majeſty; againſt the celeſtial Majeſty, as Schiſm, Hereſy, Miſcreancy (and according to this, the Book of 5 *R.* II. *Trial* 54. is to be underſtood, which ſays, That a miſcreant

* See *Forteſcue, f.* 115. the which was not cited; there, never Sedition, Strife, or murmur is heard.

ſhall forfeit his Lands, becauſe it is a kind of Treaſon). And alſo he ſhews divers Treaſons againſt the King, as, The deflowering of the King's eldeſt Daughter, *&c.* but not a word of Sedition. But admit, that Sedition imports a greater offence than Tumult, yet there is no colour to ſay, that it is Treaſon; for 25 *Edw.* III. is a flat bar (that I may uſe the *Inner-Temple* phraſe) to any thing to be Treaſon, which is not contained in it, unleſs it be made Treaſon by any ſpecial Act afterwards; and 25 *Edw.* III. does not make it Treaſon. *Stamford* cites *Glanville*, and *Bracton*, and other ancient Books, to ſhew what was Treaſon before the ſaid Statute, and what not: And he ſays, That it was a great doubt what ſhall be called Treaſon; ſaving that all agree, that any thing that tends to the death of the King was Treaſon. 3*dly*, Now examine the words, ———*againſt Us*——— thoſe words make not the crime more heinous, as the caſe is. I agree, that if the words had been,----*Sedition to take away the Life of the King*---it would have been Treaſon; yea, the very thought of Treaſon is Treaſon, (though none can judge thereof till it be produc'd in Act) 19 *H.* VI. 47. *b.* by *Newton*, 13 *Jac. B. R. John Owen*'s Caſe, the writing of a Letter, whereby he intended the death of the King, was Treaſon; but it is not expreſſed, that the raiſing of this Sedition was with ſuch intent; whereby this differs from all the caſes which can be put, in which there is ſuch an intent of the death of the King. Alſo this raiſing of Sedition againſt Us, ſhall not be intended Treaſon; for if it had been ſo, the King would have ſo expreſſed it by the word Treaſon: For, as in his gracious diſpoſition, he will not extend a fault beyond the magnitude thereof, ſo he will give to every offence the true and genuine name. If the Return had been---*againſt Our Perſon*---it had been more certain, that it concerned the King immediately; this may be againſt any point of his Government. And the proper and natural ſignification of the words,---*againſt Us*---is as much as, againſt our Authority, our Superintendency, againſt our Peace, Crown and Dignity, which are the uſual words in every Indictment of Felony. Every breach of the Peace is againſt the King. The uſual Return upon every ordinary Writ out of this Court is, That the party be before Us; and Contempt to this Court is, Contempt againſt Us; and it is in the nature of Sedition to the King. Contempts to the Court of *Star-Chamber* are Contempts againſt Us; and upon them, Commiſſions of Rebellion iſſue: and if the parties are brought in upon ſuch Commiſſions, yet they are bailable until their conviction. The King ſtiles himſelf, *Us*, in Writs; and every diſobedience to any Writ may be ſaid, *Sedition againſt Us*. Routs, riots, illegal aſſemblies, may well be ſaid and called, *Sedition againſt Us:* And for ſuch offences, a man ſhall not be reſtrained of his Liberty upon an *it may be*. Such a Return is neceſſary, by which the Court may be truly informed of the offence. For the Writ of *Habeas Corpus* is, to ſubmit and receive what the Court ſhall ordain. And this Return of this nature is not to be compared to Writs which are general, and make a brief narration of the matter, and are purſued and explained by ſubſequent declarations. And yet I urge not, that the Return ought to be as certain as an Indictment; for an Indictment of Murder is not good, if it lack the word *Murdravit*. But the Return upon an *Habeas Corpus*, *q. d. interfecit I. S.* upon prepenſed malice, is good; for the nature of the thing is expreſſed, although the formal word be wanting; but out of the Return, the ſubſtance of the offence ought always to appear, which appears not here. But it hath been ſaid by the other ſide, That, let the cauſe in the Return be as it will, yet it is not traverſable, 9 *H.* VI. 54. and I confeſs it. But as *Coke*'s 11. *Rep. P.* 93. *James Bagg*'s Caſe is, the Return ought to have certainly ſo much in it, that, if it be falſe, the party grieved may have his action upon the caſe. And the grievance complained of in the Petition of Right is, That upon ſuch Return no cauſe was certified, that is, no ſuch cauſe upon which any Indictment might be drawn up; for we never underſtand, that the party ſhall be tried upon the *Habeas Corpus*, but that upon the matter contained within it an Indictment ſhall be made, and he ſhall have his trial upon it. And yet it is clear, and it hath been agreed of all hands, in the argument of the grand *Habeas Corpus*, *Mich.* 3 *Car.* in this Court, that if the cauſe be certified upon the Return of the *Habeas Corpus*, that the Court may judge of the legality of that cauſe. 2. Conſider the parts of this Return, as they are coupled together,-----*for notable Contempts by him committed againſt Our Self and Our Government, and for ſtirring up of Sedition againſt Us.*---Upon the entire Return, the King joins Sedition with notable Contempts; ſo that it is as much as if he had ſaid, that *Sedition* is one of the notable Contempts mentioned in the firſt part of the Return, ſo that he makes it but a Contempt. For the generality and incertainty of the Return, I refer my ſelf to the caſes put by Mr. *Aſk*, and I will not wave any of them. True it is, if the Return had been, that it was for Treaſon, he had not been bailable but by the diſcretion of the Court, and ſuch Return would have been good; but it is not ſo of Sedition. *Gard.* 157. Treaſon is applied to a petty offence, to the breach of Truſt by a Guardian in *Socage*; but it is not Treaſon. And ſo Sedition is of far leſs nature than Treaſon, and is oftentimes taken of a Treſpaſs; it is not Treaſon of itſelf, nor *ſeditioſè* was never uſed in an Indictment of Treaſon. It was not Treaſon before the 25 of *Edw.* III. nor can it be Treaſon: for 25 *Edw.* III. is a flat Bar (as I have ſaid before) to all other offences to be Treaſon, which are not contained within the ſaid Act, or declared by any Statute afterwards. And there are offences which are more heinous in their nature than Sedition is, which are no Treaſon, as Inſurrections, *&c.* which ſee in the Statute 11 *H.* VII. *cap.* 7. 2 *H.* V. *cap.* 9. 8 *H.* VI. *cap.* 14. 5 *R.* II. *cap.* 6. 17 *R.* II. *cap.* 8. And by 3 and 4 *E.* VI. *cap.* 5. the aſſembly of twelve perſons to attempt the alteration of any Law, and the continuance together by the ſpace of an hour, being commanded to return, is made Treaſon; which Act was continued by the Statute of 1 *Mar. cap.* 12. and 1 *Eliz. cap.* 16. but now is expired by her death, and is not now in force, (although the contrary be conceived by ſome) which I pray may be well obſerved. By the Statute of 14 *Eliz. cap.* 1. rebellious taking of the Caſtles of the King is made Treaſon, if they be not delivered, *&c.* which ſhews clearly, that ſuch taking of Caſtles in its nature was not Treaſon. But the ſaid Statute is now expired; and alſo all Statutes, creating new Treaſons, are now repealed. But, for a concluſion of this part of my argument, I will cite a caſe, which I think expreſs in the point, or more ſtrong than the caſe in queſtion; and it was *M.* 9. *E.* III. *roll* 39. *B. R. Peter Ruſſel*'s Caſe; he was committed to priſon by the Deputy-Juſtice of *North-Wales*, becauſe he was accuſed by one *William Solyman* of Sedition, and other things touching the King: And hereupon a Commiſſion iſſued out of the Chancery, to enquire, if the ſaid *Peter Ruſſel* behaved himſelf well or ſeditiouſly againſt the King; and by the inquiſition it was found, that he behaved himſelf well. And upon an *Habeas Corpus* out of this Court, his body was returned, but no Cauſe. But the ſaid inquiſition was brought hither out of Chancery, and for that no cauſe of his caption was returned, he prayed delivery; but the Court would not deliver him, till it knew the cauſe of his commitment: Therefore (taking no regard of the ſaid Inquiſition) they now ſend a Writ to the now Juſtice of *Wales*, to certify the cauſe of his commitment. And thereupon he made this Return, That the aforeſaid *Peter Ruſſel* was taken, becauſe one *William Solyman* charged him, that he had committed divers Seditions againſt the Lord the King; and for that cauſe he was detained, and for no other. And becauſe the Return mentions not what Sedition in ſpecial, he was bailed, but not diſcharged. And I deſire the bailment of the priſoner only, and not his deliverance. I deſire that the Caſe be well obſerved. In the ſaid Caſe, there was an actual Sedition againſt the King; here is only a ſtirring up of Sedition. The words of the ſaid Award are, *Videtur curia*; which are the ſolemn words of a Judgment, given upon great deliberation. There it was,----*for other things concerning Us*----This is all one as if he had ſaid,----*for other things againſt Us*---Concerning the King, and, againſt the King, are all one, as appears by 25 *E.* III. *c.* 4. *de Clero*, *Stamf.* 124. *Weſtm.* 1. *c.* 15. *Bracton*, *f.* 119. 14 *Eliz. c.* 2. And the words of the Judgment in the ſaid Caſe, were not----*dimittitur*---but, *ideo dimittendus*----which imply the right of the party to be bailed. The ſaid caſe in ſome things was more particular than our caſe, and more ſtrong; for there was an accuſer to boot, which wants in our caſe. There, true it is, that he was committed by the Juſtice of *Wales*, and here by the King himſelf; but this makes no difference, as to this Court: for, be the commitment by the King himſelf, or by any other, if it be not upon juſt cauſe, the party may be bailed in this Court. And for the inquiſition, which is mentioned, it was no trial in the caſe; nor did the Court give any regard thereto. To detain the priſoner by the command of the King ſingly, is againſt the Petition of Right; but it being coupled with the cauſe, the cauſe is to be conſidered, and the truth of the cauſe is to be intended, as well where it is mentioned to be by an inferiour Judge, as where by the King himſelf, for it is traverſable neither in the one nor other. And 22 *H.* VIII. *roll* 37. *B. R.* and 1 *H.* VIII. *roll* 8. *Harriſon*'s Caſe, reſolved, That a man committed by the command of the King is bailable. And 33 *Eliz.* it was reſolved by all the Juſtices of *England*, which I have viewed in Chief-Juſtice *Anderſon*'s Book, under his own hand, and it was produced in Parliament, That all men committed by the Privy-Council are bailable, if the commitment be not for High-Treaſon. In all caſes of commitment, an accuſer is underſtood. Suppoſe that the accuſation mentioned in *Ruſſel*'s Caſe of Sedition, had been an accuſation of Treaſon, then the Judges ought not to have bailed him of right, and no man will ſay, but that the ſaid accuſation was a good cauſe to commit him. But the diſcovery of the offence ought to be afterward in an Indictment.

Fourthly, I come to the objections which have been made on the contrary.

1. It was objected, That this was a caſe of great conſequence; I confeſs it, but this conſequence is not to the King; for if it be truly Treaſon, then they might have returned Treaſon, and then the party was not to be bailed of right, till there ſhould be a failure of proſecution; as was lately in *Melvin*'s Caſe, who was bailed for lack of proſecution; the Return being for High-Treaſon.

2. It was objected that there can be no conviction, as this caſe is, therefore there ought to be coercive power to reſtrain the priſoner. This is ſtrange news to me, that there ſhall be any offence for which a man cannot be convicted. And if there can be no conviction, it hence follows, that there is no offence; and if there be no offence, there ought by conſequence to be no impriſonment.

3. The caſe of 14 *H.* VII. VIII. hath been objected, that a Juſtice of Peace may commit Rioters without bail. I confeſs it, for this is by force of a Statute which ordains it.

4. It hath been objected, That if an houſe be on fire, it is lawful to pull down the neighbour's houſe, for the prevention of further miſchief; and the caſes of 22 *aſſ.* and 22 *E.* IV. that every man may juſtify the coercion of a mad-man. I anſwer, That theſe caſes are true, as of neceſſity, and no other evaſion: but here, bail is proffered, which is, body for body. Fire is ſwift, and cannot be puniſhed, and no caution can be obtained thereof. But obſerve the true inference and conſequence of this argument; If my houſe be on fire, my neighbour's houſe muſt be pulled down: Mr. *Selden* is ſeditious, *ergo*, Mr. *Herbert*, his neighbour, muſt be impriſoned.

5. It hath been objected out of *Br. Treaſon*, 24. 1 *Mar.* That the ſaid Statute of 25 *E.* III. is taken largely, and that the detaining of a Caſtle or Fortreſs is Treaſon. To this I anſwer, that the bare detaining of a Caſtle is not Treaſon, unleſs it be with intention of the death of the King; but the taking of a Caſtle is Treaſon. And the caſe there meant by *Brook*, is *Conſtable*'s Caſe, *Dy.* 128. And I confeſs, 13 *Eliz. Dy.* 298. Dr. *Story*'s Caſe *, that conſpiracy to invade the Kingdom, is Treaſon; for this cannot be without great danger of the death of the King; for,---*arma tenenti, omnia dat qui juſta negat.*---And all thoſe Indictments were, that they intended the death of the King; but no ſuch intention is expreſſed here.

6. It hath been objected, That this caſe is out of the Petition of Right, becauſe in this return there is a cauſe ſhewed. But the grievance whereupon the Petition of Right was framed, was, where no cauſe was returned. It is true, that the grievance goes no further, but where no cauſe was returned; for that was the grievance at that time. But the words of the Petition of Right are further,---*without being charged with any thing, to which they might make anſwer by the Law*----which implies, that ſuch cauſe ought to be contained in the Return, which being put into an Indictment, the party may have his anſwer thereto.

* See *Shower*'s Magiſtracy of *England* vindicated, in vol. III. *p.* 684.
See alſo Sir *John Hawles*'s Reply to the Magiſtracy of *England* vindicated, (a Folio Pamphlet) *p.* 26.

7. It

7. It was objected, That the Return ſhall not be conſtrued and expounded by fractions. I anſwer, That we need not make ſuch an expoſition; for the joint conſtruction thereof makes more for us, than the ſeveral, as is ſhewed before.

8. That a general Return is ſufficient, and it need not have terms of art in it, as an Indictment ought to have. For anſwer, I confeſs it; but I affirm, as above, that a Return ought to be ſo particular, that the nature of the offence ought to appear out of it: and it is not to be compared to general Writs, as *Apoſtatâ capiendo*, *Idiotâ examinando*, *Leproſo amovendo*, and the like: for thoſe Writs are good enough, becauſe they contain the very matter. And although it hath been ſaid, that there are two kinds of Lepers, yet I never heard but of one: and the Writ, *de Hæretico comburendo*, is general, and good, becauſe it is but a Writ of execution upon a Judgment given by the ſpiritual Power. But becauſe they might not meddle with the blood of any man, the execution is by the ſecular Power.

9. It hath been objected out of 30 *aſſ. p.* 19. that the King would have one drawn and hanged for bringing into *England* the Bulls of the Pope. But the Book anſwers itſelf, for he was not drawn and hanged.

10. The Statute of *Weſtmin.* 1. *cap.* 15. was objected. But as oft as that Statute is objected, I will always cry out, *The Petition of Right*, *The Petition of Right!* as the King of *France* cried out nothing but *France*, *France!* when all the ſeveral Dominions of the King of *Spain* were objected to him.

11. A curious diſtinction hath been taken by Serjeant *Davenport*, between ſtirring *To* Sedition, and ſtirring *Up* Sedition; for the firſt implies an inclination only to do it, the ſecond implies an act done. But this is too nice, for if a man ſtir up Sedition, or to Sedition, if it be with intention of the death of the King, the one and the other is Treaſon.

12. The opinion of *Forteſcue* in 31 *H.* VI. 10. *b.* hath been objected, That for an offence done to the Court, a man may be committed before conviction. To this I anſwer, 1. That the Book does not ſay, That he ſhall be committed without Bail. 2. The offence being done in face of the Court, the very view of the Court is a conviction in Law.

13. There was objected the 24 of *Edw.* III. 23. Sir *Thomas Fitchet*'s Caſe, who, for going armed in the Palace, was committed by this Court without bail or mainprize; which ſeems to be the ſtrongeſt and hardeſt caſe that hath been objected. But the anſwer to it is clear, and undeniable; for the Statute of 2 *E.* III. *cap.* 3. is, That if any one come armed before the Juſtices, he ſhall forfeit his armour, and ſhall be impriſoned during the King's pleaſure; ſo that by the expreſs purview of the Statute, ſuch a man is not bailable. So my concluſion remains firm, notwithſtanding any of thoſe objections. That the priſoner here, being committed before conviction of any offence, (it being not poſſible to underſtand this offence Treaſon) is bailable; and that he is bailable here, I will offer two other reaſons: 1. The return is here for Sedition; and there is an information in the *Star-chamber* againſt the priſoner, for ſeditious Practices againſt the King and his Government. I will not affirm, that they are the ſame offence, but there is ſome probability that they are the ſelf-ſame; and if they be the ſame offence, then the ſedition here intended is not Treaſon, and ſo the party is bailable. 2. This priſoner was ready at this Bar the laſt Term, and here was a Grand-Jury at Bar the laſt Term, and here was the King's Counſel preſent, who are moſt watchful for the King; and yet an Indictment was not preferred to them againſt this priſoner. Which things induce me to be of opinion, that the offence here mentioned in this Return is not Treaſon, or ſo great as is pretended on the other ſide. I will remember one caſe which perhaps may be objected, (and yet I think they will not object it) and ſo conclude. 11 *R.* II. Parliament Roll 14. in the printed Statute, *cap.* 3. and 5. where it appears, that divers queſtions were propounded by the King to *Treſilian* and *Belknap*, the two Chief-Juſtices, and to the other Juſtices: one of which queſtions was, how they are to be puniſhed, who reſiſted the King in exerciſing his Royal Power, *&c.*? And the anſwer of the Judges was, *una voce*, that they are to be puniſhed as traitors; and 21 *R.* II. *cap.* 21. this opinion was confirmed. But afterwards in 1 *H.* IV. *cap.* 3. and 4. and 1 *H.* IV. in the Parliament-Roll, *numb.* 66, 67. the Judges were queſtioned, for their opinion, in Parliament. They anſwered, That they were threatened and enforced to give this opinion, and that they were in truth of the contrary opinion. And *Belknap* ſaid, That he acquainted and proteſted to the Earl of *Kent* aforehand, that his opinion was always to the contrary. But the Parliament was not content with theſe excuſes, but they were all adjudged Traitors; and *Treſilian*'s end is known to all, and *Belknap* was baniſhed; for his wife, in 2 *H.* IV. brought a Writ, without naming her huſband, becauſe he was baniſhed. And the ſaid Statute of 21 *R.* II. was repealed. Therefore upon the whole matter I conclude, that the priſoner ought to be bailed.

On the ſame day, Sir *Miles Hobart*, and *Benjamin Valentine*, and *Denzil Holles*, Eſquires, were at the Bar, upon an *Habeas Corpus* directed to the ſeveral priſons; and their Counſel was ready at the Bar to have argued the caſe for them alſo: But becauſe the ſame Return was made as above, they ſaid, That all of them would rely upon this argument made by Mr. *Littleton*.

Mr. Selden's *Argument* *.

UPON the Writ of *Habeas Corpus ad ſubjiciendum & recipiendum*, directed out of the *King*'s-*Bench* to the Lieutenant of the *Tower*, he returns, that the priſoner was firſt committed to his cuſtody by a warrant of the Lords of the Privy-Council, dated 4 *Martii* 5 *Caroli Regis*, and recites the warrant wherein the King's pleaſure for the commitment is alſo ſignified. And farther, he returns, that the priſoner is detained by him, by virtue of another warrant, afterward directed to him, under the King's own hand, dated the 7th of *May* following; wherein it is ſignified, that he was to take knowledge, that the commitment was *for notable contempts committed againſt Our Self and Our Government, and for ſtirring up of Sedition againſt Us*, with a command to detain him until his Majeſty's pleaſure were farther known, *&c.* And ſo certifies the Court, that theſe are the cauſes of taking and detaining him, and brings in his Body according to the Writ. And, whether upon this Return, the priſoner ought to be delivered by the Court, upon ſufficient bail, or remanded to the *Tower*, is the queſtion? That is, ſuppoſing the Return to be every way true (as in all caſes it muſt be ſuppoſed, when the queſtion ariſes upon a Return), whether there be ſufficient cauſe expreſſed in it, for which the priſoner ought to be remanded? Or, that the cauſe of the commitment be ſuch (as it is expreſſed in the Return) that he ought to be bailed? If there were no more in the caſe, but the Lords, or the King's command only, without farther cauſe ſhewed of the commitment; then it were clear, by the declaration of both Houſes of Parliament, and the anſwer of his Majeſty to that declaration, in the late *Petition of Right*, that the priſoners were to be remanded. And the objections that ſome have made, out of the Statute of *Weſtminſter*, the firſt, *cap.* 15. That perſons committed by command of the King, are not *repleviſable*, and out of *Stamford*, fol. 73. as if he interpreted *bailable* (which indeed he doth not, if he be obſerved) to be underſtood in that Statute by *repleviſable*, and the like, are directly againſt the very body of the *Petition of Right*, and were ſo fully cleared in the debates, out of which the *Petition of Right* was framed, that to diſpute them again, were but to queſtion what the whole Parliament had already reſolved on, as the certain and eſtabliſhed Law of the Kingdom. Nor is it timely to diſpute here again the general power of commitment, by the Lords or by the King himſelf. There is a commitment in the caſe, and there is a cauſe ſhewed of that commitment, and of the detainer in priſon; and the quality of that cauſe only is truly the ſole queſtion; to the ſtating of which, the nature and courſe of bails upon offences, either returned generally upon *Habeas Corpus*, or appearing more ſpecially upon Indictments, is ſhortly to be firſt opened. All offences, by the Laws of the Realm, being of two kinds: The firſt, puniſhable by loſs of life or limb; the ſecond, by fine, or ſome pecuniary mulct, or damage and impriſonment, or by one of them; and thoſe of the firſt kind being Treaſon, Murder, Felonies of leſs nature, and ſome more; and of the ſecond kind, bloodſheds, affrays, and other treſpaſſes: If any priſoner ſtand committed (though before conviction) for Treaſon or Murder; the Judges, for aught appears in the Books, have not often uſed to let him to bail, unleſs it have appeared to them, that there hath been either want of proſecution, or of evidence to proceed, or that the proceeding through diſability of the appellant (in caſe of appeals), as when he is excommunicate, is delayed; or that the evidence is ſlight, or ſome ſuch like cauſe. So that in the bailing upon ſuch offences of the higheſt nature, a kind of diſcretion, rather than a conſtant Law hath been exerciſed, when it ſtands wholly indifferent in the eye of the Court, whether the priſoner be guilty or not †. And according to that, they often let to bail, detain in priſon, or remand the priſoner. Alſo in Felonies of leſs nature; which being all, as thoſe of the greateſt nature capital, and ſo the puniſhment of the ſame above impriſonment, the impriſonment of the offenders without bail, is only uſed *ad ſalvam cuſtodiam*, and cannot be uſed *ad pœnam*. But if a priſoner before conviction, or ſomewhat that ſupplies a conviction, (ſo therefore alſo fit enough before conviction) ſtand committed for treſpaſſes only, as all offences of the ſecond kind are, and are puniſhable only by fine and impriſonment, or by one of them (in which caſe impriſonment is to be the higheſt part of his puniſhment, after conviction) there, by the conſtant courſe (unleſs ſome ſpecial Act of Parliament be to the contrary in ſome particular caſe) upon offer of good bail to the Court, he is to be bailed; which agrees alſo with all juſtice and exactneſs of reaſon, that ſo both the Court may, by his ſureties and bail (to whoſe care he is a-new committed) be aſſured to have him ready at the day given him upon the bail, to anſwer all proceeding againſt him; and he himſelf, having ſureties that ſo undertake for his appearance, may not be compelled, before conviction, to endure that continually, *ad cuſtodiam* only, which is the higheſt part of what he is to ſuffer, after conviction, *ad pœnam*. So that in caſes of impriſonment for offences of the firſt kind, divers circumſtances might be, for which ſufficient bail offered might, according to the uſe, be refuſed by the Court. But in caſes of impriſonment for offences of the ſecond kind, ſufficient bail, offered before conviction, ought of common right to be accepted; ſaving ſtill, where a ſpecial Act of Parliament alters the Law in ſome particular caſe: but there is no colour or pretence of any ſuch Act concerning the caſe in queſtion; ſo that we are to examine it (for the point of bailing) only at the Common Law.

The ſtate then of the queſtion is but this: Whether that expreſſion, *for notable Contempts againſt Our Self, and Our Government, and for ſtirring up of Sedition againſt Us*, do denote any offence of the firſt kind? Which, if it do not, or ſo do not, as that the Court may by the words of it be ſufficiently informed that it is ſome offence, at leaſt, of the firſt kind; the bail, in this caſe, ought to be accepted. The offences in the Return being two; firſt, *notable Contempts*, and then *ſtirring of Sedition*, and both *againſt the King*.

There can be no queſtion made of it, but that all *Contempts*, of what kind ſoever, that are puniſhable by the Laws of the Realm, are *againſt the King and his Government*, immediately or mediately. And altho' the latitude of them be ſuch, as that ſome may vaſtly exceed others; yet they are all, as *Contempts*, only treſpaſſes, *&c.* puniſhable only by fine or impriſonment, or by both, but not until conviction of the parties (as neither are other like offences), unleſs the Contempt be in the face of ſome Court, againſt which it is committed, which ſupplies a conviction. Now in this caſe, the Contempts are only expreſſed in a generality, and no conviction appears of them. So that for that part of the Return, there can be no colour why the bail ought not to be accepted. But all the doubt of the caſe depends upon the ſecond offence; that is, *the ſtirring up of Sedition againſt the King*. Which if it be an offence only of the ſame kind as *Contempts* are, or a mere treſpaſs only to the King; or, if by the words of the Return, it appears not to the Court to be an offence of the firſt kind, that is, either Treaſon, or Felony at leaſt,

* The Editor of Mr. *Selden*'s Works, in his Preface to the third Volume, ſays, "This is the Subſtance of an Argument made in his (Mr. *Selden*'s) own Caſe, and which was "pronounced by Mr. *Littleton*." But as there is ſo great a difference between them, we leave the Reader to judge of that; and, as it concerns ſo grand a point as the Liberty of the Subject, have therefore given both.

† Vide 2 aſſiſ. pl. 5. 3. aſſiſ. pl. 12. 43. aſſiſ. pl. 40. 26. aſſiſ. pl. 47. 41. aſſiſ. pl. 14. 21. *Edw.* IV. fol. 25. and 71. *Brook*, tit. Mainpriſe 60 & 63. 2. *Eliz. Dyer*, fol. 179. a.

at leaſt, (there being no conviction in the caſe) the priſoner ought to be bailed. For, unleſs the Court be aſſured, out of the words of the Return, that the priſoner ſtands committed for ſome ſuch cauſe, for which he might not of right, demand his bail; it is clear they ought to bail him. It reſts therefore to examine the nature of the offence comprehended in thoſe words, *ſtirring up ſedition againſt us*. If it be any thing above what is treſpaſs only, plainly it muſt be either Treaſon or Felony. For Felony, no man pretends that by thoſe words, any kind of Felony is to be underſtood. The queſtion then muſt be, whether the *ſtirring up ſedition againſt the King* be Treaſon or no; that is High-Treaſon, as all Treaſon is that toucheth the King, as Treaſon? For Petit-Treaſon, by the Common Law, is Felony, in regard of the King, and Treaſon only with reſpect to perſons ſlain, againſt the faith and obedience due from the offender; and therefore the indictments of it ſay, *felonice & proditorie*.

In the conſideration of the queſtion thus ſtated, firſt, the uſe of the word *ſedition*, and the ſenſe of it in our Language, and in our Laws, that received it out of that language, is to be examined; and then what thoſe words, *againſt us*, import. Out of both which, it will be eaſily concluded, that the offence, as it is expreſſed in the Return, although it be a great one, yet it is only a treſpaſs, and puniſhable by fine only or impriſonment, or both of them. For *ſedition*, and the general notion of it; we have not either in the diviſion or explication of offences that occur in our Books, an expreſs definition, deſcription or declaration of it, though it occurs ſometimes, as mingled with ſome other offences, and the adjective of it oftener than the ſubſtantive: Nor hath there been yet found any indictment or proceeding upon the crime of *ſedition*, by that name ſingly, as an offence in Law, clearly enough known by itſelf. *Unlawful aſſemblies*, *routs*, *riots*, *commotions*, are the neareſt, if not the very things that by other names do, for the moſt part, expreſs what ſedition is in our Laws. *Vid.* 3 *Hen.* VII. *fol.* 1. & *Brook*, *riots* 4 & 5. But our language, rather than our Laws, hath received the word from *Latin*, and thence hath in preambles of Statutes, and of indictments, ſometimes inſerted it; ſo that miſſing an expreſs expoſition of the word in our Law, we have reaſon to ſeek for it firſt in the language whence we received it, and then in the uſe of it in our own.

In *Latin*, that which is mutiny, raiſing of tumult, aſſembling of any armed power, or conventicles, or the like, is *ſedition*. Whence it is, that in the Civil-Law, *ſeditio & tumultus* are frequently joined; and *concitatores ſeditionis*, and *actores ſeditionis*, occur in the text of that Law *, for ſuch as ſtir up *ſedition*. And thence alſo *ſeditio militaris* is uſed for a mutiny of the Soldiers in the Army, in *Tacitus* and others, and that for no more than the profeſſing themſelves againſt any command whatſoever given by the General. In this ſenſe it is uſed alſo by a Lawyer of *Epheſus*, in the holy text, where *Demetrius* the ſilver-ſmith aſſembled the reſt of his company againſt St. *Paul*, for preaching againſt *Diana*. "For we are (ſaith he, "ſpeaking to appeaſe the aſſembly) even in jeopardy to be accuſed of this "day's *ſedition*, foraſmuch as there is no cauſe whereby we may give a "reaſon of this concourſe of people," Acts xix. 40. In the ſame ſenſe *Tertullus*, an Orator and Lawyer, pleading againſt St. *Paul* at *Cæſarea*, before *Felix* the Governor there, "We have found this man a mover of *ſe*-"*dition* amongſt all the Jews throughout the World, and a chief main-"tainer of the ſect of the *Nazarenes*," Acts xxiv. 5. And ſuch like teſtimonies are very obvious. In the ſelf-ſame ſenſe the word was received into our language, as we may ſee in that Act of Parliament againſt the *Lollards*, under *Hen.* IV. 2 *Hen.* IV. *c.* 15. The words there are, "That they taught openly and privily divers new doctrines, contrary to "the faith and determinations of the Holy Church; and of ſuch ſect and "wicked doctrine and opinions they make unlawful conventicles and "confederacies, they hold and exerciſe ſchools, they make and write "books, they do wickedly inſtruct and inform people." Et ad *ſeditionem* ſeu inſurrectionem excitant quantum poſſunt, & magnas diſſentiones & diviſiones in populo faciunt. *Rot. Parl.* 2 H. IV. *n.* 48. "And, as much as they "may, incite and ſtir them to *ſedition* and *inſurrection*, and maketh great "ſtrife and diviſion among the people, &c." And about the beginning of Queen *Mary*, an Act of Parliament was made againſt *ſeditious words and rumours*; in the preamble whereof, *ſeditious and ſlanderous news* is mentioned, and *ſeditious and ſlanderous writings, and perſons intending and practiſing to move and ſtir ſeditions* (ſo it is in *Raſtall* and the Roll of Parliament, not *ſeditious*, as in the Statutes at large), *diſcord*, *diſſenſion*, *and Rebellion within this Realm*, 1 & 2 *Phil.* & *Mar.* 3. And to the ſame purpoſe, an Act of Explanation of the ſaid Act of Queen *Mary*, was made in the beginning of Queen *Elizabeth*, 1 *Eliz. cap.* 6. wherein mention alſo is of *falſe*, *ſeditious*, *and ſlanderous news*, *or tales*, againſt the Queen. As alſo in her 13th year, *cap.* 1. a proviſion is made againſt *contentious and ſeditious ſpreading abroad of titles to the ſucceſſion of the Crown*. And in another Act of the ſame year, *c.* 2. alſo the bringing Bulls from *Rome*, *to raiſe and ſtir ſedition*, is mentioned in the preamble. And in the 23*d* year, another Act 23 *Eliz. cap.* 2. was made with this title, "Againſt ſeditious words and "rumours uttered againſt the Queen's moſt excellent Majeſty." And in indictments upon that Statute of the 1*ſt* and 2*d* of *Philip* and *Mary*, as it was continued in the Act of the 23*d* of *Elizabeth*; the party indicted for ſlanderous words, in defamation of the Queen, is ſaid to have been "ma-"chinans & intendens *ſeditionem* & rebellionem infra hoc regnum An-"gliæ movere & ſuſcitare, *and that* adviſate, & cum malitioſa intentione, "contra dictam dominam reginam, & felonice ut felo dicte domine re-"gine nunc, deviſavit & ſcripſit quaſdam falſas, ſeditioſas, & ſcandaloſas "materias, &c." 34 Eliz. Coke, *lib. intrat. tit. indictment. fol.* 352. *col.* 3 & 353. where the title is miſreferred to the Act of 1 *Eliz. cap.* 2.

In the Lord *Cromwell*'s caſe alſo, 20 *Eliz. Coke* 4. *in act. de ſcandalis*, *ſeditio* is mentioned *againſt the Queen's proceedings*; and *ſeditio domini regis*, *vel exercitus ſui*, in *Bracton*, *fol.* 118. and *ſeditio regni*, *vel exercitus*, in *Glanville*, *l.* 14. *c.* 1. and *ſeditio perſonæ domini regis vel exercitus*, in *Hengham*, *c.* 2.

Now, for the ſenſe of the words *ſedition* and *ſeditious*, it will be moſt plain, that in all theſe places, (except thoſe old Books of *Bracton*, *Glanville*, and *Hengham*, the interpretation of whom hath fitteſt place after the examination of the objections made to prove *ſedition* to be *treaſon*) they denoted in our Language, and in the uſe of our Laws, that received them thence, ſuch an offence as was not puniſhable (without ſome ſpecial proviſion by Act of Parliament) otherwiſe than by fine and impriſonment at the utmoſt; and were reputed ſingly, but as words or names deſigning *tumults*, *unlawful aſſemblies*, *routs*, *factions or rebellions* againſt any part of the eſtabliſhed Laws, or publick commands. Therefore in that Act of 2 *Hen.* IV. concerning the *Lollards*, the puniſhment of them that offended againſt the Acts, and *were ſuch ſtirrers of ſedition and inſurrection*, was, that they ſhould be impriſoned only by virtue of that Act, until purgation, if they purged themſelves; and impriſoned and fined after conviction; and detained in priſon till abjuration: and upon refuſal to abjure, or upon relapſe, to be burnt for Hereticks: But that Act is repealed by the 25 *Hen.* VIII. *cap.* 14. So, by the Act of the 1*ſt* and 2*d* of *Philip* and *Mary*, the firſt offence of *ſpeaking ſeditious and ſlanderous words*, or rumours of the King or Queen, was after conviction, ſtanding on the Pillory, and loſs of Ears, (unleſs he redeemed them by the fine of 10*l.*) and three months impriſonment. And if any, from another's report, ſhall ſpeak any ſeditious and ſlanderous news of the King and Queen, he ſhould, after conviction, loſe one Ear (or redeem it by 100 Marks) and have one month's impriſonment: And that 'if any ſhould maliciouſly deviſe, or 'write any book or writing, containing any falſe matter, clauſe or ſen-'tence, of ſlander, reproach, and diſhonour of the King or Queen, to 'alienate the minds of the ſubjects from their dutiful obedience, or to the 'encouraging, ſtirring, or moving of any inſurrection or rebellion within 'this realm; or, if any procure any ſuch thing to be done (the ſaid of-'fence being not puniſhable by the Statute of 25 of *Edw.* III. of treaſon) 'he ſhould loſe his right hand. And that the ſecond offence of them 'that were puniſhable by loſs of Ear, or Ears, ſhould be impriſoned du-'ring life, and loſs of all their goods and chattels." This Act of Queen *Mary* expired at her death, and agreeable to it was that proviſion of the Act of 1 *Eliz. c.* 6. which extended the ſame to Queen *Elizabeth*, during her life; but there is no ſuch law at this day in being. So, in that of the 13 of *Eliz. cap.* 1. the firſt offence of *contentious and ſeditious ſpreading abroad of titles to the ſucceſſion of the Crown*, is puniſhed by the impriſonment of one whole year, and the loſs of half the offender's goods, and the ſecond offence by the pains of a *præmunire*. The bringing in of Bulls alſo from *Rome*, to alienate the minds of the ſubjects from their dutiful obedience, and to raiſe and ſtir *ſedition* and *rebellion*, is made High-Treaſon by that other Act of the ſame year. By which it appears, that *ſtirring to ſedition* alone is in that very Act clearly ſuppoſed of far leſs nature. But that Act is alſo expired. In that alſo of the 23 of *Eliz. cap.* 2. the reporters of *ſeditious news or rumours* againſt the Queen, was made loſs of Ears (as before;) or, that to be redeemed at 200*l.* beſides impriſonment of ſix months: and the reporters from another's mouth, to be puniſhed according to that of 1 and 2 of *Philip* and *Mary*; ſaving, that the impriſonment, by this Act, is three months, and the ſecond offence is made Felony, and writing of any ſeditious matter, to the purpoſes in that Act of Queen *Mary*, is made Felony, upon which Act the indictments of Felony, before-mentioned, are grounded; but that Act alſo expired by the death of Queen *Elizabeth*. And in that caſe of the Lord *Cromwell*, who brought a *Scandalum Magnatum* againſt the Parſon of *Northelenham* in *Norfolk*, for ſaying, *That you like not of me, but you like of them that maintain ſeditions againſt the Queen's proceedings*. Although, in the report of the caſe, *ſedition* generally be called an open and heinous crime, and deſcribed to be as in the nature of ſome great factious aſſembly, or riot; yet the defendant juſtifies the words, by this, that the plaintiff and he had diſcourſe of one that preached againſt the Book of Common-Prayer, and that in their diſcourſe the plaintiff ſaid to the defendant, *I like not of thee*: To which he replied, *It is no marvel, for you like of them that maintain ſedition* (prædict' *ſeditioſam* doctrinam innuendo) *againſt the Queen's proceedings*; and the juſtification allowed good. Whence it appears clearly, that *maintaining ſedition* generally may be, ſuch preaching of ſeditious doctrine which is puniſhable only by the Statute of 1 *Eliz. cap.* 1. by fine and impriſonment. Out of all which examples, it appears, that *ſedition*, and Acts *ſeditiouſly* done, are of themſelves ſingly no capital crimes, or otherwiſe puniſhable than by fine or impriſonment, or both; unleſs by ſome ſpecial Act of Parliament it be ordained otherwiſe. And to confirm this alſo, we may obſerve divers other Statutes; where *routs*, *riots*, *rebellions*, and *inſurrections* (all which, of themſelves, if no traitorous attempt appear, by ſome overt Act, are puniſhable but by fine or impriſonment, unleſs ſome Act of Parliament eſpecially ordain a greater puniſhment) have ſpecial puniſhments appointed for them; being at the Common Law but in the nature of treſpaſſes. As in the 17 *Rich.* II. *c.* 8. it appears, that in the 5*th* year of the ſame King (which is 5 *Rich.* II. *c.* 6. *Stat.* 1.) *outrageous aſſemblies* of the people *againſt the King's dignity*, *and his Crown*, *and the Laws of the land* (as every great riot is) were made *Treaſon*; which Act is long ſince repealed. Whence it is alſo very obſervable to this purpoſe, that in two Acts of Parliament, the one of the 2 *Hen.* V. *c.* 9. *Stat.* 1. and the other of the 8 *Hen.* VI. *c.* 14. the ſimple word *riots* (which is moſt known in the Law, to this day, for *ſeditious* aſſemblies) is taken plainly as an expreſſion ſufficiently comprehending aſſemblies of people, in great number, in manner of inſurrection, and alſo rebellions, as will appear plainly, by comparing the preambles with the bodies of the ſame Acts. And in 11 *Hen.* VII. *c.* 7. for the puniſhment of *unlawful raiſing and leading of people*, *riots*, *routs*, *and other unlawful aſſemblies*, a form of proceeding is appointed; wherein appears moſt plainly and expreſsly, that the puniſhment was only by fine and impriſonment, and the Act was to continue but till the next Parliament, when it expired. Therefore alſo by the Act of 3 & 4 *Edw.* VI. *c.* 5. entitled, 'An Act for the puniſhment of unlawful aſſemblies, and riſing of the 'King's Subjects,' it was ordained, 'That if any perſons, to the number 'of twelve, or above, being aſſembled together, ſhall intend, with force 'of arms, unlawfully, and of their own authority, to kill or impriſon any 'of the King's Privy-Council, or to alter or change any Laws eſtabliſhed 'by Parliament, and ſhall not depart and retire to their own habitations, 'within one hour after command made by the Sheriff, ſome Juſtice of the 'Peace, or other ſuch Officer, in that behalf, the offence ſhould be High-'Treaſon. And if ſuch Perſons aſſembled, to the pulling down of ditches, 'or laying open incloſures, or to the committing of ſome ſuch more 'offences, retire not within that ſpace, that it ſhall be felony in them. 'And if any ſhould incite ſuch perſons to any ſuch act, by ſpeaking, 'ringing a bell, ſounding a trumpet, firing of beacons, or the like; inſo-'much that they remained together after any ſuch command as aforeſaid

* ff. ad l. Juliam majeſtatis, lib. 1. & tit. ad leg. Jul. de vi publ. l. 3, &c. C. tit. de ſeditioſis, l. 1. & 2.

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'by the ſpace of an hour, and commit any ſuch Act, as aforeſaid, it 'ſhould be Felony alſo. And the perſons ſo aſſembled, and remaining 'together, to the number of forty, by the ſpace of two hours, are by the 'ſame made Traitors. And that if the number be above two, and under 'twelve, that with force of arms, unlawfully, and of their own autho-'rity, aſſembled for the caſting down of ditches, incloſures, and divers 'ſuch other things, their ſtaying together after ſuch command by the 'ſpace of an hour, ſhould be puniſhed by a year's impriſonment, and fine 'and ranſom at the King's pleaſure.' And it is alſo in the ſame Act ordained, 'That if any perſon ſhall procure, move, or ſtir any other per-'ſon, or perſons, to ariſe, or make any traitorous or rebellious aſſembly, to 'the intent to do any of the things before-mentioned, it ſhould be Fe-'lony. And further, that if any perſon were ſpoken to, moved, or ſtir-'red to make any commotion, inſurrection, or unlawful aſſembly for 'any of the intents before-mentioned, and did not tell it within twenty-'four hours afterward, unleſs he have ſufficient excuſe, to ſome head 'Officer where ſuch ſpeaking were had, ſhould ſuffer impriſonment, 'until he were diſcharged by three Juſtices of the Peace, whereof one to 'be of the *quorum*.' This Act was to endure till the end of the next Parliament only, which was in 7 *Edw.* VI. and then, *cap.* 11. it was continued till the end of the next, which was in 1 *Mar. ſeſſ.* 2. wherein, *c.* 12. it is repealed, and another of the ſame nature made. Both which ſhew moſt evidently, that thoſe unlawful aſſemblies, inſurrections, commotions, and the like, which are plainly *Seditions*, provided for by thoſe Acts, were before but treſpaſſes, puniſhable only by fine and impriſonment. That of the 1 *Mar. ſeſſ.* 2. *c.* 12. is intituled, *An Act againſt unlawful and rebellious aſſemblies*, where the clauſe of the Privy-Councillors (that was in the 3 & 4 *Edw.* VI.) is omitted; and the reſt of the offence touching the altering of Laws, is expreſſed, as in that of *Ed.* VI. ſaving that the crime is made Felony, whereas it was Treaſon by that of *Ed.* VI. The reſt of that Act of 1 *Mar.* is, for the moſt part, agreeable with that of *Ed.* VI. ſaving, that none of the offences are Treaſon by this Act, but Felony at the moſt. And for the being *ſpoken to, or ſtirred to make any commotion, and not diſcovering it*, here, in this of Queen *Mary*, the offender is to ſuffer impriſonment only for three months, unleſs he be diſcharged by three Juſtices of the Peace, as in that of *Ed.* VI. This of Queen *Mary*, was kept on by continuance only, from one Parliament to another, during her time; and in 1 *Eliz. c.* 16. it was made to continue during the life of Queen *Elizabeth*, and at her death expired. To this purpoſe alſo the Act of 14 *Eliz. c.* 1. is obſervable; where, 'unlawful 'practices, ſecret conſpiracies and devices, to take or ſurprize any of 'the Queen's fortified Caſtles, and the malicious and rebellious intent 'of ſurprizing, or taking them, being expreſſed by overt-Act, or word,' are made Felony; 'and the not giving them up within ſix days after 'command from her, is made Treaſon;' which Act alſo expired with her life. Here the offences made Treaſon and Felony by the Act, were both *Seditions* of a high nature; and yet but treſpaſſes before the Act made, nor are they other now the Act is expired. For the ſurprizing or detaining of a Caſtle, without levying a war, or ſome other Act of Treaſon (as in *Sherley*'s caſe in *Dyer*) was not Treaſon, but by that Act. To theſe we may juſtly add that caſe of the Earl of *Northumberland* in 5 *Hen.* IV. *rot. parl. n.* 11, 12. *&c.* He acknowledged by writing, in Parliament, that he was guilty of not *keeping the Laws as ligeance aſketh, and of gathering power, and giving of liveries* (which are the words of the Parliament-Roll), and upon ſpecial conſideration had, by the Lords and Judges in Parliament, of the nature of the offence thus ſet forth, they adjudged it was neither Felony nor Treaſon, but only Treſpaſs; and ſo are the expreſs words of the Roll. Yet the *gathering of power, and giving liveries, and breaking of allegiance*, are large expreſſions of that, which in itſelf was truly *ſedition*, and that of a high nature. And thus, both by the uſe of the word, and the puniſhment provided, in ſome caſes in Parliament, for remedy of the offence (without which ſpecial proviſion it is never found capital) it appears clearly that *ſedition*, or the *ſtirring of ſedition*, alone, at the Common Law, (and no Statute, now in force, hath ordained otherwiſe) is but treſpaſs, and puniſhable only by fine and impriſonment.

Now for the words *againſt us*; that is, againſt the King. There is no doubt at all, but that all offences are againſt the King. Every ſlight treſpaſs, by the Law, is *contra pacem domini Regis*; and whatſoever is againſt his *peace* is againſt him; as alſo divers indictments of mere treſpaſſes conclude with *in contemptum Domini Regis*, and *contra coronam & dignitatem ſuas:* As in an indictment for hearing of maſs, is *contra pacem, dignitatem & coronam domini regis.* All which import *againſt the King.* And that Act of 23 *Eliz.* is made *againſt ſeditious words againſt the Queen's moſt excellent Majeſty*; which, even after the Act, remained not capital, being before but treſpaſs. And in the preamble of that of 14 *Eliz.* it appears, the Act was made againſt 'unlawful practice, ſecret conſpiracies 'and devices, ſtirred and moved againſt our ſovereign Lady the Queen, in 'ſeeking unlawfully to take her Caſtles, Fortreſſes, and the like.' And in *Bracton, fol.* 119. *b.* §. 3. & 120. *b.* §. 6. the concealing of treaſure, which is puniſhable by fine and impriſonment, is expreſsly ſaid to be *gravis præſumptio contra regem & dignitatem, & coronam ſuam*; as alſo the not keeping the aſſiſes of bread and ale, and the like. Neither is there any doubt of this, but that the words, *againſt the King*, may be applicable to any kind, and as well to the leaſt as the greateſt kind of offences, and imply nothing that increaſes the offence above treſpaſs.

It follows then, for the laſt part of the conſideration, that (*ſedition* being but that which we otherwiſe call *unlawful aſſemblies, riot, mutiny, rebellion*, or the like; and every offence puniſhable, being *againſt the King*) the *ſtirring up of ſedition againſt the King*, which is or may be the *ſtirring up of a rout, unlawful aſſembly, mutiny, rebellion*, or the like, againſt ſome ordinary, or extraordinary command, proceſs, writ, or execution of ſome eſtabliſhed Law, is no other offence, by the expreſſion in the return; nor can thereby be underſtood to be other (without ſome ſpecial Act of Parliament have altered the Law) than treſpaſs, and puniſhable only by fine and impriſonment, and ſo, by conſequence, no *Treaſon*. As for a ſpecial Act of Parliament, that maketh *ſedition againſt the King*, to be higher than *treſpaſs*, there is none ſuch extant. Among all the Acts of Parliament that are in force, there is none gives any colour here, but that of 25 *Ed.* III. wherein Treaſon is declared: And in that Act, only theſe words; 'If any one levy War 'againſt our Lord the King, in his Realm, or be adhering to the enemies 'of our Lord the King in his Realm, giving to them aid or comfort in 'his Realm, or elſewhere, and hereof be attainted of overt Act, it is 'High-Treaſon.' The other words concerning other and higher Treaſons, in that Act, have nothing that can ſo much as of themſelves ſuppoſe a *ſedition againſt the King*; but it is true, that in thoſe before recited there may be a *ſedition againſt the King*; that is, the *levying of War againſt the King* may be by *ſedition*, or the *adhering to the King's enemies*, or the *levying of War againſt him*, may be, by a low expreſſion, perhaps ſtiled *ſedition againſt the King*; as in every greater crime, as in theft, *treſpaſs* may be included, or underſtood. Now, unleſs on the other ſide, in that which is *ſedition* againſt the King, Treaſon muſt neceſſarily be underſtood, theſe words of the 25 *Ed.* III. make no more to prove that *ſedition* is Treaſon, than any Act againſt theft, can prove that *treſpaſs* is Felony. Therefore alſo, in that very Act of 25 *Ed.* III. the riding openly or ſecretly with armed men to kill or rob another man, or to take him, and keep him 'till he make fine and ranſom for his deliverance (though it be plainly *ſedition againſt the King*, it being againſt his Peace, his Laws, and his Crown and Dignity) is but Felony, if robbery be committed with it, and treſpaſs only if impriſonment till fine and ranſom. And ſo it is declared expreſsly in that Act. And though there have been divers Acts of Parliament ſince that of the 25 *Ed.* III. that have made divers other facts Treaſon, yet there is none of them that remain unrepealed, or not expired, that make any ſuch fact Treaſon, as is of the nature of *ſedition againſt the King:* And except only the Treaſons made by thoſe ſpecial Acts of Parliament that remain in force (as thoſe concerning Bulls from *Rome*, Jeſuits, clipping of Coin, and ſome few more), there is nothing at this day treaſon, ſaving what is compriſed in that Act of 25 *Ed.* III. to which ſome ſpecial Laws * have, in the ages ſince *Ed.* III. now and then reduced all Treaſon, by abrogating all intervenient Laws of Treaſon. And by that Act, if there be a doubt that happens before the Judges, by reaſon of any new caſe that comes before them, they ought not to judge it Treaſon, until it be enacted by Parliament to be ſo. And it doth, in the ſame Act, appear, that before that time, there was a greater latitude of Treaſon, than at any time ſince. Now, even in that time, there is an expreſs judgment of the very point in queſtion; though not in the ſame terms with this caſe, yet in the ſelf-ſame ſenſe, as if this caſe had then been before the Judges. It was the caſe of one *Ruſſel*; he was impriſoned by the Juſtice of *North Wales*, in 9 *Ed.* III. and returned to be ſo, *eo quod A. B. impoſuit ei feciſſe debuiſſe diverſas ſeditiones, &c. dominum regem tangentes.* Upon this return, the Court adjudged, that the offences contained in the Return, and as they could thereby be underſtood, were ſuch for which he ought to be bailed; and they give their reaſon with the judgment, *becauſe it did not appear what kind of ſeditions againſt the King were meant by it. Eo quod non ſpecificatur quales ſeditiones, &c. ideo dimittendus*, by mainprize or bail, which to this purpoſe are all one. For if the *ſedition* had been with traitorous intents, and ſo expreſſed, then it had been Treaſon, for which they would not have let him to mainprize. But becauſe *ſedition* againſt the King might be of divers other natures, and mere treſpaſſes, therefore they ſaid, *ideo dimittendus eſt*; expreſſing therein the right of the priſoner, that he might juſtly claim to be bailed, and by law ought to be bailed, and not only that he was bailable. But three objections may, perhaps, be made to this judgment, to make it differ in ſubſtance from the caſe in queſtion. The firſt, that *A. B. impoſuit ei feciſſe debuiſſe diverſas ſeditiones, &c.* which being as an accuſation in ſo general terms, was not certain enough to make him anſwer to it, and thence might be cauſe of the judgment. The ſecond, that it is not *contra Dominum Regem*, or *againſt the King*, as the caſe here is, but *tangentes*, or *touching* the King. And the third, that here is the King's Warrant witneſſing the offence, and command for impriſonment, and in that of 9 *Ed.* III. only the charge of a Subject and the commitment of a Subject. To all three, the reply is eaſy. For the firſt, it is plain, that the Juſtice of *North Wales* ſhews the reaſon of the impriſonment to be, becauſe *Ruſſel* was charged by *A. B.* to have committed *ſedition touching the King*, as every one that is returned to ſtand committed for any offence, is ſuppoſed to ſtand ſo committed, becauſe ſomebody charged him, or accuſed him, or can teſtify againſt him; and that is here more particularly expreſſed, which in every Return is ſuppoſed to be underſtood in the general words. As, ſuppoſe the Return were, that ſuch a one ſtands committed for Treaſon, or Murder, upon the accuſation, teſtimony, or examination of *A. B.* taken thus, or thus: would the Court bail him the ſooner for that addition? And in Returns, it was never expected that there ſhould be ſuch certainty as that the priſoner might plead and be tried. Which can never be done from Returns, but only by Appeals or Indictments, wherein the offence is in ſpecial ſet forth by time, place, and all circumſtances. Or, if they had, in this caſe of *Ruſſel*, expected or conſidered ſuch a certainty, they ought not to have let him into mainprize, or bailed him; but clearly diſmiſſed him. For, if an appeal, which is an accuſation, were brought againſt a man, or an indictment put in *de diverſis murdris*, or *de murdro*, generally; or, *de proditione* generally; clearly, upon ſuch an appeal or indictment, the Court would not put the party neither to anſwer, nor ſo much as to the trouble of bail or mainprize, becauſe ſuch a charge that way, were merely void. For in appeals and indictments, the particular circumſtance, and the ſpecial offence muſt always be ſet forth, or elſe they are void; but, in Returns, the general expreſſion is ſufficient for the Court to judge, whether the offence be ſuch, as that the priſoner ought to be bailed or no, as the common and moſt known practice is. So that the firſt objection is of no force. For the ſecond, it is certain, that the words *tangentes regem*, and *contra regem*, in matter of offences, occurring in our Laws, are taken as ſynonimous. As in 25 *Ed.* III. *Stat. de clero, cap.* 4. we have *Treaſons* or *Felonies*, touchants auters perſons que le roy meſme ou ſon royal majeſtie, *touching others than the King*; which is the ſame with, *being againſt others than the King*, or *beſides the King*; that is, *petit Treaſons* (which are both Treaſons and Felonies) as it appears in *Stamford, l.* 2. *c.* 43. *fol.* 124. *b.* High-Treaſon being *touching the King*, or *againſt the King*, or *extending to the King*; which is the ſame in 25 *Ed.* III. *de proditionibus.* Where the ſenſe of the words appears by a Law made but few years after this very caſe of *Ruſſel.* So in *Weſtmin.* 1. *ch.* 15. *Treaſon que touba le roy meſme*, is expreſsly for *Treaſon againſt the*

* Vide 11 Rich. II. c. 5. pet. 3. 1 Hen. IV. c. 10. 1 Ed. VI. c. 12. 1 Mar. parl. 1. c. 6.

King; that is, High-Treaſon. And *Bracton*, *fol.* 119 *b.* §. 2. calls the counterfeiting the Great Seal, which is High-Treaſon to this day, *Crimen læſæ majeſtatis, quod tangit coronam Regis*, or *Treaſon againſt the King*. And, in this latter age, we ſee in the Statute of 14 *Eliz. cap.* 2. that *Treaſon touching the perſon of the Queen*, and *Treaſon concerning the perſon of the Queen*, are both as the ſame, and both for *Treaſons againſt the Queen's perſon*. So that *tangentes regem*, and *contra regem*, denote the ſelf-ſame thing in the Law, and for that matter, *Ruſſel*'s caſe and this Return are of the ſelf-ſame nature. Now for the third objection concerning the King's warrant and command in this preſent caſe, which is not in that of *Ruſſel*'s, but only the accuſation, or charge, and command of a Subject. For the command ſingly conſidered, it is clearly againſt the Petition of Right: But if it be conſidered here (as it ought) joined with the cauſe of commitment, then the cauſe is only conſiderable by itſelf, as expreſſed by the warrant. But there is no Book-caſe, Act of Parliament, or other teſtimony of Law with us, that in this kind of conſideration makes any difference between the expreſſion of an offence, in a Return of the King's warrant, and the expreſſion of it in a Return of a Subject. For all Returns of this kind, in judgment of Law, are ſuppoſed true; and the ſole point examinable, for matter of bail, is the nature of the offence; unleſs the commitment were by one that might not commit, or that ſome other circumſtance, not concerning theſe matters, were in the caſe. And beſides, in 22 *Hen.* VIII. *rot.* 38. Parker's *caſe*, & 1 *Hen.* VIII. *rot.*..... the King's command for commitment for Murder, and other offences of high nature, hath been in the Return, where the Priſoner was bailed. Nor will there remain any colour of teſtimony to maintain this laſt objection.

And as againſt this caſe of *Ruſſel* (which is ſo fully in the point) theſe objections may be made; ſo againſt the main, the concluſion, it may be objected out of thoſe old Authors, *Bracton*, *Glanville* and *Hengham*; that *Bracton*, in expreſs words, makes *ſeditio domini Regis* to be Treaſon: *Si quis aliquid egerit* (ſaith he, fol. 118. b.) *ad ſeditionem domini Regis, vel exercitus ſui, vel procurantibus auxilium & conſilium præbuerit vel conſenſum*, it is *crimen læſæ majeſtatis*, to be puniſhed with death, and ſo ſuppoſes it High-Treaſon. So *Glanville*, *Si quis machinatus fuerit, vel aliquid fecerit, in mortem Regis, vel ſeditionem regni, vel exercitus*; he ſaith it is likewiſe Treaſon. And *Hengham* bringing examples of the *Placita de crimine læſæ majeſtatis*, adds, *ut de nece vel ſeditione perſonæ domini Regis, vel regni, vel exercitus*. Where we ſee, *ſeditio Regis*, or *regni*, or *exercitus*, is ſuppoſed Treaſon. But the anſwers to the authority of theſe old Authors is various. *Firſt*, However they were all three (if at leaſt that of *Glanville* be the work of Sir *Randal Glanville*, Chief-Juſtice of *England* under *Hen.* II.) learned and famous Judges in their ages, yet they lived ſo long ſince, and the reſt of the particulars of which they write, are ſo different (whether we obſerve the Pleas of the Crown in them, or the Pleas between party and party) from the practice and eſtabliſhed Laws of the enſuing ages, that their authority is of ſlight or no moment, for direction in judgment of the Law at this day, though it be very conſiderable in examination what the Law was in their times; and that way it ſometimes is uſed as an ornament in argument only, as it is ſaid in the *commentaries* of them. The firſt of them died about 400 years ſince; the ſecond, about 350; and *Hengham* about 300 years paſt. Secondly, The words of *ſeditio Regis*, or *regni*, are an obſcure expreſſion, and hardly ſo intelligible as that we may know what they meant. For what can *ſedition of the King* mean, in *Engliſh* or in *Latin*, as they expreſs it? And if it be taken for *ſedition againſt the King* (as indeed the like words are interpreted in *Scottiſh*, out of the *Regiam majeſtatem*, by Mr. *Skene*) it muſt be ſo taken againſt all Grammar, and uſual context of words; for no more than *tumultus Regis*, *rebellio Regis*, *inſurrectio Regis*, is *tumult againſt the King*, or *rebellion againſt the King*, or *inſurrection againſt the King*, is *ſeditio Regis*, in force of Language, *ſedition againſt the King*. Thirdly, Admit it be rightly taken for *ſedition againſt the King*, in thoſe old Authors, yet the Statute of 25 *Edw.* III. *de proditionibus*, ſo ſettles the Law for Treaſon, that whatſoever was Treaſon before that Act, and is not compriſed within that Act, is no Treaſon at this day, unleſs ſome ſpecial Act of Parliament have ordained it. Fourthly, The conſtant courſe of teſtimonies, as they are before ſhewed, ſince the 25th of *Ed.* III. prove expreſsly, that only *ſedition againſt the King* is taken for a leſs offence, and mere treſpaſs. Fiftnly, In particular offences, we ſee *Bracton* (whoſe authority is the chief of the three, whether we regard the expreſſion, or the quality of the writer) differs much from the Common Law of the later ages: and ſo much, that he is directly, in ſome things of great moment, contrary to the clear known Law, both of the preſent and of ancient times. As he allows no killing of a man to be Murder, but what is done ſo ſecretly, that it is not known who doth it. *Bracton*, *l.* 3. *de Corona*, *fol.* 134. *b.* & 135. And that if the offender be taken, or, if the party hurt live long enough to diſcover him that hurt him, though he die afterward, it is (ſaith he) no Murder. Which is directly contrary to the Law, yet altered by no ſpecial Act of Parliament. So, *Si quis alterius virilia abſciderit, & libidinis cauſa, vel commercii caſtraverit, ſequitur* (ſaith he, p. 144. *b.* §. 3.) *pœna aliquando capitalis, aliquando perpetuum exilium, cum omnium bonorum ademptione*; whereas there is no ſuch thing in the Laws of *England*. But indeed, by the Civil Law, *Qui hominem libidinis, vel promercii cauſa caſtraverit, pœna legis Corneliæ de ſicariis punitur*; that is, is puniſhable capitally. *ff. ad leg. Cornel. de ſicariis*, *l.* 3. §. 4. & *l.* 4. §. *ult.* Whence, doubtleſs, *Bracton* (who cites often, to other purpoſes, the very texts and words, and quotes the places of the *Digeſts*, and the *Code*) had that puniſhment for ſuch as gelded men. And thence alſo had, by all likelihood, that touching *ſedition*. For, by the Civil Law, all *ſedition*, publick raiſing of tumults, gathering armed men without publick authority, and whatſoever is but with us as a commotion or riot, is Treaſon (*crimen læſæ majeſtatis*) and capital. To which purpoſe there be divers texts in that Law *ff. ad leg. Juliam majeſt. l.* 1. & *de pœnis*, *l.* 38. §. 2. *de appellationibus*, *l.* 16. *C. de ſeditioſis*, *l.* 1. & 2. *&c.* which doubtleſs he both read, and often followed: and by *concitatores ſeditionis*, or *ſtirrers up of ſedition*, by that very name were condemned as capital Traitors. But this was never, for aught appears, Law in *England*; but the contrary appears plain enough by what is already ſaid. Sixthly, For anſwer to the objections out of *Bracton* and *Glanville*, if their authority ſhall be taken ſufficient to maintain *ſedition* to be Treaſon; then will it be as reaſonable to prove, that in ſuch a caſe bail alſo ſhould be taken. For *Bracton* ſaith expreſsly of that, and other Treaſons, that he joins with it, that the priſoner ought to be bailed, unleſs an accuſer be preſent. *Si quis*, ſaith he, *de hoc crimine defamatus fuerit, tunc videndum erat utrum apparet accuſator, vel non*; *ſi autem nullus appareat, niſi ſola fama quæ tantum apud bonos & graves oriatur, hic ſalvo attachiabitur per ſalvos & ſecuros plegios*; *vel ſi plegios non habuerit, per carceris incluſionem, donec de crimine ſibi impoſito veritas inquiratur*. And *Glanville* ſaith expreſsly, that although an accuſer be preſent, yet he is to be bailed. *Etiamſi accuſator fuerit* (ſaith he) *accuſatus dimittitur per plegios*; *aut ſi non fuerit, in carcerem dimittitur*. So that either the authority of theſe old Authors is of no moment, for the reaſons before ſhewed; or if it be valuable, and that advantage muſt be taken from them, it is as reaſonable that their other opinion, for the bail, be as well accepted and allowed of in this caſe. But there remains, perhaps, one objection, out of the opinions of *Treſilian* and *Belknap*, the two Chief-Juſtices; and of *Holt*, *Fulthorp*, and *Burgh*, Juſtices of the Common-Pleas, and *Lockton*, one of the King's Serjeants in 11 *Rich.* II. (*Vide* 21 *Rich.* II. *c.* 11. ſee the Roll:) Who being, among other things, demanded at *Nottingham* by the King, and charged to anſwer, upon their faith and legiance to the King, how they ought to be puniſhed that did interrupt the King, ſo that he might not exerciſe thoſe things that pertaineth to his regality and prerogative; (in which words, perhaps, may be included all kind of ſedition againſt any proceeding, proceſs, or ordinary command of the King) with one aſſent they anſwered, That they ought to be puniſhed as Traitors. And if that were Law, it were hard to find a ſedition againſt the King, but that it were Treaſon. For all his proceedings, proceſs, and ordinary commands, belong to his regality and prerogative, and every ſedition againſt him, is a kind of interruption of the exerciſe, at leaſt, of thoſe proceedings, proceſs, and ordinary commands.

It is true, that in the 11*th* of *Rich.* II. ſuch an anſwer, among divers others of like nature, were given by thoſe Judges, and that Serjeant; and they put their Seals alſo to them. But it is as true, that for theſe very anſwers they were accuſed by the Commons in Parliament, the ſelf-ſame year, where they anſwered upon the accuſation: Firſt, That the anſwers were written in the original to which their Seals were put, otherwiſe than their meaning was, in ſome part. Secondly, That they had been threatened to make no other anſwer than what might agree with the King's liking. Thirdly, That their anſwers proceeded not of their free-will, but for fear of death; and that ſome of them had revealed as much to the Earl of *Kent*, deſiring him to witneſs as much hereafter if time ſerved. *Rot. Parl.* 11. *Rich.* II. *n.* 14. & *vide Stat.* 11 *Rich.* II. *c.* 3, 5, *&c.* Notwithſtanding all which, at the inſtance of the Commons, they were judged all by Declaration in Parliament made by the King and Commons (which was according to the Act of 25 *Edw.* III. and ſo by Act of Parliament) to be Traitors, and to ſuffer as in caſe of Treaſon; good part of which proceeding is remembred in the Statutes of that year, but much more in the Rolls of that Parliament. And although in the Parliament of 21 of *Rich.* II. that Parliament, and in particular, this proceeding againſt the Judges, were wholly annulled, and their anſwers adjudged good; as appears in the printed Statutes of that year, 21 *Rich.* II. *c.* 12. yet in the 1ſt of *Hen.* IV. it was declared by Parliament, 1 *Hen.* IV. *c.* 3. that this proceeding of Parliament of 21 of *Rich.* II. being cauſed by a certain number only, of the Members of Parliament, and that the *Statutes, Judgments, Ordinances, and Eſtabliſhments, were made, ordained, and given erroneouſly and deceitfully in great diſheriſon and final deſtruction, and undoing of the liege people of the realm.* Where alſo it was further declared and adjudged, in the ſame Parliament, that all the Parliament of 21 *Rich.* II. and all *circumſtances and dependents thereupon to be of no force or value, but annulled.* And beſides, that *the Parliament of the* 11*th of Rich.* II. wherein thoſe Judges were condemned as Traitors, for that anſwer, and all the reſt of that kind, ſhould *be firmly holden and kept, after the purport and effect of the ſame, as a thing made for the great honour and common profit of the Realm.* So that that anſwer of the Judges, in the 11 of *Rich.* II. ſo highly condemned as falſe and erroneous, by two Parliaments, both which have to this day continued in firm ſtrength, is of no weight to prove that *ſedition againſt the King is Treaſon.* Nor doth any thing elſe prove it, but the contrary is manifeſted by the arguments before urged. And by conſequence, it is only treſpaſs againſt the King, and puniſhable by fine and impriſonment, and therefore the priſoner returned to ſtand committed *for ſtirring it up againſt the King* ought to be bailed.

Some days after Sir *Rob. Heath*, the King's Attorney-General, argued, That this return was good, and that the parties ought not to be bailed: And that within the return there appears good cauſe of their commitment, and of their detaining alſo. The caſe is great in expectation and conſequence: and concerns the liberty of the ſubject on the one part, whereof the argument is plauſible; and on the other part, it concerns the ſafety and ſovereignty of the King, which is a thing of great weight. The conſideration of both pertains to you the Judges, without ſlighting the one, or too much elevating the other. The Return, which now is before you, is entire; but I will firſt conſider it as divided in parts. Firſt, the firſt Warrant, which is that of the Lords of the Privy-Council, is general, that it was by the command of the Lord the King: and this in former times was held a very good return, when due reſpect and reverence was given to government; but, *Tempora mutantur*. And this return is no way weakned by any latter opinion; for notwithſtanding that, the firſt commitment of a man may be general: for if upon the return, the true cauſe ſhould be reveal'd to the Gaoler, by this means, faults ſhould be publiſhed and divulged before their puniſhment, and ſo the complices of the fact will eſcape, and it is not fit that the Gaoler, which is but a miniſterial Officer, ſhould be acquainted with the ſecrets of the cauſe. But when the cauſe is returned in court, more certainty is requiſite; for then (as it hath been objected) ſomething ought to be expreſſed to which the party may anſwer, and upon which the Court may ground their judgment. And to this purpoſe, the Petition of Right hath been much inſiſted upon; but the Law is not altered by it, but remains as it was before. And this will appear upon the view of all the parts of the Petition. 1. The occaſion of the Petition, and the grievance, is ſhewed in theſe words: *Divers of your Subjects have been of late impriſoned, without any cauſe ſhewed, &c.* But

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in this return there is a cauſe ſhewed, to which the parties may anſwer. Then, 2. The prayer of the Petition is, That no freeman, in any ſuch manner as before is mentioned, be impriſoned or detained; that is, ſuch manner of impriſonment, the ground whereof doth not appear. Then the anſwer of the King to the Petition was in ſundry words: 2 *June* 1628, in theſe words, *The King willeth, that right be done according to the Laws and Cuſtoms of the Realm, &c.* Which anſwer gave not ſatisfaction. And afterwards his anſwer was in a Parliamentary Phraſe, *Soit droit fait come eſt deſire.* But afterwards, on the 26 of *June*, 1628, the King expreſſed his intention and meaning in the ſaid anſwer. "It muſt be conceived, that "I have granted no new, but only confirmed the ancient Liberties of my "ſubjects, *&c.*" A Petition in Parliament is not a Law, yet it is for the honour and dignity of the King, to obſerve and keep it faithfully; but it is the duty of the people not to ſtretch it beyond the words and intention of the King. And no other conſtruction can be made of the Petition, than to take it as a confirmation of the antient liberties and rights of the ſubjects. So that now the caſe remains in the ſame quality and degree, as it was before the Petition. Therefore we will now conſider, how the Law was taken before the Petition; and for the diſcuſſing thereof, we will examine the ſecond Part of the Return, and in it two things: 1. If the Return, as it is now made, ſhall be intended for true. 2. Admit that it is true, if there be any offence contained within it, which is good to detain the priſoners. For the 1. it is clear, that the cauſe ſhall be intended true which is returned, though in truth it be falſe; and ſo are 9 *H.* VI. 44. and *F. Corpus cum cauſa*, an 12 *Coke*'s *Rep.* 11. *p.* 93 *Bagg*'s caſe. 2. It ſeems that there is ſuch a crime contain'd in this return, which is a good cauſe for detaining the Priſoners. It is true, that it was confidently urged in Parliament, in 3 *Car.* that general returns, that were committed by the command of the Lord the King, are not good: and that thoſe arguments remain as monuments on record, in the Upper Houſe of Parliament; but I will not admit them for Law. But I will remember what was the opinion of former times, 22 *H.* VI. 52. by *Newton*; a man committed by the command of the King, is not repleviſable. And the opinion cannot be intended of a replevin made by the Sheriff, becauſe the principal caſe there is upon a return in this Court. 33 *Hen.* VI. 28. *Poyning*'s caſe, where the return was, That he was committed by the Lords of the Council, and it was admitted good. It is true, that this opinion is grounded upon *Weſt.* 1. *c.* 15. but I will not inſiſt upon it. But the conſtant opinion hath always been, that a man committed by the command of the King is not bailable. In 9 *H.* VI. 44. it is ſaid, That if one be taken upon the King's ſuit, the Court will not grant a *ſuperſedeas*. The contrary opinion is grounded upon *Magna Charta*, which is a general Law, and literally hath no ſenſe to that purpoſe; and it is contrary to the uſual practice in criminal cauſes, in which the impriſonment is always lawful until the Trial, altho' it be made by a Juſtice of Peace, or Conſtable. And that a man committed by the command of the King or Privy-Council, is not bailable, he cited 1 *Jacobi*, Sir *John Brocket*'s caſe; 8 *Jacobi*, *Thomas Cæſar*'s caſe; 12 *Jac. James Demaiſtres*'s caſe; 43 *Eliz. William Rinch*'s caſe; and in the caſe of *M.* 36 *Eliz.* and 4 and 5 *Eliz. Richard Thimelby*'s caſe; and ſaid, that there are innumerable precedents to this purpoſe. *M.* 21 & 22 *Eliz.* upon the return of an *Habeas Corpus* it appears, that *Michael Page* was committed by the command of the Lord the King, but was not delivered; and after was arraigned in this Court, and loſt his hand. And at the ſame time *Stubbs* was committed by the command of the Lord the King, for ſeditious words and rumours, and he loſt his hand alſo upon the ſame Trial. *M.* 17 & 18 *Eliz.* upon *Habeas Corpus* for *John Loan*, it was returned, That he was committed for divulging ſundry ſeditious writings, and he was remanded. And 7 *H.* VII. *roll* 6. *Rug*'s caſe; and *roll* 13. *Chaſe*'s caſe, where the return was, That they were committed by the command of the Lord the King, and they were not delivered; and this was alſo the opinion in this Court, *M.* 3 *Car.* and after the ſaid time the Law is not altered; and ſo, I hope, neither are your opinions.

But to conſider the particular cauſe mentioned in the return, I will not rely upon the firſt part of the words, although they be of great weight, but only upon the laſt words,——*for ſtirring up of ſedition againſt Us.*——— But it hath been objected, that *Sedition* is not a word known in the Law: But I marvel that the ſignification of the word is not underſtood, when it is joined with the words——*againſt Us*;——this ought to be underſtood, Sedition againſt the King, in his politick capacity. *Sedition* hath ſundry acceptations, according to the ſubject handled, as it appears *Coke*'s 4 *Rep. p.* 13. Lord *Cromwell*'s caſe, which hath been cited. If it be ſpoken of a man, that he is ſeditious, if it be of a Company in *London*, it ſhall be underſtood ſedition in the Company; if it be ſpoken of a Soldier, it ſhall be taken for mutinous. Mr. *Littleton*, who argued this caſe, very well ſaid, That *Tacitus* uſed this word, and it is true; and he ſays, That there are two manners of ſeditions, *Seditio armata & togata*; and the laſt is more dangerous than the former. But couple it with the ſubſequent words here, [*againſt us*] the interpretation and ſenſe thereof is eaſy, and *loquendum ut vulgus.* Mr. *Littleton* ſhews the acceptation of this word in divers places of Scripture, and I will not reject them, for they make for me; 20 *Numb.* 3. the Latin is,—*populi verſi ſunt in ſeditionem*;—and it is engliſhed—*murmuring*—but clearly it was High-Treaſon againſt the Governor, and God himſelf. 26 *Numb.* 9. *in ſeditione Corah*—it is manifeſt, that that was a great Inſurrection. 12 *Jud.* 1. *facta eſt ergo ſeditio in Ephraim, The Ephraimites roſe againſt Jephtha*; and he at the ſame time was their Judge and Governor, ſo it was the height of Inſurrection. It is true, that in 15 *Acts* 2. *facta eſt ſeditio*; and in ſome tranſlations it is, *Orta eſt repugnantia non parva*, for it may be taken in ſeveral ſenſes. 19 *Acts* 40. the Town-Clerk there knew not how to anſwer for *this day's ſedition*, or inſurrection, and no doubt he was in great peril, for it was a great inſurrection; and I wiſh the greater ones were as circumſpect as he was. 24 *Acts* 5. *Tertullus accuſed Paul of ſedition*, and doubtleſs it was conceived a great offence, if you conſider the time, and other circumſtances, for they were Heathens and *Romans.* And although he in very truth taught the Goſpel of God, yet he was taken for a peſtilent fellow, and as a perſuader to ſhake off Government. *Bracton, lib.* 3. *de Corona, c.* 2. ranks Sedition amongſt the crimes *læſæ Majeſtatis.* But it hath been objected, that if it be a capital offence, it ought to be Felony or Treaſon. To this I ſay, that it cannot be Felony, but it may be Treaſon, for any thing that appears. It is true, that by the Statute of 25 *E.* III. Treaſons are declared, and nothing ſhall be called Treaſon, which is not compriſed within the ſaid Statute, unleſs it be declared ſo by Act of Parliament. But upon Indictment of Treaſon, ſuch Sedition as this may be given in evidence, and perhaps will prove Treaſon. And the return is not, that he was ſeditious, which ſhews only an inclination; but that he ſtirred up ſedition, which may be Treaſon, if the evidence will bear it. In divers Acts of Parliament, notice is taken of this word [*Seditio*], and it is always coupled with Inſurrection or Rebellion, as appears by the Statutes of 5 *R.* II. *c.* 6. 17 *R.* II. *c.* 8. 2 *H.* V. *c.* 9. 8 *H.* VI. *c.* 14. 3 & 4 *E.* VI. *c.* 5. 2 *R.* II. *c.* 5. 1 & 2 *Phil. & Mar. c.* 2. 1 *Eliz. c.* 7. 13 *Eliz. c.* 2. 23 *Eliz. c.* 2. 27 *Eliz. c.* 2. and 35 *Eliz. c.* 1. all which were cited before; and they prove, that *Sedition* is a word well known in the Law, and of dangerous conſequence, and which cannot be expounded in good ſenſe. Wherefore, as to the nature of the offence, I leave it to the Court. But out of theſe Statutes it appears, that there is a narrow difference between it and Treaſon, if there be any at all.

3dly, As to the Objections which have been made, I will give a ſhort anſwer to them.

1. It was objected, That every impriſonment is either for cuſtody, or puniſhment; the laſt is always after the Judgment given for the offence; and if it be but for cuſtody, the Party upon tender of ſufficient Mainpernors is bailable. I confeſs, that this difference is true, but not in all reſpects; for I deny, that a man is always bailable, when impriſonment is impoſed upon him for cuſtody: For impriſonment is for two intents; the one is, that the Party which had offended, ſhould not avoid the judgment of Law; the ſecond is, that he ſhall not do harm in the interim during his Trial; and the Law is careful in this point. But it hath been ſaid, That although the party be bailed, yet he is impriſoned. I deny that, for ſo is 1 *H.* IV. 6. If the Party come not at the day, the Bail ſhall be impriſoned; but yet the Bail ſhall not ſuffer the ſame puniſhment which ought to have been inflicted upon the Party; as if it were for Treaſon, the Bail ſhall not anſwer for the fault, but only for the body. Serjeant *Berkley* did well call a ſeditious man an Incendiary to the Government, and, as *commune incendium*, is to be reſtrained of his Liberty. And he put 22 *E.* IV. and 22 *aſſ.* 56. that a mad-man may be reſtrained, to prevent the hurt he would otherwiſe do himſelf and others. A ſeditious man is as a mad-man, in the publick ſtate of the Commonwealth, and therefore ought to be reſtrained. And it appears by the Writ *de Leproſo amovendo*, that a Leper is to be removed, and, in a manner, impriſoned, for the contagion of the diſeaſe; and this is for the Safeguard of others, leſt his Leproſy infect others. The application is eaſy, and by the Statute of 1 *Jac. c.* 33. is reſtrained to keep within doors; and if he go abroad, any man may juſtify the killing of him. The infection of Sedition is as dangerous as any of theſe diſeaſes, therefore it is not ſafe to let ſeditious men to bail, or at liberty; and in dangerous caſes, the wiſeſt way is to make all ſafe. In all caſes of this nature, much is left to the diſcretion of the Court. The caſe of *M.* 9. *E.* III. *roll.* 39 *Ruſſell*, hath been objected, to be in the point; I have viewed the record of that caſe, and although it be verbally, yet it is not materially to this purpoſe: for the commitment was by a Juſtice of *North Wales*, upon the accuſation of an accuſer; and it was within a ſhort time after the Statute of 5 *E.* III. by which it was ordained, That none ſhould be impriſoned upon the accuſation of one accuſer: but here the detainment is by the King himſelf, for ſtirring up of ſedition. And there the return was, That he was accuſed of ſeditions and indecencies, where the latter word doth qualify the former. And there iſſued a Writ of good behaviour, (as the Uſe was) to enquire of the truth of the offence; and it was found, that there was no ſuch offence: and then upon the ſame return again he was ſet at liberty; ſo that the caſe there was ſpecial, and the manner of proceedings ſpecial. And I deſire that one thing may be obſerved, that *Ruſſell* came in here upon the *Habeas Corpus*, 20 *Sept.* but was not delivered until *Hillary* Term following. And for 28 *H.* VI. the Duke of *Suffolk*'s caſe, which was objected, that the general accuſation of divers Treaſons was not legal. That is true, becauſe it was in Parliament, and in the nature of an accuſation; and being in a Court of Juſtice, it had been unjuſt to condemn a man before his Trial; and yet this Court, upon probability of a fault, does oft-times reſtrain a man before conviction. But it hath been objected in this caſe, They have been a long time impriſoned, and no proceedings againſt them. It is well known, there have been ſome proceedings againſt them, and they declined them; and alſo more than three months is requiſite for the preparation of ſuch proceedings, and the King intends to proceed againſt them in convenient time. And ſome that were offenders in the ſame kind are already delivered, to wit, Mr. *Coriton* and Sir *Peter Hayman.* Therefore, if any injury be done to the Priſoners, they themſelves are the cauſe of it, for not ſubmitting themſelves to the King. And for the inſtance which Mr. *Littleton* uſed of the Judges in 11 *R.* II. altho' they ſuffered for their opinions given to the King, I deſire, that the time when their opinion was delivered, may be conſidered, to wit, in the time of *R.* II. and the time when they ſuffered, to wit, in the time of *H.* IV. And it was the ſaying of a Noble Gentleman, the Lord *Egerton*, That *Belknap* ſuffered rather by the potency of his enemies, than the greatneſs of his offence: And yet it is to be confeſſed, that they might have given better counſel; but there was no time to diſpute of the juſtneſs of their counſel, when the ſword was in the hands of the Conqueror.

What hath been relied upon is the reſolution of all the Juſtices of *England* in 34 *Eliz.* which reſolution is now regiſtered in the Upper Houſe of Parliament, at the requeſt of the Commons, in *Tertio Caroli Regis*; but I leave it to you, as that reſolution ſhall ſway your Judgments. The ſaid reſolution is, That the cauſe ought to be certified in the generality, or ſpeciality; and here the general cauſe is certified at leaſt, if the ſpecial be not ſo: and upon the whole matter the bailment of theſe priſoners is left to your diſcretion; and I have ſhewed to you the diſcretion of your predeceſſors. And if any danger appear to you in their bailment, I am confident that ye will not bail them, if any danger may enſue; but firſt ye are to conſult with the King, and he will ſhew you where the danger reſts. Therefore upon the whole matter I pray, that they be remanded.

When

When the Court was ready to have delivered their Opinions in this great Buſineſs, the Priſoners were not brought to the Bar, according to the Rule of the Court. Therefore Proclamation was made for the Keepers of the ſeveral Priſons to bring in their Priſoners; but none of them appeared, except the Marſhal of the King's-Bench, who informed the Court, that Mr. *Stroud*, who was in his Cuſtody, was removed Yeſterday, and put in the *Tower* of *London* by the King's own Warrant: And ſo it was done with the other Priſoners; for each of them was removed out of his Priſon in which he was before. But notwithſtanding, it was prayed by the Counſel for the Priſoners, that the Court would deliver their Opinion as to the Matter in Law: But the Court refuſed to do that, becauſe it was to no Purpoſe; for the Priſoners being abſent, they could not be bailed, delivered, or remanded.

The Evening before, there came a Letter to the Judges of this Court from the King himſelf, informing the Court with the Reaſons, wherefore the Priſoners were not ſuffered to come at the Day appointed for the Reſolution of the Judges.

To our Truſty and Well-beloved, our Chief-Juſtice, and the reſt of our Juſtices of our Bench.

" *C. R.*

" TRUSTY and Well-beloved, we greet you well. Whereas by " our ſpecial Commandment we have lately removed Sir *Miles Ho-* " *bart*, *Walter Long*, and *Will. Stroud*, from the ſeveral Priſons where " they were formerly committed, and have now ſent them to our *Tower* " of *London*; underſtanding there are various Conſtructions made thereof, " according to the ſeveral Apprehenſions of thoſe who diſcourſe of it, as " if we had done it to decline the Courſe of Juſtice; we have therefore " thought fit to let you know the true Reaſon and Occaſion thereof; as " alſo, why we commanded thoſe and the other Priſoners ſhould not " come before you the laſt Day. We (having heard how moſt of them " a while ſince did carry themſelves inſolently and unmannerly both to- " wards us and your Lordſhips) were and are very ſenſible thereof; and " though we hear yourſelves gave them ſome Admonition for that Miſcar- " riage, yet we could not but reſent our Honour, and the Honour of ſo " great a Court of Juſtice ſo far, as to let the World know how much " we diſlike the ſame: And having underſtood that your Lordſhips, and " the reſt of our Judges and Barons of our Court of Common Pleas and " Exchequer, (whoſe Advices and Judgements we have deſired in this " great Buſineſs, ſo much concerning our Government), have not yet " reſolved the main Queſtion; we did not think the Preſence of thoſe " Priſoners neceſſary; and until we ſhould find their Temper and Diſcre- " tions to be ſuch as may deſerve it, we were not willing to afford them " Favour. Nevertheleſs, the Reſpect we bear to the Proceedings of that " Court, hath cauſed us to give Way, that *Selden* and *Valentine* ſhould at- " tend you To-morrow, they being ſufficient to appear before you, ſince " you cannot as yet give any reſolute Opinion in the main Point in queſ- " tion."

Given under our Signet, at our Manour at *Greenwich*, this 24 *Junii*, in the fifth Year of our Reign.

Within three Hours after the Receipt of thoſe Letters, other Letters were brought unto the ſaid Judges, as followeth:

To our Truſty and Well-beloved, our Chief-Juſtice, and the reſt of our Juſtices of our Bench.

" *C. R.*

" TRUSTY and Well-beloved, We greet you well. Whereas by " our Letters of this Day's Date, we gave you to underſtand our " Pleaſure, That of thoſe Priſoners which, by our Commandment, are " kept in our *Tower* of *London*, *Selden* and *Valentine* ſhould be brought " To-morrow before you; now, upon more mature Deliberation, we " have reſolved, That all of them ſhall receive the ſame Treatment, and " that none ſhall come before you, until we have Cauſe given us to believe " they will make a better Demonſtration of their Modeſty and Civility, " both towards us and your Lordſhips, than at their laſt Appearance they " did."

Given under our Signet, at *Greenwich*, this 24th Day of *June*, in the fifth Year of our Reign.

So the Court this Term delivered no Opinion, and the impriſoned Gentlemen continued in reſtraint all the long Vacation.

Towards the latter End of this Vacation, all the Juſtices of the King's-Bench being then in the Country, received every one of them a Letter to be at *Serjeant's-Inn* upon *Michaelmas-Day*. Theſe Letters were from the Council-Table; and the Cauſe expreſſed in them was, *That his Majeſty had preſent and urgent Occaſion to uſe their Service.* The Judges came up accordingly on *Tueſday*, being *Michaelmas-Day*. The next Morning about four o'Clock, Letters were brought to the Chief-Juſtice from Mr. *Trumbal*, Clerk of the Council then attending, that he and Judge *Whitelocke*, one of the Judges of that Court, ſhould attend the King that Morning ſo ſoon as conveniently they could; which the Chief-Juſtice and that Judge did at *Hampton* that Morning; where the King taking them apart from the Council, fell upon the Buſineſs of the Gentlemen in the *Tower*, and was contented they ſhould be bailed, notwithſtanding their Obſtinacy, in that they would not give the King a Petition, expreſſing, *That they were ſorry he was offended with them.* He ſhewed his Purpoſe to proceed againſt them by the Common Law in the *King's-Bench*, and to leave his proceeding in the *Star-Chamber*. Divers other Matters he propoſed to the ſaid Judges by way of Advice*, and ſeemed well contented with what they anſwered, though it was not to his Mind; which was, That the Offences were not capital, and that by the Law the Priſoners ought to be bailed, giving Security for their good Behaviour. Whereupon the King told them, *That he would never be offended with his Judges, ſo they dealt plainly with him, and did not anſwer him by Oracles and Riddles* †.

The firſt Day of *Michaelmas* Term it was moved by Mr. *Maſon*, to have the Reſolution of the Judges; and the Court with one Voice ſaid, That they are now content that they ſhould be bailed, but that they ought to find Sureties alſo for the good Behaviour. And Juſtice *Jones* ſaid, That ſo it was done in the Caſe which had been often remembered to another Purpoſe, to wit, *Ruſſel*'s Caſe, in 9 *E.* III. To which Mr. *Selden* anſwered (with whom all the other Priſoners agreed in Opinion), That they have their Sureties ready for the Bail, but not for the good Behaviour; and deſire, that the Bail might firſt be accepted, and that they be not urged to the other; and that for theſe Reaſons:

Firſt, The Caſe here hath long depended in Court (and they have been impriſoned for theſe thirty Weeks), and it had been oftentimes argued on the one Side and the other; and thoſe that argued for the King, always demanded that we ſhould be remanded; and thoſe which argued on our Side, deſired that we might be bailed or diſcharged; but it was never the Deſire of the one Side or the other, that we ſhould be bound to the good Behaviour. And in the laſt Term four ſeveral Days were appointed for the Reſolution of the Court, and the ſole Point in queſtion was, *If bailable or not?* Therefore he now deſires, that the Matter of Bail and of good Behaviour may be ſevered, and not confounded.

Secondly, Becauſe the finding of Sureties of good Behaviour is ſeldom urged upon Returns of Felonies or Treaſons. And it is but an Implication upon the Return, that we are culpable of thoſe Matters which are objected.

Thirdly, We demand to be bailed in point of Right; and if it be not grantable of Right, we do not demand it: But the finding of Sureties for the good Behaviour, is a Point of Diſcretion merely; and we cannot aſſent to it without great Offence to the Parliament, where theſe Matters which are ſurmiſed by Return were acted; and by the Statute of 4 *H.* VIII. all Puniſhments of ſuch Nature are made void, and of none Effect. Therefore, *&c.*

Court. The Return doth not make Mention of any thing done in Parliament, and we cannot in a judicial Way take Notice that theſe Things were done in Parliament. And by *Whitelocke*, the Surety of good Behaviour, is a preventing Medicine of the Damage that may fall out to the Commonwealth; and it is an Act of Government and Juriſdiction, and not of Law. And by *Croke*, it is no Inconvenience to the Priſoners; for the ſame Bail ſufficeth, and all ſhall be written upon one Piece of Parchment. And *Heath*, Attorney-General, ſaid, That by the Command of the King, he had an Information ready in his Hand to deliver in the Court againſt them.

Hyde, Chief-Juſtice. If now you refuſe to find Sureties for the good Behaviour, and be for that Cauſe remanded, perhaps we afterwards will not grant a *Habeas Corpus* for you, inaſmuch as we are made acquainted with the Cauſe of your Impriſonment.

Aſhley, the King's Serjeant, offered his own Bail for Mr. *Holles*, one of the Priſoners, (who had married his Daughter and Heir) but the Court refuſed it; for it is contrary to the Courſe of the Court, unleſs the Priſoner himſelf will become bound alſo ‡.

And Mr. *Long*, that had found Sureties in the Chief-Juſtice's Chamber, for the good Behaviour, refuſed to continue his Sureties any longer, inaſmuch as they were bound in a great Sum of 2000 *l.* and the good Behaviour was a tickliſh Point. Therefore he was committed to the Cuſtody of the Marſhal, and all the other Priſoners were remanded to Priſon, becauſe they would not find Sureties for the good Behaviour.

Mich. 6 *Car. B. R.*

John Selden was committed to the *Marſhalſea* of the *King's Bench*, for not putting in Sureties for his good Behaviour. There were with him in the ſame Priſon, *Hobart*, *Stroud*, and *Valentine*. In the End of *Trinity Term*, 6 *Car.* the Sickneſs increaſing in *Southwark*, the three laſt named made Suit unto the Judges of the *King's-Bench*, to be delivered over to the *Gatehouſe* in *Weſtminſter*, to avoid the Danger. The Judges thought it Charity, and by Writ to the Marſhal of the *King's-Bench*, commanded him to deliver them to the Keeper of the *Gatehouſe*, and ſent him a Writ to receive them. Mr. *Selden* never ſent unto them whilſt they were in Town, but when they were all gone, made Suit to the Lord-Treaſurer to move the King, that, to avoid this Danger, he might be removed to the *Gatehouſe*; which he did, and ſent a Warrant under his Hand to the Marſhal, ſignifying his Majeſty's Pleaſure to remove him to the *Gatehouſe*; accordingly he was removed. Thereupon, when the Judges came to Town in *Michaelmas Term*, they called the Marſhal to Account for his Priſoner, Mr. *Selden*; and he preſenting unto them the Lord-Treaſurer's Warrant by the King's Direction, the Judges told him it would not ſerve, for he could not be removed but by Writ; and upon his Majeſty's Pleaſure ſignified, it might ſo have been done. And although the Judges were out of Town, yet the Clerk of the Crown would have made the Writ upon ſo good a Warrant, and it might have been ſubſcribed by the Judges at their Return. And to avoid the like Error hereafter, the Court ſent Juſtice *Whitelocke* to the Lord Treaſurer, to let him know, that Mr. *Selden* never

* Mr. *Whitelocke* in his Memorials, page 13. ſays, My Father did often and highly complain againſt this way of ſending to the Judges for their Opinions beforehand; and ſaid, *That if Bp.* Laud *went on in his way, he would kindle a Flame in the Nation.*

† Mr. *Whitelocke*, in his Memorials of the *Engliſh* Affairs, p. 14. (Edit. 1732.) The Judges were ſomewhat perplexed about the *Habeas Corpus* for the Parliament-men, and wrote an humble and ſtout Letter to the King, *That by their Oaths they were to bail the Priſoners; but thought fit, before they did it, or publiſhed their Opinions therein, to inform his Majeſty thereof, and humbly to adviſe him (as had been done by his noble Progenitors in like Caſe) to ſend a Direction to his Juſtices of his Bench, to bail the Priſoners.* But the Lord-Keeper would not acknowledge to my Father, who was ſent to him from the reſt of his Brethren about this Buſineſs, that he had ſhewed the Judges Letter to the King, but diſſembled the Matter, and told him, that he and his Brethren muſt attend the King at *Greenwich*, at a Day appointed by him.

Accordingly the Judges attended the King, who was not pleaſed with their Determination, but commanded them not to deliver any Opinion in this Caſe without conſulting with the reſt of the Judges; who delayed the Buſineſs, and would hear Arguments in the Caſe as well as the Judges of the King's-Bench had done; and ſo the Buſineſs was put off to the End of the Term. Then the Court of King's-Bench being ready to deliver their Opinions, the Priſoners were removed to other Priſons, and a Letter came to the Judges from the King, *That this was done becauſe of their inſolent Carriage at the Bar.* And ſo they did not appear.

The Judges of the King's-Bench were ſent for by the Lord-Keeper to be in *London* on *Michaelmas*-day; the Chief-Juſtice *Hyde*, and my Father, were ſent for to the King at *Hampton-Court*, who adviſed with them about the impriſoned Parliament-men; and both theſe Judges did what good Offices they could, to bring on the King to heal theſe Breaches.

‡ This Motion of diſcharging proceeded from the King himſelf, who had conferred with the Judges, and had declared his Content the Priſoners ſhould be bailed, notwithſtanding their Obſtinacy, that they would not ſo much as preſent a Petition to him to expreſs, that *they were ſorry he was offended with them.* But the Priſoners began now to value themſelves upon their Suffering, and had ſo much Countenance from ſeveral of their late Fellow-members, that they would not now accept of a Deliverance, but unanimouſly refuſed to find Sureties for their Behaviour: Nay, Mr. *Holles* was ſo induſtrious to be continued in Cuſtody, that when one offered his own Bail, he would not yield to the Courſe of the Court, to be himſelf bound with him. And even Mr. *Long*, who had actually found Suretie's in the Chief-Juſtice's Chamber, declared in Court, that his Sureties ſhould no longer continue. Such a Merit did they now place in Confinement, as to labour againſt their own Liberty; and by ſuch glorying in Perſecution to raiſe a Popularity to themſelves, and caſt an Odium on the King. *Kennet*'s Hiſt. of *England*. Vol. III. page 49.

never looked after any of the Court, but ſought a new and irregular way to be removed without them. The Lord Treaſurer made a very honourable anſwer, That he would not move the King for Mr. *Selden* to be removed by this means, until he ſent him word, on his credit, that it was a legal way; and told that Judge, that Mr. *Selden* was at the Judges diſpoſe, to remove back when they would, for it was not the King's meaning to do any thing contrary to the order of the Court; or their formal proceedings: ſo Writs were ſent this *Michaelmas Term* to remove the four priſoners back again to the *Marſhalſea*.

The Caſe of Sir *Miles Hobart*, and *William Stroud*, Eſq.

ON the 23d of *January*, the Attorney-General exhibited two ſeveral Informations, the one againſt *William Stroud*, Eſq; the other againſt Sir *Miles Hobart*, Knight. The charge againſt both of them therein, was for ſeveral eſcapes out of the priſon of the *Gatehouſe*: they both pleaded, Not Guilty. And their Caſes appeared to be as followeth: The ſaid *William Stroud*, and Sir *Miles Hobart*, were by the King's command committed to priſon, for miſdemeanors alledged againſt them, in their carriage in the Houſe of Commons at the laſt Parliament. Afterwards in *Trinity Term*, *Anno* 6 *Caroli*, both of them being by order of this Court, and by a Warrant from the Attorney-General to be removed unto the *Gatehouſe*; the Warden of the *Marſhalſea* (where they were before impriſoned) ſent the ſaid *Stroud* to the Keeper of the *Gatehouſe*, who received him into his Houſe lately built, and adjoining to the priſon of the *Gatehouſe*, but being no part thereof. After which receipt, the ſame night, he licenſed the ſaid *Stroud* to go with his Keeper unto his Chamber in *Gray's-Inn*, and there to reſide. Sir *Miles Hobart* was alſo by the ſaid Warden of the *Marſhalſea*, delivered to the Keeper of the *Gatehouſe*, but being ſick, and abiding at his Chamber in *Fleet-ſtreet*, he could not be removed to the priſon of the *Gatehouſe*, but there continued with his Keeper alſo. Afterwards the Sickneſs increaſing in *London*, they (with the licence of the Keeper of the *Gatehouſe*, as it was proved) retired with their Under-keepers to their ſeveral Houſes in the Country for the ſpace of ſix weeks, until *Michaelmas Term* then next following, when by direction of the ſaid Keeper they returned to his Houſe; but in all that ſpace it could not be proved, that they were in any part of the old Priſon of the *Gatehouſe*, but in the new building thereto adjoining; unleſs when they once withdrew themſelves to a Cloſe-ſtool, which was placed near to the Parlour, and was part of the old Priſon of the *Gatehouſe*. This Evidence was given to both the Juries, and both of them returned their Verdicts ſeverally, *That they were not Guilty*, according to the information exhibited againſt them. And in this caſe it was debated at the Bar and Bench, whether by this receipt and continuance in the new houſe only, it may be ſaid, That they ever had been impriſoned? And the Judges held, *That their voluntary retirement to the Cloſe-ſtool made them to be priſoners*. They reſolved alſo, that in this and all other caſes, although a Priſoner depart from Priſon with his Keeper's licence, yet it is an offence as well puniſhable in the Priſoner as in the Keeper. And *Calthorpe* made this difference between breach of Priſon and eſcape; the firſt is *againſt the Gaoler's will*; the other is *with his conſent, but in both the Priſoner is puniſhable*: whereunto the whole Court agreed. It was alſo reſolved that the Priſon of the *King's-Bench* is not any local Priſon, confined only to one place, and that every place where any Perſon is reſtrained of his Liberty is a Priſon: As, if one take ſanctuary and depart thence, he ſhall be ſaid to break Priſon *.

In the next Parliament, which met *April* 13, 1640, it was referr'd to a Committee, to conſider of the breach of privilege by Sir *John Finch* (the Speaker), 5 *Car.* I. who refus'd to put the queſtion by command of the Houſe; and the Committee order'd to ſtate matter of fact, and ſo report.

Monday, *April* 20. Mr. Treaſurer reported, that Sir *John Finch* late Speaker did not ſay, *He would not put the queſtion*; but that, *He durſt not put it*: That *he left the Chair not to diſobey the Houſe*, but *to obey his Majeſty*.

The Houſe thereupon *reſolv'd*, That it was a breach of Privilege of the Houſe, for the Speaker not to obey the commands of the Houſe; and that it appear'd the Speaker did adjourn the Houſe by command of the King, without conſent of the Houſe, which is alſo a breach of Privilege; it was therefore order'd, that this ſhould be humbly repreſented to his Majeſty.

But this Parliament being ſoon diſſolved, *viz. May* 5. 1640. nothing was done for theſe Gentlemen; but in the next Parliament, which met *Nov.* 3. 1640. reparation was ordered them; as will be ſhewn in the following Proceeding.

XVIII. Proceedings againſt Sir JOHN ELLIOT, DENZIL HOLLES, Eſq. and BENJAMIN VALENTINE, Eſq. for ſeditious Speeches in Parliament; in *B. R. Mich.* 5 *Car.* I. 1629 †.

SIR *Robert Heath*, the King's Attorney-General, exhibited informations in this Court againſt Sir *John Elliot*, Knight, *Denzil Holles*, and *Benjamin Valentine*, Eſqrs. the effect of which was, ‡ That the King that now is, for weighty cauſes, ſuch a day and year, did ſummon a Parliament, and to that purpoſe ſent his Writ to the Sheriff of *Cornwall* to chuſe two Knights: by virtue whereof Sir *John Elliot* was choſen and returned Knight for *Cornwall*. And that in the ſame manner, the other Defendants were elected Burgeſſes of other places, for the ſame Parliament. And ſhewed further, that Sir *John Finch* was choſen for one of the Citizens of *Canterbury*, and was Speaker of the Houſe of Commons. And that the ſaid *Elliot* publickly and maliciouſly in the Houſe of Commons, to raiſe ſedition between the King, his Nobles, and People, uttered theſe words, *That the Council and Judges had all conſpired to trample under foot the Liberties of the Subjects*. He further ſhewed, that the King had power to call, adjourn, and diſſolve Parliaments: and that the King, for divers reaſons, had a purpoſe to have the Houſe of Commons adjourned, and gave direction to Sir *John Finch*, then the Speaker, to move an adjournment; and if it ſhould not be obeyed, that he ſhould forthwith come from the Houſe to the King. And that the Defendants, by confederacy aforehand, ſpake a long and continued ſpeech, which was recited *verbatim*, in which were divers malicious and ſeditious words, of dangerous conſequence. And to the intent that they might not be prevented of uttering their premeditate Speeches, their intention was, that the Speaker ſhould not go out of the Chair till they had ſpoken them; the Defendants, *Holles* and *Valentine*, laid violent hands upon the Speaker, to the great affrightment and diſturbance of the Houſe. And the Speaker being got out of the Chair, they by violence ſet him in the Chair again; ſo that there was a great tumult in the Houſe. And after the ſaid ſpeeches pronounced by Sir *John Elliot*, *Holles* did recapitulate them.

And to this information,

The Defendants put in a plea to the juriſdiction of the Court, becauſe *theſe offences are ſuppoſed to be done in Parliament, and ought not to be puniſhed in this Court, or in any other, but in Parliament.*

And the Attorney-General moved the Court, to over-rule the plea to the juriſdiction. And that, he ſaid, the Court might do, although he had not demurred upon the Plea.

But the Court would not over-rule the plea, but gave day to join in demurrer this Term. And on the firſt Day of the next Term, the record ſhall be read, and within a day after ſhall be argued at bar.

Hyde, Chief-Juſtice, ſaid to the Counſel of the Defendants; So far light we will give you: this is no new queſtion, but all the Judges in *England*, and Barons of the *Exchequer*, before now, have oft been aſſembled on this occaſion, and have, with great patience, heard the arguments on both ſides; and it was reſolved by them all with one voice, That an offence committed in Parliament, criminally or contemptuouſly, the Parliament being ended, reſts puniſhable in another Court.

Jones. It is true, that we all reſolved, That an offence committed in Parliament againſt the Crown, is puniſhable after the Parliament in another Court; and what Court ſhall that be, but the Court of the *King's-Bench*, in which the King, by intendment, ſitteth?

Whitlocke. The queſtion is now reduced to a narrow room, for all the Judges are agreed, That an offence committed in Parliament againſt the King or his Government, may be puniſhed out of Parliament. So that the ſole doubt which now remains, is, whether this Court can puniſh it.

Croke agreed, That ſo it had been reſolved by all the Judges, becauſe otherwiſe there would be a failure of Juſtice. And by him, if ſuch an offence be puniſhable in another Court, what Court ſhall puniſh it but this Court, which is the higheſt Court in the Realm for criminal offences? And perhaps not only criminal actions committed in Parliament are puniſhable here, but words alſo.

Mr. *Maſon* of *Lincoln's-Inn* argued for Sir *John Elliot*, one of the Defendants. The charges in the information againſt him are three:

1 For Speeches.

2. For Contempts to the King, in reſiſting the Adjournment.

* Mr. *Whitlocke*, in his Memorials, *p.* 16. ſays, In the Year 1631. ſome of the impriſoned Parliament-men, upon their Petition, were removed from the Priſons wherein they then were, to other Priſons, to prevent the danger of the Sickneſs then increaſing. Sir *Miles Hobart* put in ſureties for his good behaviour, and ſo was diſcharged from his Impriſonment.

Anno 1631. Sir *John Walter* died, a grave and learned Judge; he fell into the King's diſpleaſure, charged by his Majeſty *for dealing cautelouſly, and not plainly*, with him, *in the buſineſs concerning the Parliament-men*: as if he had given his opinion to the King privately one way, and thereby brought him on the Stage, and there left him, and then was of another Judgment.

His opinion was contrary to all the reſt of the Judges, *That a Parliament-man for Miſdemeanor in the Houſe, criminally, out of his Office and Duty, might be only impriſoned, and not farther proceeded againſt*: which ſeemed very ſtrange to the other Judges, becauſe it could not appear, whether the Party had committed an offence, unleſs he might be admitted to his anſwer.

The King diſcharged him of his ſervice by meſſage, yet he kept his place of Chief-Baron, and would not leave it but by legal Proceeding; becauſe his Patent of it was, *Quam diu ſe bene geſſerit*, and it muſt be tried whether he did *bene ſe geſſere*, or not: He never ſat in Court after the King forbad him, yet held his place till he died.

† The King at firſt intended to proceed againſt the above Gentlemen in the *Star-Chamber*, to which end an Information was exhibited againſt them in that Court, on the 7th of *May*; but that being dropped, they were proceeded againſt in the *King's-Bench*, and the ſame matters in effect were ſet forth as in the Information in the *Star-Chamber*.

‡ See the Information in the *King's Bench*, the Defendant's Plea, the Attorney-General's Demurrer, *&c.* at large, *poſtea*.

3. For Conſpiracy with the other Defendants, to detain Mr. Speaker in the Chair.

In the diſcuſſion of theſe matters, he argued much to the ſame intent he had argued before, therefore his argument is reported here very briefly.

1. For his Speeches, they contain matter of accuſation againſt ſome great Peers of the Realm; and as to them, he ſaid, that the King cannot take notice of them. The Parliament is a Council, and the Grand Council of the King; and Councils are ſecret and cloſe, none other have acceſs to thoſe Councils of Parliament, and they themſelves ought not to impart them without the conſent of the whole Houſe. A Jury in a Leet, which is ſworn to inquire of offences within the ſaid juriſdiction, are ſworn to keep their own counſel; ſo the Houſe of Commons inquire of all grievances within the Kingdom, and their Counſels are not to be revealed. And to this purpoſe was a petition, 2 *H.* IV. *numb.* 10. That the King ſhall not give credit to any private reports of their proceedings, to which the King aſſents: therefore the King ought not to give credit to the information of theſe offences in this caſe. 2. The words themſelves contain ſeveral accuſations of great men; and the liberty of accuſation hath always been Parliamentary. 50 *E.* III. Parliament-Roll, *numb.* 21. the Lord *Latimer* was impeached in Parliament for ſundry offences. 11 *R.* II. the Archbiſhop of *York*; 18 *H.* VI. *numb.* 18. the Duke of *Suffolk*; 1 *Mar. Dy.* 93. the Duke of *Norfolk*; 36 *H.* VI. *numb.* 60. un Vickar General; 2 & 3 *E.* VI. *c.* 18. the Lord *Seymour*; 18 of King *James*, the Lord of *St. Albans*, Chancellor of *England*; and 21 of King *James*, *Cranfield*, Lord Treaſurer; and 1 *Car.* the Duke of *Buckingham*. 3. This is a privilege of Parliament which is determinable in Parliament, and not elſewhere; 11 *R.* II. *numb.* 7. the Parliament-Roll, A Petition exhibited in Parliament, and allowed by the King, That the liberties and privileges of Parliament ſhall only be diſcuſſed there, and not in other Courts, nor by the Common, nor Civil Law; (ſee this caſe more at large in *Selden*'s notes upon *Forteſcue*, *f.* 42.) 11 *R.* II. Roll of the proceſs and judgment. An appeal of Treaſon was exhibited againſt the Archbiſhop of *Canterbury* and others, and there the advice of the ſages of the one Law and the other being required; but becauſe the appeal concerned perſons which are Peers of the Realm, which are not tried elſewhere than in Parliament, and not in an inferior Court. 28 *H.* VI. *numb.* 18. There being a queſtion in Parliament concerning precedency, between the Earl of *Arundel*, and the Earl of *Devon*, the opinion of the Judges being demanded, they anſwered, That this queſtion ought to be determined by the Parliament, and by no other. 31 *H.* VI. *numb.* 25, 26. During the prorogation of the Parliament, *Thorp* that was the Speaker, was out in execution at the ſuit of the Duke of *York*; and upon the re-aſſembly of the Parliament, the Commons made ſuit to the King and Lords to have their Speaker delivered. Upon this, the Lords demand the opinion of the Judges; who anſwer, That they ought not to determine the privileges of the High-Court of Parliament. 4. This accuſation in Parliament is in legal courſe of Juſtice, and therefore the accuſer ſhall never be impeached, 13 *H.* VII. and 11 *Eliz. Dy.* 285. Forging of falſe Deeds brought againſt a Peer of the Realm, action *de ſcandalis magnatum*, doth not lie. *Coke*'s *Rep.* 4. 14. *Cutler* and *Dixy*'s caſe, where divers caſes are likewiſe put to this purpoſe. 35 *H.* VI. 15. If upon the view of the body the ſlayer cannot be found, the *Coroner* ought to enquire, Who firſt found the dead body? And if the firſt finder accuſe another of the murder, that is afterward acquit, he ſhall not have an action upon the caſe, for it was done in legal manner. So it is the duty of the Commons to enquire of the grievances of the Subjects, and the cauſes thereof, and doing it in a legal manner, 19 *H.* VI. 19. 8 *H.* IV. 6. in conſpiracy it is a good plea, that he was one of the indictors. And 20 *H.* VI. 5. that he was a grand Jury-man, and informed his Companions. And 21 *E.* IV. 6, 7. and 35 *H.* VI. 14. that he was a Juſtice of Peace, and informed the Jury, 27 *aſſ. p.* 12. is to the ſame purpoſe. And if a Juſtice of Peace, the firſt Finder, a Juror, or Indictor, ſhall not be puniſhed in ſuch caſes; *à fortiori*, a Member of the Houſe of Commons ſhall not, who, as 1 *H.* VII. is a Judge. 27 *aſſ. p.* 44. may be objected, where two were indicted of a conſpiracy, becauſe they maintained one another; but the reaſon of the ſaid caſe was, becauſe maintenance is a matter forbidden by the Law; but Parliamentary accuſation, which is our matter, is not forbidden by any Law. *Coke*'s *Rep.* 9. 56. there was a conſpiracy, in procuring others to be indicted. And it is true, for there it was not his duty to prefer ſuch accuſation. (2) The accuſation was extra-judicial, and out of Court; but it was not ſo in our caſe. (3) Words ſpoken in Parliament, which is a ſuperiour Court, cannot be queſtioned in this Court, which is inferiour. 3 *E.* III. 19. and *Stamford* 153. will be objected, where the Biſhop of *Wincheſter* was arraigned in this Court, becauſe he departed the Parliament without licence; there is but the opinion of *Scroop*, and the caſe was entered, *P.* 3 *E.* 19. And it is to be obſerved, that the plea of the Biſhop there, was never over-ruled. From this I gather, that *Scroop* was not conſtant to his opinion, which was ſudden, being in the ſame Term in which the plea was entered; or if he were, yet the other Judges agree not with him; and alſo at laſt the Biſhop was diſcharged by the King's Writ. From this I gather, that the opinion of the Court was againſt the King, as in *Pl.* 20. in *Fogaſſa*'s caſe, where the opinion of the Court was againſt the King, the party was diſcharged by Privy-Seal. 1 and 2 *Phil. & Mar.* hath been objected, where an information in this Court was preferred againſt Mr. *Plowden*, and other Members of the Houſe of Commons, for departing from the Houſe without licence. But in that caſe I obſerve theſe matters. (1) That this information depended during all the life of the Queen, and at laſt was *ſine die*, by the death of the Queen. (2) In the ſaid caſe, no plea was made to the juriſdiction of the Court, as here it is. (3) Some of them ſubmitted themſelves to the fine, becauſe it was eaſy, for it was but 53*s.* 4*d.* But this cannot be urged as a precedent, becauſe it never came in judgment, and no opinion of the Court was delivered therein. And it is no argument, that becauſe at that time they would not plead to the juriſdiction, therefore we now cannot if we would. (4) Theſe offences were not done in the Parliament-Houſe, but elſewhere by their abſence, of which the Country may take notice; but not of our matters done in Parliament. And abſence from Parliament, is an offence againſt the King's ſummons to Parliament. 20 *R.* II. Parliament-Roll 12. *Thomas Hackſey* was indicted of High-Treaſon in this Court, for preferring Petition in Parliament; but 1 *H.* IV. *numb.* 90. he preferred a Petition to have this judgment voided, and ſo it was, although the King had pardoned him before. And 1 *H.* IV. *numb.* 104. all the Commons made petition to the ſame purpoſe, becauſe this tends to the deſtruction of their privileges. And this was likewiſe granted. 4 *H.* VIII. *c.* 8. *Strode's* caſe, That all condemnations impoſed upon one, for preferring of any Bill, ſpeaking, or reaſoning in Parliament, are void. And this hath always been conceived to be a general Act, becauſe the prayers, time, words, and perſons are general, and the anſwer to it is general; for a general Act is always anſwered with, *Le Roy voit*, and a particular Act with *Soit droit fait al partyes*. And 33 *H.* VI. 17, 18. a general Act is always inrolled, and ſo this is.

Secondly, For the ſecond matter, the contempt to the command of the adjournment, *Jac.* 18. it was queſtioned in Parliament, whether the King can adjourn the Parliament, (although it be without doubt that the King can prorogue it). And the Judges reſolve, that the King may adjourn the Houſe by commiſſion; and 27 *Eliz.* it was reſolved accordingly. But it is to be obſerved, that none was then impeached for moving that queſtion. (2) It is to be obſerved, that they reſolve, that the adjournment may be by commiſſion, but not reſolved that it may be by a verbal command, ſignified by another; and it derogates not from the King's Prerogative, that he cannot ſo do, no more than in the caſe of 26 *H.* VIII. 8. that he cannot grant one acre of land by parol. The King himſelf may adjourn the Houſe in perſon, or under the Great Seal, but not by verbal Meſſage, for none is bound to give credit to ſuch Meſſage; but when it is under the Great Seal, it is *Teſte Meipſo*. And if there was no command, then there can be no contempt in the diſobedience of that command. (3) In this, no contempt appears by the information; for the information is, That the King had power to adjourn Parliaments. Then put the caſe, the command be, that they ſhould adjourn themſelves: this is no purſuance of the Power which he is ſuppoſed to have. The Houſe may be adjourned two ways, to wit, by the King, or by the Houſe itſelf; the laſt is their own voluntary act, which the King cannot compel, for, *Voluntas non cogitur*.

Thirdly, For the third matter, which is the conſpiracy: although this be ſuppoſed to be out of the Houſe, yet the Act is legal; for Members of the Houſe may adviſe of matters out of the Houſe; for the Houſe itſelf is not ſo much for conſultations, as for propoſition of them. And 20 *H.* VI. 34. is, that inqueſts which are ſworn for the King, may enquire of matters elſewhere. (2) For the conſpiracy to lay violent hands upon the Speaker, to keep him in the chair; the Houſe hath privilege to detain him in the chair, and it was but lightly and ſoftly, and other Speakers have been ſo ſerved. (3) The King cannot prefer an information for treſpaſs; for it is ſaid, the King ought to be informed by a Jury, to wit, by indictment, or preſentment. (4) This cannot be any contempt, becauſe it appears not that the Houſe was adjourned; and if ſo, then the Speaker ought to remain in the chair; for without him, the Houſe cannot be adjourned. But it may be objected, that the information is, That all theſe matters were done maliciouſly and ſeditiouſly. But to this I anſwer, That this is always to be underſtood according to the ſubject matter, 15 *E.* IV. 4. and 18 *H.* VIII. 5. A wife that hath title to have Dower, agrees with another to enter, (which hath right) that ſhe againſt him may recover her dower. This ſhall not be called *Covin*, becauſe both the parties have right and titles. (2) It will be objected, That if theſe matters ſhall not be puniſhable here; they ſhall be unpuniſhed altogether, becauſe the Parliament is determined. To this I ſay, That they may be puniſhed in the ſubſequent Parliament, and ſo there ſhall be no failure of right. And many times matters in one Parliament have been continued to another, as 4 *E.* III. *numb.* 16. the Lord *Berkley*'s caſe, 50 *E.* III. *numb.* 185. 21 *R.* II. *c.* 16. 6 *H.* VI. *numb.* 45, 46. 8 *H.* IV. *numb.* 12. offence in the foreſt ought to be puniſhed in Eyre, and Eyres oftentimes were not held but every third year. *C.* 9. *Epiſtle*, and 36 *E.* III. *t.* 10. A Parliament may be every year. Error in this Court cannot be reverſed but in Parliament, and yet it was never objected, that therefore there ſhall be a failure of right. 25 *E.* III. *c.* 2. If a new caſe of Treaſon happen, which is doubtful, it ſhall not be determined till the next Parliament. So in *Weſtm.* 2. *c.* 28. where a new caſe happens, in which there is no Writ, ſtay ſhall be made till the next Parliament. And yet in theſe caſes, there is no failure of right. And ſo the Judges have always done in all difficult caſes; they have referred the determination of them to the next Parliament, as appears by 2 *E.* III. 6, 7. 1 *E.* III. 8. 33 *H.* VI. 18. 5 *E.* II. *Dower* 145. the caſe of dower of a rent-charge. And 1 *Jac.* the Judges refuſe to deliver their opinions concerning the union of the two Kingdoms. The preſent caſe is great, rare, and without precedent, therefore, not determinable but in Parliament. And it is of dangerous conſequence; for (1) by the ſame reaſon, all the Members of the Houſe of Commons may be queſtioned. (2) The parties ſhall be diſabled to make their defence, and the Clerk of Parliament is not bound to diſcloſe thoſe particulars. And by this means, the debates of a great Council ſhall be referred to a petty Jury. And the parties cannot make juſtification, for they cannot ſpeak thoſe words here, which were ſpoken in the Parliament, without ſlander. And the Defendants have not means to compel any to be witneſſes for them; for the Members of the Houſe ought not to diſcover the Counſel of the Houſe: ſo that they are debarred of juſtification, evidence, and witneſs. *Laſtly*, By this means, none will adventure to accuſe any offender in Parliament, but will rather ſubmit himſelf to the common danger; for, for his pains he ſhall be impriſoned, and perhaps greatly fined: and if both theſe be unjuſt, yet the party ſo vexed can have no recompence. Therefore, *&c.*

The Court. The queſtion is not now, whether theſe matters be offences, and whether true or falſe. But, admitting them to be offences, the ſole queſtion is, whether this Court may puniſh them; ſo that a great part of your argument is nothing to the preſent queſtion.

At another day, being the next, Mr. *Calthorpe* (who ſucceeded Mr. *Maſon*, as Recorder of *London*) argued for Mr. *Valentine*, another of the Defendants:

1. In general, he ſaid, for the nature of the crimes, that they are of four ſorts:
   1. In Matter.
   2. In Words.
   3. By Conſent.
   4. By Letters.

Two of them are laid to the charge of this Defendant, to wit, the crime of the Matter, and of Conſent. And of offences, *Bracton* makes ſome publick, ſome private. The offences here are publick. And of them, ſome are capital, ſome not capital; as aſſault, conſpiracy, and ſuch like, which have not the puniſhment of life and death. Publick crimes capital are ſuch as are againſt the Law of Nature, as Treaſon, Murder; I will agree, that if they be committed in Parliament, they may be queſtioned elſewhere out of Parliament. But in our caſe, the crimes are not capital, for they are aſſault and conſpiracy, which in many caſes may be juſtified, as appears by 22 *H.* VII. *Keilw.* 92. 2. *aſſ.* 3 *H.* IV. 10. 22 *E.* IV. 43. Therefore this Court ſhall not have juriſdiction of them, for they are not againſt the Law of Nations, of God, or Nature; and if theſe matters ſhall be examinable here, by conſequence all actions of Parliament-men may be drawn in queſtion in this Court. But it ſeems by theſe reaſons, that this Court ſhall not have juriſdiction, as this caſe is:

1. Becauſe theſe offences are juſtifiable, being but the bringing the Speaker to the Chair, which alſo perhaps was done by the Votes of the Commons; but if theſe matters ſhall be juſtified in this Court, no trial can be, for upon iſſue of his own wrong, he cannot be tried, becauſe acts done in the Houſe of Commons are of record, as it was reſolved in the Parliament, 1 *Jac.* and 16 *H.* VII. 3. *C.* 9. 31. are, that ſuch matters cannot be tried by the Country. And now they cannot be tried by record, becauſe, as 22 *H.* VIII. *Dy.* 32. is, an inferior Court cannot write to a ſuperior. And no *Certiorari* lies out of the *Chancery*, to ſend this here by *Mittimus*, for there was never any precedent thereof; and the Book of the Houſe of Commons, which is with their Clerk, ought not to be divulged. And *C. Little.* is, that if a Man be indicted in this Court for Piracy committed upon the Sea, he may well plead to the juriſdiction of this Court, becauſe this Court cannot try it.

2. It appears by the old Treatiſe, *de modo tenendi Parliamentum*, that the Judges are but aſſiſtants in the Parliament; and if any words or acts are made there, they have no power to contradict or controul them. Then it is incongruous that they, after the Parliament diſſolved, ſhall have power to puniſh ſuch words or acts, which at the time of the ſpeaking or doing, they had not power to contradict. There are ſuperior, middle, and more inferior Magiſtrates; and the ſuperior ſhall not be ſubject to the controul of the inferior. It is a poſition, that *in pares eſt nullum imperium, multo minus in eos, qui magis imperium habent. C. Littl.* ſays, That the Parliament is the ſupreme Tribunal of the Kingdom, and they are Judges of the ſupreme Tribunal; therefore they ought not to be queſtioned by their inferiors. (3.) The offences objected do concern the privileges of Parliament, which privileges are determinable in Parliament, and not elſewhere, as appears by the precedents which have been cited before. (4.) The Common Law hath aſſigned proper Courts for matters, in reſpect of the place and perſons: 1. For the place, it appears by 11 *E.* IV. 3. and *old Entries*, 101. that in an *ejectione firmæ*, it is a good plea, that the Land is ancient demeſne, and this excludes all other Courts. So it is for Land in *Durham*, *old Entries*, 419. for it is queſtionable there, and not out of the County. 2. For Perſons, *H.* 15 *H.* VII. *rol.* 93. *old Entries*, 47. If a Clerk of the *Chancery* be impleaded in this Court, he may plead his privilege, and ſhall not anſwer. So it is of a Clerk of the *Exchequer*, *old Entries*, 473. then much more when offences are done in Parliament, which is exempt in ordinary juriſdiction, they ſhall not be drawn into queſtion in this Court. And if a man be indicted in this Court, he may plead ſanctuary, 22 *H.* VII. *Keilw.* 91. & 22. and ſhall be reſtored, 21 *E.* III. 60. The Abbot of *Bury*'s caſe is to the ſame purpoſe. (5.) For any thing that appears, the Houſe of Commons had approved of theſe matters, therefore they ought not to be queſtioned in this Court. And if they be offences, and the ſaid Houſe hath not puniſhed them, this will be a caſting of imputation upon them. (6.) It appears by the *old Entries*, 446, 447. that ſuch an one ought to repreſent the Borough of *St. Germains*, from whence he was ſent; therefore he is in nature of an Ambaſſador, and he ſhall not be queſtioned for any thing in the execution of his Office, if he do nothing againſt the Law of Nature or Nations, as it is the caſe of an Ambaſſador. In the time of Queen *Elizabeth*, (*Camden*'s Brit. 449.) the Biſhop of *Roſs*, in *Scotland*, being Ambaſſador here, attempted divers matters againſt the State; and by the opinion of all the Civilians of the ſaid time, he may be queſtioned for thoſe offences, becauſe they are againſt the Law of Nations and Nature; and in ſuch matters, he ſhall not enjoy the privileges of an Ambaſſador. But if he commit a civil offence, which is againſt the Municipal Law only, he cannot be queſtioned for it, as *Bodin. de Republica*, agrees the caſe. Upon the Statute of 28 *H.* VIII. *c.* 15. for Trial of Pirates, 13 *Jac.* the caſe fell out to be thus: A Jew came Ambaſſador to the *United Provinces*, and in his journey he took ſome *Spaniſh* Ships, and after was driven upon this Coaſt; and agreed upon the ſaid Statute, that he cannot be tried as a Pirate here by commiſſion, but he may be queſtioned *civiliter* in the Admiralty; for, *Legati ſuo Regi ſoli judicium faciunt.* So Ambaſſadors of Parliament, *ſoli Parliamento*, to wit, in ſuch things, which of themſelves are juſtifiable. (7.) There was never any precedent, that this Court had puniſhed offences of this nature, committed in Parliament, where any plea was put in, as here it is to the juriſdiction of the Court; and where there is no precedent, non-uſage is a good expoſitor of the Law. Lord *Littl. Section* 180. *Co. Littl. f.* 81. ſays, as uſage is a good interpreter of the Laws, ſo non-uſage, where there is no example, is a great intendment that the Law will not bear it. 6 *Eliz. Dy.* 229. upon the Statute of 27 *H.* VIII. of inrollments, that bargain and ſale of a Houſe in *London* ought not to be enrolled; the reaſon there given is, becauſe it is not uſed. 23 *Eliz. Dy.* 376. no error lies here of a judgment given in the five Ports, becauſe ſuch Writ was never ſeen; yet in the diverſity of Courts it is ſaid, that error lies of a judgment given in the five Ports. 39 *H.* VI. 39. by *Aſhton*, that a protection to go to *Rome* was never ſeen, therefore he diſallowed it. (8.) If this Court ſhall have juriſdiction, the Court may give judgment according to Law, and yet contrary to Parliament Law, for the Parliament in divers caſes hath a peculiar Law. Notwithſtanding the Statute of 1 *H.* V. *c.* 1. that every Burgeſs ought to be reſident within the Borough of which he is Burgeſs, yet the conſtant uſage of Parliament is contrary thereunto; and if ſuch matter ſhall be in queſtion before ye, ye ought to adjudge according to the Statute, and not according to their uſage. So the Houſe of Lords hath a ſpecial Law alſo, as appear by 11 *R.* II. the roll of the proceſs and judgment, (which hath been cited before to another purpoſe) where an appeal was not according to the one Law or the other, yet it was good according to the courſe of Parliament. (9.) Becauſe this matter is brought in this Court by way of information, where it ought to be by way of indictment. And it appears by 41 *aſſ. p.* 12. that if a Bill of Deceit be brought in this Court, where it ought to be by Writ, this matter may be pleaded to the juriſdiction of the Court, becauſe it is *vi & armis*, and *contra pacem*. It appears by all our Books, that informations ought not to be grounded upon ſurmiſes, but upon matter of Record, 4 *H.* VII. 5. 6. *E.* VI. *Dy.* 74. Information in the *Exchequer*, and 11 *H.* VIII. *Kielw.* 101. are to this purpoſe. And if the matter be *vi & armis*, then it ought to be found by Inqueſt. 2 *E.* III. 1, 2. Appeal ſhall not be granted upon the return of the Sheriff, but the King ought to be certified of it by indictment. 1 *H.* VII. 6. and *Stamf. f.* 95. *a.* upon the Statute of 25 *E.* III. *c.* 4. that none ſhall be impriſoned but upon indictment or preſentment; and 28 *E.* III. *c.* 3. 42 *E.* III. *c.* 3. are to the ſame purpoſe. So here, this information ought to have been grounded upon indictment, or other matter of Record, and not upon bare intelligence given to the King. (10.) The preſent caſe is great and difficult, and in ſuch caſes, the Judges have always outed themſelves of juriſdiction, as appears by *Bracton*, *Book* II. *f.* 1. *Si aliquid novi non uſitatum in Regno acciderit*, 2 *E.* III. 6, 7. and *Dower* 242.

Now I will remove ſome objections which may be made.

Where the King is Plaintiff, it is in his election to bring his action in what Court he pleaſes. This is true in ſome ſenſe, to wit, That the King is not reſtrained by the Statute of *Magna Charta*, *Quod communia placita non ſequantur curiam noſtram*; for he may bring his *Quare impedit* in *B. R.* And if it concerns *Durham*, or other County Palatine, yet the King may have his action here: for the ſaid Courts are created by Patent, and the King may not be reſtrained by Parliament, or by his own Patent, to bring his action where he pleaſeth. But the King ſhall not have his action where he pleaſeth againſt a prohibition of the Common Law, as 12 *H.* VII. *Keilw.* 6. the King ſhall not have a *Formedon* in *Chancery*. And *C.* 6. 20. *Gregory's* caſe, if the King will bring an information in an inferior Court, the party may plead to the juriſdiction. So where the Common Law makes a prohibition, the King hath not election of his Court.

The information is *contra formam Statuti*, which Statute, as I conceive, is intended the Statute of 5 *H.* IV. *c.* 6. and 11 *H.* VI. *c.* 11. which gives power to this Court to puniſh an aſſault made upon the ſervant of a Knight of Parliament. But our caſe is not within thoſe Statutes, nor the intent of them; for it is not intendible, that the Parliament ſhould diſadvantage themſelves in point of their privilege. And this was a Treſpaſs done within the Houſe, by Parliament-men amongſt themſelves. And *Crompton*'s *Juriſdiction of Courts*, *f.* 8. ſaith, That the Parliament may puniſh treſpaſſes done there.

Precedents have been cited of Parliament-men impriſoned and puniſhed for matters done in Parliament. To this I ſay, That there is *Via juris*, and *Via facti*; and *Via facti* is not always *Via juris*. *C.* 4. 93. precedents are no good directions, unleſs they be judicial.

Otherwiſe there will be a failure of Juſtice, wrongs ſhall be unpuniſhed. To this I anſwer, That a miſchief is oft-times rather ſufferable than an inconvenience, to draw in queſtion the privileges of Parliament. By the antient Common Law, as it appears by 21 *E.* III. 23. and 21 *aſſ.* if an Infant bring an Appeal, the ſuit ſhall be ſtaid during his infancy; becauſe the party cannot have his Trial by battle againſt the Infant; but the Law is now held otherwiſe in the ſaid caſe. And in ſome caſes, criminal offences ſhall be diſpuniſhed, 29 *H.* VIII. *Dy.* 40. Appeal of Murder lies not for Murder done in ſeveral Counties.

This Court of *B. R.* is *coram ipſo Rege*; the King himſelf, by intendment, is here in perſon. And, as it is ſaid, *C.* 9. 118. it is *Supremum Regni Tribunal*, of ordinary juriſdiction. But to this I ſay, That the Parliament is a tranſcendent Court, and of tranſcendent juriſdiction: it appears by 28 *aſſ. p.* 52. that the ſtile of other Courts is *coram Rege*, as well as this is; as *coram Rege in Cancellaria*, *coram Rege in Camera*; and though it be *coram Rege*, yet the Judges give the judgment. And in the time of *H.* III. in this Court, ſome Entries were *coram Rege*, others, *coram Hugone de Bigod.*

The privileges of Parliament are not queſtioned, but the conſpiracies and miſdemeanors of ſome of them. But to this I ſay, that the diſtinction is difficult and narrow in this caſe, where the offences objected are juſtifiable, and if they be offences, this reflects upon the Houſe, which hath not puniſhed them.

The caſes of 3 *E.* III. 19. and 1 and 2 *Phil. & Mar.* have been objected. But for the laſt it is obſervable, That no plea was pleaded to the juriſdiction, as it is in our caſe. And if a Parliament-man, or other which hath privilege, be impleaded in foreign Court, and neglect his plea to the juriſdiction, the Court may well proceed, 9 *H.* VII. 14. 36 *H.* VI. 34 *H.* 13 *Jac.* In this Court the Lord *Norreys*, that was a Peer of Parliament, was indicted for the Murder of one *Bigod*, and pleaded his pardon. And there it was doubted, how the Court ſhould proceed againſt him (for he, by Law, ought to have his Trial by his Peers). And it was reſolved, that when he pleads his pardon, or confeſſeth his fault, thereby he gives juriſdiction to the Court, and the Court may give judgment againſt him. So that theſe caſes, where it was not pleaded to the juriſdiction, can be no precedent in our caſe.

The privilege here is not claimed by Preſcription or Charter, therefore it is not good. But I ſay, that notwithſtanding this, it is good; for where the Common Law outs a Court of juriſdiction, there needs no Charter or Preſcription; 10 *H.* VI. 13. 8 *H.* VIII. *Keilw.* 189. *Br. n. c.* 515. Where ſanctuary of a Church is pleaded, there's no need to make preſcription, becauſe every Church is a ſanctuary by the Common Law. Therefore, *&c.*

Sir *Robert Heath*, the King's Attorney, the ſame day argued on the other ſide, but briefly. *Firſt*, he anſwered the objections which had been made.

Firſt, He ſaid, That informations might well be for matters of this nature, which are not capital; and that there are many precedents of ſuch informations. (But note, that he produced none of them.)

Secondly,

Secondly, It hath been objected, That they are a Council, therefore they ought to ſpeak freely. But ſuch ſpeeches which are here pronounced, prove them not Councillors of State, but *Bedlams*; the addition of one word would have made it Treaſon, to wit, *proditorie*. But it is the pleaſure of the King to proceed in this manner, as now it is. And there is great difference between Bills and Libels, and between their proceedings, as Council and as mutinous.

Thirdly, That it would be of dangerous conſequence; for by this means none would adventure to complain of grievances. I anſwer, they may make their complaints in a parliamentary manner; but they may not move things, which tend to diſtraction of the King and his Government.

Fourthly, Theſe matters may be puniſhed in following Parliaments But this is impoſſible, for following Parliaments cannot know with what mind theſe matters were done. Alſo the Houſe of Commons is not a Court of Juſtice of itſelf. The two Houſes are but one body, and they cannot proceed criminally to puniſh crimes, but only their Members by way of impriſonment; and alſo they are not a Court of Record. And they have forbid their Clerk to make entry of their ſpeeches, but only of matters of courſe; for many times they ſpeak upon the ſudden, as occaſion is offered. And there is no neceſſity that the King ſhould expect a new Parliament. The Lords may grant Commiſſions to determine matters after the Parliament ended: but the Houſe of Commons cannot do ſo. And alſo a new Houſe of Commons conſiſts of new men, which have no cognizance of theſe offences. 1 *H.* IV. The Biſhop of *Carliſle*, for words ſpoken in the Parliament, that the King had not right to the Crown, was arraigned in this Court of High-Treaſon; and then he did not plead his privilege of Parliament, but ſaid, That he was *Epiſcopus unctus*, &c.

Fitzby, 4 *H.* VIII. *Strode*'s caſe hath been objected. But this is but a particular Act, although it be in print; for *Raſtal* entitles it by the name of *Strode*: ſo the title, body, and proviſo of the Act are particular.

Sixthly, That this is an inferiour Court to the Parliament, therefore, *&c.* To this I ſay, That, even ſitting the Parliament, this Court of *B. R.* and other Courts, may judge of their privileges, as of a Parliament-man put in execution, *&c.* and other caſes. It is true that the Judges have oft-times declined to give their judgment upon the privileges of Parliament, ſitting the Court. But from this it follows not, that when the offence is committed there, and not puniſhed, and the ſaid Court diſſolved, that therefore the ſaid matter ſhall not be queſtioned in this Court.

Seventhly, By this means the privileges of Parliament ſhall be in great danger, if this Court may judge of them. But I anſwer, That there is no danger at all; for this Court may judge of Acts of Parliament.

Eighthly, Perhaps theſe matters were done by the Votes of the Houſe; or, if they be offences, it is an imputation to the Houſe to ſay, That they had neglected to puniſh them; but this matter doth not appear. And if the truth were ſo, theſe matters might be given in evidence.

Ninthly. There is no precedent in the caſe, which is a great preſumption of Law. But to this I anſwer, That there was never any precedent of ſuch a fact, therefore there cannot be a precedent of ſuch a judgment. And yet in the time of Queen *Elizabeth*, it was reſolved by *Brown*, and many other Juſtices, that offences done in Parliament may be puniſhed out of Parliament, by impriſonment or otherwiſe. And the caſe of 3 *E.* III. 19. is taken for good Law by *Stamf.* and *Fitzh.* And 22 *E.* III. and 1 *Mar.* accord directly with it. But it hath been objected, that there was no plea made to the juriſdiction. But it is to be obſerved, that *Plowden*, that was a learned man, was one of the Defendants, and he pleaded not to the juriſdiction, but pleaded licence to depart. And the ſaid information depended during all the Reign of Queen *Mary*, during which time there were four Parliaments, and they never queſtioned this matter.

But it hath been further objected, That the ſaid caſe differs from our caſe, becauſe that there the offence was done out of the Houſe, and this was done within the Houſe. But in the ſaid caſe, if licence to depart be pleaded, it ought to be tried in Parliament, as well as theſe offences here. Therefore, *&c.*

The Judges alſo the ſame day ſpake briefly to the caſe, and agreed with one voice, *That the Court, as this caſe is, ſhall have juriſdiction, although that theſe offences were committed in Parliament, and that the impriſoned Members ought to anſwer.*

Jones began and ſaid, That though this queſtion be now newly moved, yet it is an ancient queſtion with him; for it had been in his thoughts theſe eighteen years. For this information there are three queſtions in it:

1. *Whether the matters informed be true or falſe? And this ought to be determined by Jury or Demurrer.*

2. *When the matters of the information are found or confeſſed to be true, if the information be good in ſubſtance?*

3. *Admit that the offences are truly charged, if this Court hath power to puniſh them? And that is the ſole queſtion of this day.*

And it ſeems to me, that of theſe offences, although committed in Parliament, this Court ſhall have juriſdiction to puniſh them. The Plea of the Defendants here to the juriſdiction being concluded with a demurrer, is not peremptory unto them, although it be adjudged againſt them; but if the plea be pleaded to the juriſdiction, which is found againſt the Defendant by Verdict, this is peremptory.

In the diſcuſſion of this point, I decline theſe queſtions:

1. *If the matter be voted in Parliament, when it is finiſhed, it can be puniſhed and examined in another Court?*

2. *If the matter be commenced in Parliament, and that ended, if afterward it may be queſtioned in another Court?*

I queſtion not theſe matters; but I hold, that an offence committed criminally in Parliament, may be queſtioned elſewhere, as in this Court; and that for theſe reaſons:

Firſt, Quia intereſt Reipublicæ ut maleficia non maneant impunita: *and there ought to be a freſh puniſhment of them. Parliaments are called at the King's pleaſure, and the King is not compellable to call his Parliament; and if before the next Parliament, the party offending, or the witneſſes die, then there will be a failure of Juſtice.*

Secondly, *The Parliament is no conſtant Court every Parliament moſtly conſiſts of ſeveral men, and, by conſequence, they cannot take notice of matters done in the foregoing Parliament; and there they do not examine by oath, unleſs it be in* Chancery, *as it is uſed of late time.*

Thirdly, *The Parliament cannot ſend Proceſs to make the offenders to appear at the next Parliament; and being at large, if they hear a noiſe of a Parliament, they will* fugam facere, *and ſo prevent their puniſhment.*

Fourthly, *Put the caſe, that one of the Defendants be made a Baron of Parliament, now he cannot be puniſhed in the Houſe of Commons, and ſo he ſhall be unpuniſhed.*

It hath been objected, *That the Parliament is the ſuperiour Court to this, therefore this Court cannot examine their proceedings.*

To this I ſay, That this Court of the *King's-Bench* is a higher Court than the Juſtices of Oyer and Terminer, or the Juſtices of Aſſize: but if an offence be done where the *King's-Bench* is, after it is removed, this offence may be examined by the Juſtices of Oyer and Terminer, or by the Juſtices of Aſſize. We cannot queſtion the judgments of Parliaments, but their particular offences.

2 Object. *It is a privilege of Parliament, whereof we are not competent Judges.*

To this I ſay, That *privil gium eſt privata Lex & privat. legem.* And this ought to be by grant or preſcription in Parliament: and then it ought to be pleaded for the manner, as is in 33 *H.* VIII. *Dy.* as it is not here pleaded. Alſo we are Judges of all Acts of Parliament: as 4 *H.* VII. Ordinance made by the King and Commons is not good, and we are Judges what ſhall be a Seſſion of Parliament, as it is in *Plowden*, in *Partridge*'s caſe. We are Judges of their lives and lands, therefore of their liberties. And 8 *Eliz.* (which was cited by Mr. Attorney) it was the opinion of *Dyer*, *Oatlyn*, *Welſh*, *Brown*, and *Southcot*, Juſtices, That offences committed in Parliament may be puniſhed out of Parliament. And 3 *Ed.* V. 19. it is good Law. And it is uſual near the end of Parliaments to ſet down ſome petty puniſhment upon offenders in Parliament, to prevent other Courts. And I have ſeen a Roll in this Court, in 6 *H.* VI. where judgment was given in a Writ of Annuity in *Ireland*, and afterward the ſaid judgment was reverſed in Parliament in *Ireland*; upon which judgment Writ of Error was brought in this Court, and reverſed.

Hyde Chief-Juſtice, to the ſame intent: No new matter hath been offered to us now by them that argue for the Defendants, but the ſame reaſons and authorities in ſubſtance, which were objected before all the Juſtices of *England*, and Barons of the *Exchequer*, at *Serjeants-Inn* in *Fleet-ſtreet*, upon an information in the *Star-Chamber* for the ſame matter. At which time, after great deliberation, it was reſolved by all of them, *That no offence committed in Parliament, that being ended, may be puniſhed out of Parliament.* And no Court more apt for that purpoſe than this Court in which we are: and it cannot be puniſhed in a future Parliament, becauſe it cannot take notice of matters done in a foregoing Parliament.

As to what was ſaid, That an inferiour Court cannot meddle with matters done in a ſuperiour; true it is, that an inferiour Court cannot meddle with judgments of a ſuperiour Court; but if particular Members of a ſuperiour Court offend, they are oft-times puniſhable in an inferiour Court: as, if a Judge ſhall commit a capital offence in this Court, he may be arraigned thereof at *Newgate*. 3 *E.* III. 19. and 1 *Mar.* which have been cited, over-rule this caſe. Therefore, *&c.*

Juſtice *Whitlocke*. 1. *I ſay in this caſe*, Nihil dictum quod non dictum prius.

2. *That all the Judges of* England *have reſolved this very point.*

3. *That now we are but upon the brink and ſkirts of the cauſe: for it is not now in queſtion, if theſe be offences or no; or, if true or falſe; but only if this Court have juriſdiction.*

But it hath been objected, *That the offence is not capital, therefore it is not examinable in this Court.*

But though it be not capital, yet it is criminal, for it is ſowing of ſedition to the deſtruction of the Commonwealth. The queſtion now is not between us that are Judges of this Court, and the Parliament, or between the King and the Parliament; but between ſome private Members of the Houſe of Commons and the King himſelf: for here the King himſelf queſtions them for thoſe offences, as well he may. In every Commonwealth there is one ſuper-eminent power, which is not ſubject to be queſtioned by any other; and that is the King in this Commonwealth, who, as *Bracton* ſaith, *Solum Deum habet ultorem*. But no other within the Realm hath this privilege. It is true, that that which is done in Parliament by conſent of all the Houſe, ſhall not be queſtioned elſewhere; but if any private Members, *exuunt perſonas judicum, & induunt malefacientium perſonas, & ſunt ſeditioſi*; is there ſuch ſanctimony in the place, that they may not be queſtioned for it elſewhere? The Biſhop of *Roſs*, as the caſe hath been put, being Ambaſſador here, practiſed matters againſt the State: and it was reſolved, That although *Legatus ſit Rex in alieno ſolo*, yet when he goes out of the bounds of his office, and complots with Traitors in this Kingdom, that he ſhall be puniſhed as an offender here. A Miniſter hath a great privilege when he is in the Pulpit; but yet, if in the Pulpit he utter ſpeeches which are ſcandalous to the State, he is puniſhable. So in this caſe, when a Burgeſs of Parliament becomes mutinous, he ſhall not have the privilege of Parliament. In my opinion, the Realm cannot conſiſt without Parliaments, but the behaviour of Parliament-men ought to be Parliamentary. No outrageous ſpeeches were ever uſed againſt a great Miniſter of State in Parliament, which have not been puniſhed. If a Judge of this Court utter ſcandalous ſpeeches to the State, he may be queſtioned for them before Commiſſioners of Oyer and Terminer, becauſe this is no judicial act of the Court.

But it hath been objected, *That we cannot examine Acts done by a higher Power.*

To this I put this caſe: when a Peer of the Realm is arraigned of Treaſon, we are not his Judges, but the High Steward, and he ſhall be tried by his Peers: but if error be committed in this proceeding, that ſhall be reverſed by error in this Court: for that which we do is *coram ipſo Rege.*

It hath been objected, *That the Parliament-Law differs from the Law by which we judge in this Court in ſundry caſes.* And for the inſtance which hath been made, *That by the Statute, none ought to be choſen Burgeſs of a Town in which he doth not inhabit, but that the uſage of Parliament is contrary:* But

if

if information be brought upon the ſaid Statute againſt ſuch a Burgeſs, I think that the Statute is a good warrant for us to give judgment againſt him.

And it hath been objected, *That there is no precedent in this matter.*

But there are ſundry precedents, by which it appears, that the Parliament hath tranſmitted matters to this Court; as 2 *R.* II. there being a queſtion between a great Peer and a Biſhop, it was tranſmitted to this Court, being for matter of behaviour: and although the Judges of this Court are but inferiour men, yet the Court is higher. For it appears by the 11 *Eliz. Dy.* That the Earl Marſhal of *England* is an Officer of this Court; and it is always admitted in Parliament, That the Privileges of Parliament hold not in three caſes, to wit, *Firſt, in caſe of Treaſon. Secondly, in caſe of Felony. And thirdly, in ſuit for the Peace.* And the laſt is our very caſe. Therefore, *&c.*

Croke argued to the ſame intent: he ſaid, *That theſe offences ought to be puniſhed in the Court, or no where; and all manner of offences which are againſt the Crown, are examinable in this Court.*

It hath been objected, *That by this means, none will adventure to make complaints in Parliament.*

That is not ſo; for he may complain in a Parliamentary courſe, but not falſely and unlawfully, as here is pretended; for that which is unlawfully, cannot be in a Parliamentary courſe.

It hath been objected, *That the Parliament is a higher Court than this.*

And it is true: But every Member is not a Court; and if he commit offence, he is puniſhable here. Our Court is a Court of high Juriſdiction, it cannot take cognizance of real Pleas; but if a real Plea comes by Error in this Court, it ſhall never be tranſmitted. But this Court may award a *Grand Cape*, and other Proceſs uſual in real actions: but of all capital and criminal Cauſes, we are originally competent Judges, and by conſequence of this matter. But I am not of the opinion of Mr. Attorney-General, that the word *proditorie* would have made this Treaſon. And for the other matters, he agreed with the Judges. Therefore by the Court, the Defendants were ruled to plead further: and Mr. *Lenthal* of *Lincoln's-Inn* was aſſigned of Counſel for them.

But inaſmuch as the Defendants would not put in any other Plea, the laſt day of the Term Judgment was given againſt them upon a *Nihil dicit*; which Judgment was pronounced by *Jones* to this effect:

" The matter of the information now, by the confeſſion of the Defendants, is admitted to be true, and we think their Plea to the juriſdiction inſufficient for the matter and manner of it. And we hereby will not draw the true Liberties of Parliament-men into queſtion; to wit, for ſuch matters which they do or ſpeak in a Parliamentary manner. But in this caſe there was a conſpiracy between the Defendants to ſlander the State, and to raiſe ſedition and diſcord between the King, his Peers, and People; and this was not a Parliamentary courſe. All the Judges of *England*, except one, have reſolved the Statute of 4 *H.* VIII. to be a private Act, and to extend to *Strode* only. But every Member of the Parliament ſhall have ſuch Privileges as are there mentioned; but they have no Privilege to ſpeak at their pleaſure. The Parliament is an high Court, therefore it ought not to be diſorderly, but ought to give good example to other Courts. If a Judge of our Court ſhould rail upon the State, or Clergy, he is puniſhable for it. A Member of the Parliament may charge any great Officer of the State with any particular offence; but this was a malevolous accuſation in the generality of all the Officers of State, therefore the matter contained within the information is a great offence, and puniſhable in this Court.

2. For the puniſhment, although the offence be great, yet that ſhall be with a light hand, and ſhall be in this manner."

1. *That every of the Defendants ſhall be impriſoned during the King's pleaſure: Sir* John Elliot *to be impriſoned in the* Tower *of* London, *and the other Defendants in other priſons.*

2. *That none of them ſhall be delivered out of priſon until he give ſecurity in this Court for his good behaviour, and have made ſubmiſſion and acknowledgment of his offence.*

3. *Sir* John Elliot, *inaſmuch as we think him the greateſt Offender, and the Ringleader, ſhall pay to the King a Fine of* 2000l. *and Mr.* Holles, *a Fine of* 1000 Marks: *and Mr.* Valentine, *becauſe he is of leſs ability than the reſt, ſhall pay a Fine of* 500l. And to all this, all the other Juſtices with one voice accorded.

Afterwards the Parliament which met the third of *November*, 1640. upon report made by Mr. Recorder *Glyn*, of the ſtate of the ſeveral and reſpective caſes of Mr. *Holles*, Mr. *Selden*, and the reſt of the impriſoned Members of the Parliament, in *Tertio Caroli*, touching their extraordinary ſufferings, for their conſtant affections to the Liberties of the Kingdom, expreſſed in that Parliament; and upon arguments made in the Houſe thereupon, did, upon the ſixth of *July*, 1641, paſs theſe enſuing votes; which, in reſpect of the reference they have to theſe laſt mentioned proceedings, we have thought fit to inſert: *viz.*

July 6. 1641.

1. REſolved upon the queſtion, That the iſſuing out of the Warrants from the Lords and others of the Privy-Council, compelling Mr. *Holles*, and the reſt of the Members of that Parliament, 3 *Car.* during the Parliament, to appear before them, is a breach of the Privilege of Parliament by thoſe Privy Counſellors.

2. *Reſolved, &c.* That the committing of Mr. *Holles*, and the reſt, by the Lords and others of the Privy-Council, during the Parliament, is a breach of the Privilege of Parliament by thoſe Lords, and others.

3. *Reſolved, &c.* That the ſearching and ſealing of the Chamber, Study, and Papers of Mr. *Holles*, Mr. *Selden*, and Sir *John Elliot*, being Members of this Houſe, and during the Parliament, and iſſuing of Warrants to that purpoſe, was a breach of the Privilege of Parliament, by thoſe that executed the ſame.

4. *Reſolved, &c.* That the exhibiting of an information in the Court of *Star-Chamber*, againſt Mr. *Holles* and the reſt, for matters done by them in Parliament, being Members of Parliament, and the ſame ſo appearing in the information, is a breach of the Privilege of Parliament.

5. *Reſolved, &c.* That Sir *Robert Heath*, and Sir *Humphrey Davenport*, Sir *Heneage Finch*, Mr. *Hudſon*, and Sir *Robert Berkley*, that ſubſcribed their names to the information, are guilty thereby of the breach of Privilege of Parliament.

6. *Reſolved, &c.* That there was a delay of Juſtice towards Mr. *Holles*, and the reſt that appeared upon the *Habeas Corpus*, in that they were not bailed in *Eaſter* and *Trinity*-Term, 5 *Car.*

7. *Reſolved, &c.* That Sir *Nicholas Hyde*, then Chief Juſtice of the King's-Bench, is guilty of this delay.

8. *Reſolved, &c.* That Sir *William Jones*, being then one of the Juſtices of the Court of King's-Bench, is guilty of this delay.

9. *Reſolved, &c.* That Sir *James Whitlocke*, Knt. then one of the Juſtices of the Court of King's-Bench, is not guilty of this delay *.

Ordered, That the further debate of this ſhall be taken into conſideration on to-morrow morning.

July 8. 1641.

10. *REſolved upon the Queſtion*, That Sir *George Croke* Knight, then one of the Judges of the King's-Bench, is not guilty of this delay.

11. That the continuance of Mr. *Holles*, and the reſt of the Members of Parliament, 3 *Car.* in priſon, by the then Judges of the King's-Bench, for not putting in Sureties for their good behaviour, was without juſt or legal cauſe.

12. That the exhibiting of the information againſt Mr. *Holles*, Sir *John Elliot*, and Mr. *Valentine*, in the King's-Bench, being Members of Parliament, for matters done in Parliament, was a breach of the Privilege of Parliament.

13. That the over-ruling of the Plea, pleaded by Mr. *Holles*, Sir *John Elliot*, and Mr. *Valentine*, upon the information to the juriſdiction of the Court, was againſt the Law and Privilege of Parliament.

14. That the judgment given upon a *Nihil dicit*, againſt Mr. *Holles*, Sir *John Elliot*, and Mr. *Valentine*, and Fine thereupon impoſed, and their ſeveral impriſonments thereupon, was againſt the Law and Privilege of Parliament.

15. That the ſeveral proceedings againſt Mr. *Holles*, and the reſt, by committing them, and proſecuting them in the *Star-Chamber*, and in the King's-Bench, is a grievance.

16. That Mr. *Holles*, Mr. *Stroud*, Mr. *Valentine*, and Mr. *Long*, and the Heirs and Executors of Sir *John Elliot*, Sir *Miles Hobart*, and Sir *Peter Heyman*, reſpectively, ought to have reparation for their reſpective damages and ſufferings, againſt the Lords and others of the Council, by whoſe warrants they were apprehended and committed, and againſt the Council that put their hands to the information in the *Star-Chamber*, and againſt the Judges of the King's-Bench.

17. That Mr. *Lawrence Whitaker*, being a Member of the Parliament 3 *Car.* entering into the Chamber of Sir *John Elliot*, being likewiſe a Member of the Parliament, ſearching of his trunks and papers, and ſealing of them, is guilty of the breach of the Privilege of Parliament, this being done before the diſſolution of Parliament.

18. *Reſolved upon the Queſtion*, That Mr. *Lawrence Whitaker* being guilty of the breach of the Privileges as aforeſaid, ſhall be ſent forthwith to the *Tower*, there to remain a priſoner during the pleaſure of the Houſe.

Mr. *Whitaker* was called down, and kneeling at the Bar, Mr. Speaker pronounced this ſentence againſt him accordingly.

Mr. *Whitaker* being at the Bar, did not deny, but that he did ſearch and ſeal up the Chamber, and Trunk, and Study of Sir *John Elliot*, between the ſecond and tenth of *March*, during which time the Parliament was adjourned: But endeavoured to extenuate it, by the confuſion of the times, at that time; the length of the time ſince that crime was committed being thirteen years; the command that lay upon him, being commanded by the King and twenty-three Privy-Counſellors.

Afterwards Mr. Recorder *Glyn* made a farther Report to the Houſe of Commons, *viz.*

The Warrant, which iſſued and was ſubſcribed by twelve Privy-Counſellors, to ſummon nine of the Members of the Houſe of Commons, in the Parliament of *Tertio Caroli*, to appear before them during the Parliament, *viz.* Mr. *William Stroud*, Mr. *Benjamin Valentine*, Mr. *Holles*, Sir *John Elliot*, Mr. *Selden*, Sir *Miles Hobart*, Sir *Peter Heyman*, Mr. *Walter Long*, and Mr. *William Coriton*, bearing date *Tertio Martii*, *Quarto Caroli*; and the names of the twelve Privy-Counſellors that ſigned this warrant were read: the Parliament being adjourned the ſecond of *March*, to the tenth of *March*, and then diſſolved.

The Warrants under the hands of ſixteen Privy-Counſellors, for committing of Mr. *Denzil Holles*, Sir *John Elliot*, Mr. *John Selden*, Mr. *Benjamin Valentine*, and Mr. *William Coriton*, cloſe Priſoners to the *Tower*, bearing date, *Quarto Martii*, *Quarto Caroli*, during the Parliament; were read; and the names of the Privy-Counſellors that ſubſcribed them, were read. The Warrants under the hands of twenty-two Privy-Counſellors, directed to *William Boſwel* Eſq. to repair to the Lodgings of *Denzil Holles* Eſq. and to *Simon Digby* Eſq. to repair to the Lodgings of Mr. *John Selden*, and to *Lawrence Whitaker* Eſq. to repair to the Lodgings of Sir *John Elliot*, requiring them to ſeal up the trunks, ſtudies, and cabinets, or any other thing that had any papers in them, of the ſaid Mr. *Holles*, Mr. *John*

* Mr. *Whitlocke* in his *Memorials of the Engliſh Affairs*, p. 38, 39. ſays, In the Houſe there fell out a Debate touching the Writs of *Habeas Corpus*, upon which *Selden* and the reſt of his fellow-priſoners demanded to be bailed; and the Judges of the King's-Bench did not bail them, as by Law they ought; *but required of them Sureties for their good behaviour.* This was ſo far aggravated by ſome, that they moved, *The Priſoners might have reparation out of the Eſtates of thoſe Judges who then ſat in the King's-Bench when they were remanded to priſon*; which Judges they named to be *Hyde*, *Jones*, and my Father: as for Judge *Croke*, who was one of that Court, they excuſed him, as differing in Opinion from the reſt.

I being a Member of the Houſe, and Son to the Judge, knew this to be miſtaken, as to the Fact, and ſpake in the behalf of my Father, to this effect:

" That it was not unknown to divers worthy Members of the Houſe, that Judge *Whitlocke* had been a faithful, able, and ſtout Aſſertor of the Rights and Liberties of the " free-born Subjects of this Kingdom; for which he had been many ways a Sufferer. And particularly by a ſtrait and cloſe Impriſonment, for what he ſaid and did, as a " Member of this Honourable Houſe in a former Parliament: and he appeals to thoſe noble Gentlemen, who cannot but remember thoſe paſſages; and ſome, who were " then Sufferers with him. And for his Opinion, and Carriage in the Caſe of the *Habeas Corpus*, 'tis affirmed to have been the ſame with that of Judge *Croke*; and he ap- " peals for this, to the honourable Gentlemen, who were concerned in it; and others, who were preſent then in Court," *Hampden*, and divers others ſeconded this Motion; who affirmed very much of the Matter of Fact, and expreſſed themſelves with great Reſpect and Honour to the Memory of the deceaſed Judge, who was thereupon reckoned by the Houſe in the ſame degree with Judge *Croke*, as to their Cenſure and Proceedings.

Selden, and Sir *John Elliot*, were read, and likewiſe the names of the Privy-Councillors that ſubſcribed the ſaid Warrants. A Warrant under the hands of thirteen Privy-Councillors, for the commitment of Mr. *William Stroud* cloſe Priſoner to the King's-Bench, bearing date 2d *April*, 1628, was read, and the Names of the Privy-Councillors that ſubſcribed it: The like Warrant was for the Commitment of Mr. *Walter Long*, cloſe Priſoner to the Marſhalſea.

Reſolved, &c. That Mr. *Holles* ſhall have the Sum of five thouſand Pounds for his Damages, Loſſes, Impriſonments, and Sufferings, ſuſtained and undergone by him, for his Service done to the Commonwealth in the Parliament of *Tertio Caroli*.

Reſolved, &c. That Mr. *John Selden* ſhall have the Sum of five thouſand Pounds for his Damages, Loſſes, Impriſonments, and Sufferings, ſuſtained and undergone by him, for his Service done to the Commonwealth in the Parliament of *Tertio Caroli*.

Reſolved, &c. That the Sum of five thouſand Pounds be aſſigned for the Damages, Loſſes, Impriſonments, and Sufferings, ſuſtained and undergone by Sir *John Elliot*, for his Service done to the Commonwealth in the Parliament of *Tertio Caroli*, to be diſpoſed of in ſuch Manner as this Houſe ſhall appoint.

Reſolved, &c. That the Sum of two thouſand Pounds, Part of four thouſand Pounds, paid into the late Court of *Wards and Liveries*, by the Heirs of Sir *John Elliot*, by reaſon of his Marriage with Sir *Daniel Norton*'s Daughter, ſhall be repaid to Mr. *Elliot*, out of the Arrears of Monies payable into the late Court of *Wards and Liveries*, before the taking away of the ſaid late Court.

Ordered, That it be referred to the Committee who brought in this Report, to examine the Decree made in the late Court of *Wards and Liveries*, concerning the Marriage of Sir *John Elliot*'s Heir with Sir *Daniel Norton*'s Daughter; and what Monies were paid by reaſon of the ſaid Decree, and by whom; and to report their Opinion thereupon to the Houſe.

Ordered, That it be referred to the Committee, to examine after what Manner Sir *John Elliot* came to his Death, his Uſage in the *Tower*, and to view the Rooms and Places where he was impriſoned, and where he died, and to report the ſame to the Houſe.

Reſolved, &c. That the Sum of five thouſand Pounds ſhall be paid unto the ..... of Sir *Peter Heyman*, for the Damages, Loſſes, Sufferings, and Impriſonments, ſuſtained and undergone by Sir *Peter Heyman*, for his Service done to the Commonwealth in the Parliament of *Tertio Caroli*.

Reſolved, &c. That Mr. *Walter Long* ſhall have the Sum of five thouſand Pounds paid unto him, for the Damages, Loſſes, Sufferings, and Impriſonment, ſuſtained and undergone by him, for his Service done to the Commonwealth in the Parliament *Tertio Caroli*.

Reſolved, &c. That the Sum of five thouſand Pounds ſhall be aſſigned for the Damages, Loſſes, Sufferings, and Impriſonment, ſuſtained and undergone by Mr. *Stroud* (late a Member of this Houſe) deceaſed, for Service done by him to the Commonwealth in the Parliament of *Tertio Caroli*.

Reſolved, &c. That Mr. *Benjamin Valentine* ſhall have the Sum of five thouſand Pounds paid unto him, for the Damages, Loſſes, Sufferings, and Impriſonments, ſuſtained and undergone by him, for his Service to the Commonwealth in the Parliament of *Tertio Caroli*.

Reſolved, &c. That the Sum of five hundred Pounds ſhall be beſtowed and diſpoſed of, for the erecting a Monument to Sir *Miles Hobart*, a Member of the Parliament of *Tertio Caroli*, in Memory of his Sufferings for his Service to the Commonwealth in the Parliament of *Tertio Caroli*.

Ordered, That it be recommitted to the Committee, who brought in this Report, to conſider how the ſeveral Sums of Money this Day ordered to be paid for Damages to the ſeveral Members before-named, for their Sufferings in the Service of the Commonwealth, may be raiſed.

In the Reign of King *Charles* II. this Affair was taken into Conſideration, and the Houſe of Commons came to ſeveral Reſolutions.

Die Martis, 12 *Novembris* 1667.

Upon a Report made by Mr. *Vaughan* from the Committee concerning Freedom of Speech in Parliament,

Reſolved, &c. That the Houſe do agree with the Committee, That the Act of Parliament in 4 *Hen.* VIII. commonly intitled, An Act concerning *Richard Strode*, is a general Law, extending to indemnify all and every the Members of both Houſes of Parliament, in all Parliaments, for and touching any Bills, ſpeaking, reaſoning, or declaring of any Matter or Matters, in and concerning the Parliament to be communed and treated of, and is a declaratory Law of the ancient and neceſſary Rights and Privileges of Parliament.

Die Sabbati, 23 *Novembris* 1667.

Reſolved, &c. That the Judgment given 5 *Car.* againſt Sir *John Elliot*, *Denzil Holles*, and *Benj. Valentine*, in the King's-Bench, is an illegal Judgment, and againſt the Freedom and Privilege of Parliament.

Die Sabbati, 7 *Decembris* 1667.

Reſolved, &c. That the Concurrence of the Lords be deſired to the Votes of this Houſe concerning Freedom of Speech in Parliament; and that a Conference be on *Monday* next deſired to be had with the Lords, at which time the Votes may be delivered, and Reaſons for them given.

Die Jovis, 12 *Decembris* 1667.

A Meſſage from the Lords by Sir *William Child* and Sir *Thomas Eſtcourt*.

Mr. Speaker,

The Lords have commanded us to acquaint you, that they agree with this Houſe in the Votes delivered them at the laſt Conference concerning Freedom of Speech in Parliament.

Die Mercurii, 11 *Decembris* 1667.

Next the Lord Chamberlain and the Lord *Aſhley* reported the Effect of the Conference with the Houſe of Commons Yeſterday, which was managed by Mr. *Vaughan*, who ſaid he was commanded by the Houſe of Commons to acquaint their Lordſhips with ſome Reſolves of their Houſe concerning the Freedom of Speech in Parliament, and to deſire their Lordſhips Concurrence therein.

In order to which, he was to acquaint their Lordſhips with the Reaſons that induced the Houſe of Commons to paſs thoſe Reſolves.

He ſaid the Houſe of Commons was accidentally informed of certain Books publiſhed under the Name of Sir *George Croke*'s *Reports*, in one of which there was a Caſe publiſhed, which did very much concern this great Privilege of Parliament; and which paſſing from Hand to Hand amongſt the Men of the Long Robe, might come in time to be a received Opinion as good Law.

The Houſe of Commons conſidering the Conſequence, did take care that this Caſe might be enquired into, and cauſed the Book to be produced and read in their Houſe, and he thought it the next and cleareſt Way to inform their Lordſhips, is to read the Caſe itſelf, which is *Quinto Caroli primi Michaelmas Term*, which Caſe was read as followeth:

The King verſus *Sir* John Elliot, Denzil Holles, *and* Benjamin Valentine.

AN Information was exhibited againſt them by the Attorney-General, reciting, that a Parliament was ſummoned to be held at *Weſtminſter*, 17 *Martii* 3 *Caroli Regis ibidem inchoat.* And that Sir *John Elliot* was duly elected and returned Knight for the County of *Cornwall*, and the other two Burgeſſes of Parliament for other Places; and Sir *John Finch* choſen Speaker. That Sir *John Elliot*, *machinans & intendens omnibus viis & modis ſeminare & excitare* Diſcord, evil Will, Murmurings, and Seditions, as well *verſus Regem*, *magnates*, *prælatos*, *proceres & juſticiarios*, *& reliquos ſubjectos Regis*, *& totaliter deprivare & ſubvertere regimen & gubernationem Regni* Angliæ, *tam in domino Rege quam in conciliariis & miniſtris ſuis cujuſcunque generis*, *& introducere tumultum & confuſionem* in all Eſtates and Parts, *& ad intentionem*, that all the King's Subjects ſhould withdraw their Affections from the King, the 23d of *Febr. Anno* 4 *Car.* in the Parliament, and hearing of the Commons, *falſo*, *malitioſe*, *& ſeditioſe*, uſed theſe Words, *The King's Privy Council*, *his Judges*, *and his Counſel learned*, *have conſpired together to trample under their Feet the Liberties of the Subjects of this Realm*, *and the Liberties of this Houſe.*

And afterwards, upon the ſecond of *March*, *Anno* 4. aforeſaid, the King appointed the Parliament to be adjourned until the 10th of *March* next following, and ſo ſignified his Pleaſure to the Houſe of Commons; and that the three Defendants the ſaid 2d Day of *March*, 4 *Car. malitioſe* agreed, and amongſt themſelves conſpired to diſturb and diſtract the Commons, that they ſhould not adjourn themſelves according to the King's Pleaſure before ſignified; and that the ſaid Sir *John Elliot*, according to the Agreement and Conſpiracy aforeſaid, had maliciouſly *in propoſitum & intentionem prædictam* in the Houſe of Commons aforeſaid, ſpoken theſe falſe, pernicious, and ſeditious Words precedent, &c. And that the ſaid *Denzil Holles*, according to the Agreement and Conſpiracy aforeſaid, between him and the other Defendants, then and there *falſo*, *malitioſe*, *& ſeditioſe* uttered *hæc falſa*, *malitioſa & ſcandaloſa verba præcedentia*, &c. And that the ſaid *Denzil Holles*, and *Benjamin Valentine*, *ſecundum agreamentum & conſpirationem prædict.* &c. *ad intentionem & propoſitum prædict.* uttered the ſaid Words upon the ſaid 2d Day of *March*, after the ſignifying the King's Pleaſure to adjourn; and the ſaid Sir *John Finch*, the Speaker, endeavouring to get out of the Chair, according to the King's Command, they *vi & armis manu forti & illicito* aſſaulted, evil intreated, and forcibly detain'd him in the Chair; and afterwards being out of the Chair, they aſſaulted him in the Houſe, and evil entreated him, *& violenter manu forti & illicito* drew him to the Chair, and thruſt him into it. Whereupon there was great Tumult and Commotion in the Houſe, to the great Terror of the Commons there aſſembled, againſt their Allegiance, in *maximum contemptum*, and to the Diſheriſon of the King, his Crown and Dignity, for which, &c. To this Information the Defendants appearing, pleaded to the Juriſdiction of this Court, that the Court ought not to have Cognizance thereof, becauſe it is for Offences done in Parliament, and ought to be there examined and puniſhed, and not elſewhere. It was thereupon demurred, and after Argument adjudged, that they ought to anſwer; for the Charge is for Conſpiracy, ſeditious Acts and Practices, to ſtop the Adjournment of the Parliament, which may be examined out of Parliament, being ſeditious and unlawful Acts; and this Court may take cognizance and puniſh them: Afterwards divers Rules being given againſt them, *viz.* Sir *John Elliot*, that he ſhould be committed to the *Tower*, and ſhould pay 2000*l.* Fine, and upon his Enlargement ſhould find Sureties for his good Behaviour; and againſt *Holles*, that he ſhould pay a thouſand Marks, and ſhould be impriſoned, and find Sureties, &c. and againſt *Valentine*, that he ſhould pay 500*l.* Fine, be impriſoned, and find Sureties.

Then Mr. *Vaughan* laid much Emphaſis upon the Words *machinans & intendens*, &c. and then went on, That the Houſe of Commons had not only read the Caſe as it was in the Book, but did look into the Record, where, in the Information itſelf, they found ſome conſiderable Differences from the Print; as that the Crime alledged conſiſting partly of Words ſpoken in the Houſe, partly of criminal Actions pretended to be committed; the Gentlemen accuſed pleaded ſeverally, namely, ſpecially to the Words, and a ſeveral Plea apart to the criminal Actions: But the Court dealt ſo craftily, that they over-ruled the whole Plea, mingled together, and took it in general, ſo that perhaps whatſoever was criminal in the Actions might ſerve for a Juſtification of their Rule, and might make it ſeem in time to become a Precedent, and a ruled Caſe againſt the Liberty of Speech in Parliament, which they durſt not ſingly and barefaced have done.

The Houſe of Commons did take care to enquire what ancient Laws did fortify this the greateſt Privilege of both Houſes; and they found in the 4th Year of *Henry* VIII. an Act concerning one *Richard Strode*, who was a Member of Parliament, and was fined at the Stannary Courts in the *Weſt*, for condeſcending and agreeing with other Members of the Houſe to paſs certain Acts to the Prejudice of the *Stannaries*; this Act was made occaſionally for him, but did reach to every Member of Parliament that then was, or ſhall be; the very Words being, *viz.*

[And over that, it be enacted by the ſame Authority, that all Suits, Accuſements, Condemnations, Executions, Fines, Amercements, Puniſhments, Corrections, Grievances, Charges and Impoſitions, put or had, or hereafter to be put or had unto, or upon the ſaid *Richard*, and to every other Perſon or Perſons afore-ſpecified, that now be of this preſent Parliament, or that of any Parliament hereafter ſhall be, for any Bill, ſpeaking, reaſoning, or declaring of any Matter or Matters concerning the Parliament to be commenced and treated of, be utterly void, and of none Effect. And over that, be it enacted by the ſaid Authority, that if the ſaid *Richard Strode*, or any of the ſaid other Perſon or Perſons hereafter be vexed, troubled, or otherwiſe charged for any Cauſes as is aforeſaid, that then he or they, and every of them ſo vexed or troubled of, or for the

ſame,

ſame, to have action upon the Caſe againſt every ſuch perſon or perſons ſo vexing or troubling any, contrary to this ordinance and proviſion; in the which action the party grieved ſhall recover treble damages and coſts; and that no protection, eſſoyne, nor wager of Law in the ſaid action in any wiſe be admitted nor received.]

He ſaid, 'tis very poſſible the Plea of thoſe worthy perſons, *Denzil Holles*, Sir *John Elliot*, and the reſt, was not ſufficient to the Juriſdiction of the Court, if you take in their criminal actions all together; but, as to the words ſpoken in Parliament, the Court could have no Juriſdiction while this Act of 4 *Hen.* VIII. is in force, which extends to all Members that then were (or ever ſhould be), as well as *Strode*; and was a publick general Law, though made upon a private and a particular occaſion.

He recommended to their Lordſhips the conſideration of the time when theſe words in the caſe of Sir *George Croke*'s Reports were ſpoken, which was the ſecond of *March*, 4 *Caroli primi*, being in that Parliament which began in the precedent *March*, 3 *Car.* at which time the Judgment given in the King's-Bench about the *Habeas Corpus* was newly reverſed, which concerned the freedom of our perſons, the liberty of Speech invaded in this caſe; and not long after the ſame Judges (with ſome others) joined with them in the caſes of Ship-money, invaded the Propriety of our Goods and Eſtates; ſo that their Lordſhips find every part of theſe words for which thoſe worthy perſons were accuſed, juſtified.

If any man ſhould ſpeak againſt any of the great Officers, as the Chancellor or Treaſurer, or any of the reſt recited in thoſe Acts, as by accuſing them of Corruption, ill Counſel, or the like, he might poſſibly juſtify himſelf by proving of it; but in this caſe it was impoſſible to do it, becauſe thoſe Judgments had preceded and concluded him, for he could make none, but by alledging their own Judgments which they themſelves had reſolved, and would not therefore allow to be Crimes, which they had made for Laws.

He did inform their Lordſhips, that the Bill in the Rolls hath another title than that he did mention; this being that, that the Clerks knew it by, rather than the proper Title.

The words in the caſe are charged *ea intentione*, which ought not to be; for it is clear, and undoubted Law, that whatever is in itſelf lawful, cannot have an unlawful intent annexed to it. Things unlawful may be made a higher crime by the illneſs of the intent; for inſtance, taking away my Horſe is a Treſpaſs only, but intending to ſteal him makes it Felony; borrowing my Horſe, though intending to ſteal him, is not Felony, becauſe borrowing is lawful; and there were no uſe of freedom of Speech otherwiſe, for a depraved intention may be annexed to any the moſt juſtifiable action. If a man eat no fleſh, he may be accuſed for the depraved intention of bringing in the *Pythagorean* religion, and ſubverting the *Chriſtian:* If a man drink water, he may be accuſed of the depraved intention of ſubverting the King's Government, by deſtroying his Revenue both of Exciſe and Cuſtom.

No man can make a doubt, but whatſoever is once enacted is lawful; but nothing can come into an Act of Parliament, but it muſt be firſt offered or propounded by ſomebody, ſo that if the Act can wrong nobody, no more can the firſt propounding; the Members muſt be as free as the Houſes. An Act of Parliament cannot diſturb the State, therefore the Debate that tends to it cannot, for it muſt be propounded and debated before it can be enacted.

In the reign of *Henry* the Eighth, when there were ſo many Perſons taken by Act of Parliament out of the Lords Houſe, as the Abbots and Priors, and all the Religious Houſes and Lands taken away; it had been a ſtrange information againſt any Member of Parliament then, for propounding ſo great an alteration in Church and State.

Beſides, Religion itſelf began then to be altered, and was perfected in the beginning of *Edward* the Sixth's reign, and returned again to Popery in the beginning of Queen *Mary*'s; and the Proteſtant Religion reſtored again in the beginning of Queen *Elizabeth*'s.

Should a Member of Parliament, in any of theſe times, have been juſtly informed againſt in the King's-Bench for propounding or debating any of theſe alterations; ſo that their Lordſhips perceive the reaſons and inducements the Houſe of Commons had to paſs theſe Votes now preſented to their Lordſhips?

Afterwards theſe Votes were read, *viz.*

Reſolved, &c. That the Act of Parliament 4 *Hen.* VIII. commonly intitled, An Act concerning *Richard Strode*, is a general Law, extending to indemnify all and every the Members of both Houſes of Parliament, in all Parliaments, for and touching any Bills, ſpeaking, reaſoning, or declaring of any matter or matters in and concerning the Parliament, to be communed and treated of; and is a declaratory Law of the antient and neceſſary Rights and Privileges of Parliament.

Reſolved, &c. That the Judgment given 5 *Car.* againſt Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine* Eſquires, in the King's-Bench, was an illegal Judgment, and againſt the Freedom and Privilege of Parliament.

To both which Votes the Lords agree with the Houſe of Commons.

Upon conſideration had this day of a Judgment given in the Court of King's-Bench in *Michaelmas*-Term, in the fifth year of King *Charles* the Firſt, againſt Sir *John Elliot* Knt. *Denzil Holles*, and *Benjamin Valentine* Eſquires, which Judgment is found to be erroneous: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That the ſaid *Denzil Holles* Eſq; (now Lord *Holles*, Baron of *Ifeild*) be deſired to cauſe the Roll of the Court of King's-Bench, wherein the ſaid Judgment is recorded, to be brought before the Lords in Parliament by a Writ of Error, to the end that ſuch further Judgment may be given upon the ſaid caſe, as this Houſe ſhall find meet.

Attorn. Gen. & *al. verſus* Holles & *al.*

Mich. 10 Car. ſecundi Regis. Rot. 75.

An Information in the King's-Bench againſt Sir *John Elliot*, *Benjamin Valentine*, and *Denzil Holles* Eſqs; Members of the Houſe of Commons, for ſeveral ſeditious Speeches in the ſaid Houſe, and aſſaulting the Speaker, and forcing him to ſit in the chair after the King had ſignified his Pleaſure that the Houſe ſhould be adjourned.

MEmorandum, quod Rob. Heath Mil. Attorn. Dom. Regis nunc General. qui pro eodem Dom. Rege in hac parte ſequitur in propr. perſona ſua ven. hic in Cur. dicti Dom. Regis coram Rege apud Weſtm. die Mercur. prox. poſt Craſtin. animar. iſto eodem Term. & pro eodem Domino Rege protulit hic in Cur. dicti Domin. Regis coram ipſo Rege tunc ibidem quandam informationem verſus Johan. Elliot nuper de London Mil. Benjamin Valentine nuper de London Ar. & Denzil Holles nuper de London Ar. que ſequitur in hec verba ſcilicet Midd. ſſ. Memorandum quod Robertus Heath Mil. Attorn. Dom. Regis nunc General. qui pro eodem Dom. Rege in hac parte ſequitur in propria perſona ſua ven. hic in Cur. dicti Dom. Regis coram ipſo Rege apud Weſtm. die Mercur. prox. poſt Craſtin. Animar. iſto eodem Termino. Et pro eodem Dom. Rege dat Cur. hic intelligi & informari. Quod cum dictus Dom. Rex pro diverſis arduis & urgentibus negotiis ipſum Regem & ſtatum & defenſion. Regn. Angl. & Eccleſiæ Anglican. concernen. quoddam Parliament. ſuum apud Civit. ſuam Weſtm. pred. teneri ordinavit. Cumque ſuperinde quoddam Parliamentum ſuum debito modo inchoat. & tent. fuit apud Weſtm. pred. decimo ſeptimo die Martii Anno Regni dicti Dom. Regis 3 & ibidem per diverſas prorogationes continuat. uſque 10 diem Martii Anno regni dicti Dom. Regis 4°. quo quidem 10 die Martii idem Parliament. diſſolut. fuit. Cumque antea pred. 17 diem Martii Anno 3° ſuprad. ſcilicet 16 die ejuſdem menſis Mar. Anno 3° ſuprad. Johannes Elliot nuper de London Mil. debito modo elect. & retorn. fuit un. Mil. pro Com. Cornub. in eodem Parliament. deſervitur. Cumque etiam Benjamin Valentine nuper de London Ar. eodem 16 die Martii Anno 3° ſuprad. debito modo elect. & retornat. fuit un. Burgenſ. pro Burgo de St. Germans in pred. Com. Cornub. in eodem Parliament. deſervitur. Cumque etiam Denzil Holles nuper de London Ar. eodem 16 die Martii Anno 3° ſuprad. debito modo elect. & retornat. fuit un. Burgenſ. pro Burgo de Dorcheſter in Com. Dorſ. in eodem Parliament. deſervitur. Cumque etiam Johannes Finch Mil. eodem 16 die Martii Anno 3° ſuprad. debito modo elect. & retornat. fuit un. Civium pro Civitat. Cantuar. in eodem Parliament. deſervitur. Cumque pred. 16° die Martii Anno 3 ſuprad. prefat. J. Finch apud Weſtm. pred. debito modo electus & conſtitut. fuit prolocutor. per Commun. in eodem Parliament. Et ſic Prolocutor pro Commun. continuavit uſque diſſolution. ejuſdem Parliament. Quod prefat. J. E. machinans & intendens omnibus viis & modis quibus poterit diſcord. malevolenc. murmuraciones & ſeditiones tam int. pred. Dom. Regem & magnat. prælatos, proceres & juſtic. ſuos hujus Regni quam int. pred. magnat. prælat. proceres & juſticiar. dicti Dom. Regis & reliquos ſubdit. ſuos ſeminare & excitare & Regimen & gubernation. hujus Regni Angl. tam in pred. Dom. Rege quam in conſiliar. & miniſtris ſuis cujuſcunque generis totalit. deprivare & enervare & tumult. & confuſion. in omnibus ſtatibus & partibus hujus Regni Angl. introducere & ad intention. quod veri & ligei ſubdit. dicti domini Regis cordialem ſuum amorem ab ipſo Rege retraherent in & duran. Parliament. pred. ſcilicet 23 die Febr. Anno 4° ſuprad. apud Weſtm. pred. in Domo Commun. Parliament. ibidem & ſedente eadem domo Militib. Civib. & Burgenſ. adtunc & ibidem aſſemblat. & in eor. preſentia & auditu falſo & malitioſe & ſeditioſe hec falſa ficta malitioſa & ſcandaloſa verba Anglicana alta voce dixit & propalavit, videlicet, *The King's Privy Council, all his Judges and his Counſel learned, have conſpired together to trample under their feet the Liberty of the Subjects of this Realm, and the Privileges of this Houſe.* (Privileg. pred. Domus Commun. Parliament. innuendo) Cumque poteſtas ſummonend. Parliament. ejuſdemque continuand. adjornand. prorogand. & diſſolvend. Dom. Regi ſpectat & de jure pertinet ad libitum & beneplacitum ſuum. Cumque dictus Dom. Rex pro diverſ. urgent. cauſis ipſum ad hoc ſpecialit. moven. ſecundo die Martii Anno 4° ſuprad. Parliament. pred. adjornari ordinavit eodem ſecundo die Martii uſque 10 diem ejuſdem menſis Martii adtunc prox. futur. Et dictus Dom. Rex pred. ſecundo die Martii Anno 4° ſuprad. apud Weſtm. pred. mandavit prefat. Johanni Finch adtunc prolocutori pred. quod ipſe eodem ſecundo die Martii Militibus Civibus & Burgenſ. in Domo Commun. Parliament. adtunc & ibidem aſſemblat. beneplacitum dicti Dom. Regis ſignificaret & notum faceret quod immediate poſt ſignification. ill. ſic fact. pred. domus Commun. per ipſos Mil. Cives & Burgenſ. adjornaretur uſque 10 diem Martii adtunc prox. futur. Et ſuperinde prefat. Johannes Finch eodem ſecundo die Martii apud Weſtm. pred. Militib. Civib. & Burgenſ. in dicta domo Commun. Parliament. adtunc & ibidem aſſemblat. ſeden. eadem domo publice ſignificavit & notum fecit pred. beneplacitum dicti Dom. Regis quod pred. domus immediate poſt ſignification. ill. fact. uſque ad pred. 10 diem Martii per ſeipſos adjornaretur & quod pred. Johannes Elliot B. Valentine & Denzil Holles tempore ſignification. pred. per pred. prolocutor. in forma pred. fact. preſentes fuer. in domo Commun. pred. & adtunc & ibidem audiverunt eandem ſignification. & ill. bene intellexer. pred. tamen J. E. B. V. & D. H. eodem ſecundo die Martii Anno quarto ſuprad. apud Weſt. pred. malitioſe agreaver. & inter eos conſpiraver. ad diſturband. Milites Cives & Burgenſ. de pred. domo Commun. Parliament. in eadem domo apud Weſtm. pred. adtunc & ibidem aſſemblat. ne illi ſecundum beneplacitum dicti Dom. Regis eis ut prefertur ſignificat. ſeipſos adjornarentur. Et. pred. J. E. ſecundum agreament. & conſpiration. pred. ad malitioſa propoſita & intention. pred. poſtea ſcilicet eodem ſecundo die Martii Anno 4° ſuprad. apud Weſtm. pred. in eadem dom. Commun. Parliament. in preſentia & auditu pred. Milit. Civium & Burgenſ. adtunc & ibidem aſſemblat. alta voce falſo malitioſe & ſeditioſe dixit & propalavit hec falſa ficta ſcandaloſa malitioſa & ſeditioſa Anglicana verba ſequen. *The miſerable Condition we are in, both in Matters of Religion and Policy, makes me look with a tender eye both to the perſon of the King and the Subject: You know how Arminianiſm doth undermine us, and how Popery comes upon us ſo open-faced as it gives a Terror to the Law; that particularly concerning the Plantation of Jeſuits amongſt us, and other things incident thereto, do manifeſtly ſhew it. And not only theſe men who are actors themſelves, I mean the Jeſuits, but thoſe that are their great Maſters and Fautors, they have the power of the Law, and dare check Magiſtrates in the Execution of their duties; from them it comes that we ſuffer their guilt, and the fear of puniſhment that may befall them, brings us upon thoſe Rocks. There are among them ſome Prelates of the Church, the great Biſhop of* Winchester *and his Fellows; it is apparent what they have done to caſt an aſperſion upon the Honour, Piety and Goodneſs of*

of the King. Theſe are not all: but it is extended to ſome others, who, I fear, in guilt and conſcience of their own ill deſerts, do join their power with that Biſhop, and the reſt, to draw his Majeſty into a jealouſy of the Parliament; amongſt them I ſhall not fear to name the Great Lord Treaſurer, in whoſe perſon is, I fear, contracted all that which we ſuffer. If we look into religion and policy, I find him building upon the ground laid by the Duke of Bucks, *his great Maſter; from him, I fear, came thoſe ill Counſels which contracted that unhappy concluſion of the laſt Seſſion of Parliament. And whoſoever ſhall go about to break Parliaments, Parliaments will break him! I find that not only in the affections of his Heart, but alſo in relation to him, he is the head of the Papiſts. They and their Prieſts and Jeſuits have all relation to him, and I doubt not to fix it indubitably upon him; and ſo far from the greatneſs and power of him comes the danger of our Religion. For policy in that great Queſtion of Tonnage and Poundage; that intereſt that is pretended to be the King's, is but the intereſt of that perſon to undermine the policy of this Government, and thereby to weaken the Kingdom. It was the Counſel of* Hoſpitales, *Chancellor to* Charles *the Ninth, King of* France, *that the way to weaken this Kingdom was to impeach the Trade of it, and ſo to lay our walls waſte and open. And I doubt not, but by the diſquiſition of a few days to prove that his labours are to undermine us; That he invites Strangers to come in to drive our Trade, or at leaſt our Merchants to trade in ſtrange bottoms, which is as dangerous; and this is that which imprints this fear in his perſon, and makes him to miſinterpret our proceedings to his Majeſty. Now therefore it will be fit for true* Engliſhmen *to perform their duties, and to ſhew their deſire of the ſafety both of the King and Kingdom, and to reſolve to defend the ſincerity of our Religion, and to declare our reſolutions alſo for the defence of the right of the Subject, whereby we may declare ourſelves to be Freemen, and ſo the more wealthy and able to ſupply his Majeſty upon all occaſions. And that we ſhould declare all that we have ſuffered, to be the effect of new Counſels, to the ruin of the Government of this State, and to make a proteſtation againſt all thoſe men, whether greater or ſubordinate, that they ſhall all be declared as capital enemies to the King and Kingdom, that will perſuade the King to take Tonnage and Poundage without Grant of Parliament. And that if any Merchants ſhall willingly pay thoſe Duties without conſent of Parliament, they ſhall be declared as Acceſſaries to the reſt.* Quodque pred. D. H. ſecundum agreament. & conſpiration. inde inter ipſum & prefat. J. E. & B. V. ut prefertur prehabit. poſtea ſcilicet eodem ſecundo die Martii Anno 4° ſuprad. apud Weſtm. pred. in eadem domo Commun. Parliament. militib. civib. & burgenſ. adtunc & ibidem aſſemblat. & in eor. preſentia & auditu alta voce falſo malitioſe & ſeditioſe dixit & propalavit hec falſa ficta malitioſa pernicioſa & ſeditioſa verba Anglican. ſequen. videlicet, *Whoſoever ſhall counſel the taking up of Tonnage and Poundage without an Act of Parliament, let him be accounted a capital enemy to the King and Kingdom; and what Merchant ſoever ſhall pay Tonnage and Poundage, without an Act of Parliament, let him be accounted a betrayer of the Liberties of the Subject, and a capital enemy to the King and Kingdom.* Quodque prefat. B. V. & D. H. ſecundum agreament. & conſpiration. pred. inde inter eos & prefat. J. E. prehabit. ad intention. & propoſit. pred. & ad intention. quod. preſat. J. E. & D. H. pred. falſa malitioſa ſcandaloſa & ſeditioſa verba pred. in forma pred. & ad intention. & propoſita pred. per eos pred. ſecundo die Martii Anno 4° ſuprad. dict. & propalat. ut prefertur dicerent & propalarent eodem ſecundo die Martii poſt ſignification. pred. pred. beneplaciti dicti Dom. Regis pro adjornament. dict. domus Commun. Parliament. ut prefertur. fiend. per prefat. prolocutorem fact. & ante dictionem & propalationem aliquor. verbor. pred. prefat. J. E. & D. H. eodem ſecundo die Martii ut prefertur dict. & propalat. prefat. Johanne Finch prolocutor. pred. adtunc & ibidem in quadam Cathedra Anglice vocat. *the Speaker's Chair* in domo pred. exiſten. & extra pred. ſecundum mandat. dicti dom. Regis ei in hac parte prius dat. ire conan. in & ſuper prefat. Johannem Finch adtunc & ibidem in pace Dei & dict. Dom. Regis exiſten. vi & armis & manu forti & illicite inſult. fecer. & eundem J. Finch maletractaver. & eundem J. F. in Cathedra pred. contra voluntat. ſuam manu forti & illicite detinuer. Quodque poſtea eodem ſecundo die Martii & ante diction. propalation. aliquor. verbor. pred. per pred. J. E. & D. H. dict. & propalat. ſecundo die Martii Anno 4° ſuprad. prefat. J. F. prolocutor. pred. apud Weſtm. pred. in domo pred. extra Cathedram pred. adtunc exiſten. in & ſuper prefat. J. F. adtunc & ibidem in pace Dei & dict. Domini Regis inſult. fecer. & prefat. J. Finch maletractaver. & violent. manu forti & illicite contra voluntat. ſuam in Cathedram pred. traxer. truſer. & impuler. per quod magn. tumult. & periculoſa commotio & confuſio in dom. Commun. pred. & maximi terror. pred. Militib. Civib. & Burgenſ. adtunc & ibidem aſſemblat. adtunc & ibidem mot. & excitat. fuer. contra ligeanc. ſuar. debit. in magn. contempt. & manifeſt. exheredationem dicti Domini Regis & derogation. perſone regiminis & prerogative ſue Regie & in legum & ſtatus hujus regni Angl. ſubverſion. & in magn. ſcandal. & ignominiam Conſiliar. de privato Concilio dicti Dom. Regis & al. magnat. prelator. & procer. hujus Regni Angl. & Juſticiar. & Juſtic. dicti Dom. Regis ac in diſturbation. & terrorem communitat. in Parliament. pred. ſic ut premittitur aſſemblat. necnon ad peſſimum & pernicioſiſſimum exemplum omn. al. in hujuſmodi caſu delinquen. & contra pacem ejuſdem Dom. Regis coron. & dignitat. ſuas necnon contra formam ſtatut. &c. Unde idem Attorn. &c. per quod precept. fuit Vic. quod non omitt. &c. Quin Venire fac. eos ad reſpond. &c.

The Defendants plead ſeverally for themſelves, that they were Parliament-Men, and that the Offence was committed in Parliament, and ought there to be heard and determined, and not in the King's Bench.

Et modo ſcilicet die Martis prox. poſt Octab. Sancti Martini iſto eodem termino coram Dom. Rege apud Weſt. ven. pred. J. E. Mil. B. V. & D. H. in propr. perſon. ſuis & pred. J. E. habit. audit. information. pred. idem J. quoad ſuppoſit. tranſgr. offenſ. & contempt. pred. in informatione pred. mentionat. in dicend. & propaland. pred. Anglicana verba in informatione pred. ſuperius recitat. Ac eidem J. per informationem pred. in forma pred. impoſit. dic. quod ipſe non intend. quod Dom. Rex nunc de aut pro ſuppoſit. tranſgr. offenſ. & contempt. ill. eidem J. ſic impoſit. in Cur. dicti Dom. Regis nunc hic reſponderi velit aut debeat quia dic. quod pred. ſuppoſit. offenſ. tranſgr. & contempt. in dicend. & propaland. pred. Anglicana verba in informatione pred. mentionat. & eidem J. in forma pred. impoſit. in Parliament. & non in Cur. Dom. Regis nunc hic audiri & terminari debent, &c. Et ulterius idem Johannes dic. quod ipſe pred. 16 die Martii Anno 3° ſuprad. in informatione pred. mentionat. debito modo elect. & retorn. fuit un. Mil. pro pred. Com. Cornub. in Parliament. pred. deſervitur. prout in informatione pred. ſuperius mentionat. Quodque idem. J. tempore ſuppoſit. offenſ. tranſgr. & contempt. pred. in dicend. & propaland. Anglicana verba pred. eidem J. in forma pred. impoſit. ac duran. toto tempore Parliament. pred. apud Weſtm. pred. fuit & remanſit un. mil. pro Com. Cornub. pred. pro eodem Parliament. Et hoc parat. eſt verificare unde ex quo in informatione pred. evidenter apparet & plene liquet quod ſuppoſit. offenſ. tranſgr. & contempt. pred. in dicend. & propaland. Anglicana verba pred. eidem J. in forma pred. impoſit. & per information. pred. ſuppoſit. commiſſ. fore commiſſ. fuit in pred. domo Commun. Parliament. pred. in Parliament. pred. idem J. pet. Judic. ſi pred. Dom. Rex nunc hic de offenſ. tranſgr. & contempt. pred. quoad Anglicana verba pred. per ipſum J. in Parliament. pred. in forma pred. dici & propalari ſuppoſit. in Cur. dicti Dom. Regis nunc hic reſponderi velit aut debeat. Et quoad tot. reſid. ſuppoſit. offenſ. tranſgr. & contempt in informatione pred. mentionat. eidem J. in forma pred. impoſit. eidem J. dic. quod ipſe non intendit quod dictus Dom. Rex nunc de aut pro pred. reſid. offenſ. tranſgr. & contempt. pred. in eadem informatione mentionat. eidem J. ſuperius in forma pred. impoſit. in Cur. dicti Dom. Regis nunc hic reſponderi velit aut debeat quia dic. quod reſid. pred. ſuppoſit. offenſ. tranſgr. & contempt. in informatione pred. ſuperius ſpec. eidem Johanni per information. pred. in forma pred. impoſit. in Parliament. & non in Cur. Dom. Regis nunc hic audiri & terminari debent. Et idem J. ulterius dic. quod ipſe pred. 16 die Martii Anno 3° ſuprad. in informatione pred. mentionat. debito modo elect. & retornat. fuit un. Mil. pro pred. Com. Cornub. in pred. Parliament. deſervitur, prout per information. pred. ſuperius mentionat. Quodque idem J. tempore reſid. ſuppoſit. offenſ. tranſgr. & contempt. pred. ei in forma pred. impoſit. Ac duran. toto tempore Parliament. pred. apud Weſtm. pred. fuit & remanſit un. Mil. pro pred. Com. Cornub. in Parliament. pred. Et hoc parat. eſt verificare. Unde & ex quo in informatione pred. evident. apparet & plene liquet quod pred. reſid. pred. ſuppoſit. tranſgr. offenſ. & contempt. pred. in informatione pred. mentionat eidem J. in forma pred. impoſit. per eandem information. ſuppoſit. fore commiſſ. fuit commiſſ. in pred. domo Commun. Parliament. pred. in Parliament. pred. idem J. pet. Judic. ſi dictus Dom. Rex nunc de reſid. pred. ſuppoſit. offenſ. tranſgr. & contempt. in informatione pred. mentionat. eidem J. in forma pred. impoſit. in Parliament. pred. in forma pred. fieri ſuppoſit. in Cur. Dom. Regis nunc hic reſponderi velit aut debeat, &c.

Et pred. Benjamin. Valentine habit. audit. information. pred. idem B. dic. quod ipſe non intendit quod dictus Dom. Rex nunc de aut pro ſuppoſit. offenſ. & contempt. pred. in informatione pred. mentionat. eidem B. per eandem information. impoſit. in Cur. dicti Dom. Regis nunc hic reſponderi velit aut debeat. Quia dic. quod pred. ſuppoſit. offenſ. tranſgr. & contempt. in informatione pred. mentionat. eidem B. per eandem informationem in forma pred. impoſit. in Parliament. & non in Cur. Domini Regis nunc hic audiri & terminari debent. Et idem B. ulterius dicit quod ipſe pred. 16 die Martii Anno 3° ſuprad. in informatione pred. mentionat. debito modo elect. & retornat. fuit un. Burgenſ. pro predicto Burgo de St. Germans in pred. Com. Cornub. in pred. Parliament. deſervitur, prout per information. pred. ſuperius mentionat. Quodq; idem B. tempore ſuppoſit. offenſ. tranſgr. & contempt. pred. ei in forma pred. impoſit. Ac duran. toto tempore Parliament. pred. apud Weſtm. pred. fuit & remanſit. un. Burgenſ. pro pred. Burgo de St. Germans in eodem Parliament. Et hoc parat. eſt verificare. Unde & ex quo in informatione pred. evident. apparet & bene liquet quod ſuppoſit. offenſ. tranſgr. & contempt. pred. in informatione pred. mentionat. eidem B. in forma pred. impoſit. per information. pred. ſuppoſit. fore commiſſ. fuit commiſſ. in pred. domo Commun. Parliamenti pred. Idem B. pet. Judic. ſi dictus Dominus Rex nunc de offenſ. tranſgr. & contempt. pred. ſic ſibi impoſit. per ipſum B. in Parliament. predict. fieri ſuppoſit. in Cur. dicti Dom. Regis nunc hic reſponderi velit aut debeat, &c.

Et pred. Denzil Holles habit. audit. information. idem D. quoad ſuppoſit. tranſgr. offenſ. & contempt. pred. in informatione pred. mentionat. in dicend. & propaland. pred. Anglicana verba in informatione pred. ſuperius recitat. Ac eidem D. per information. pred. in forma pred. impoſit. dic. quod ipſe non intendit quod Dominus Rex nunc de aut pro ſuppoſit. tranſgr. offenſ. & contempt. ill. eidem. D. ſic impoſit. in Cur. dicti Domini Regis nunc hic reſponderi velit aut debeat. Quia dic. quod pred. ſuppoſit. offenſ. tranſ. & contempt. in dicend. & propaland. pred. Anglicana verba in informatione pred. mentionat. eidem D. in forma pred. impoſit. in Parliament. & non in Cur. Dom. Regis nunc hic audiri & terminari debeant, &c. Et ulterius idem D. dic. quod ipſe pred. 16 die Martii Anno 3° ſuprad in informatione pred. mentionat. debito modo elect. & retornat. fuit un. Burgenſ. pro pred. Burgo de Dorcheſter in pred. Com. Dorſ. in Parliament. pred. deſervitur, prout in informatione pred. ſuperius mentionat. Quodque idem D. tempore ſuppoſit. offenſ. tranſgr. & contempt. pred. in dicend. & propaland. Anglicana verba pred. eidem D. in forma pred. impoſit. ac duran. toto tempore Parliament. pred. apud Weſtm. pred. fuit & remanſit. un. Burgenſ. pro pred. Burgo de Dorcheſter in eodem Parliament. Et hoc parat. eſt verificare. Unde & ex quo in informatione pred. evident. apparet & plene liquet quod ſuppoſit. offenſ. tranſgr. & contempt. pred. in dicend. & propaland. Anglicana verba pred. eidem D. in forma pred. impoſit. per informationem pred. ſuppoſit. fore commiſſ. fuit commiſſ. in domo pred. Commun. Parliament. pred. Parliament. pred. idem D. pet. Judic. ſi dictus Dom. Rex nunc de offenſ. tranſgr. & contempt. pred. quoad Anglicana verba pred. per ipſum D. in Parliament. pred. in forma pred. dici & propalari ſuppoſit. in Cur. Dom. Regis nunc hic reſponderi velit aut debeat. Et quoad tot. reſid. ſuppoſit. offenſ. tranſgr. & contempt. in informatione pred. mentionat. eidem D. ſuperius in forma pred. imponit. idem D. dicit quod ipſe non intendit quod dictus Dom. Rex nunc de aut pro pred. reſid. offenſ. tranſgr. & contempt. pred. in eadem informatione mentionat. eidem D. ſuperius in forma predict. impoſit. in Cur. dicti Dom. Regis nunc hic reſponderi velit aut debeat. Quia dic. quod pred. reſid. ſuppoſit. offenſ. tranſgr. & contempt. in informatione pred. ſuperius ſpecificat. eidem D. per information. pred. in forma pred. imponit. in Parliament. & non

in Cur. Dom. Regis nunc hic audiri & terminari debent. Et idem D. ulterius dic. quod ipſe pred. 16 die Martii Anno 3° ſuprad. in informatione pred. mentionat. debito modo elect. & retornat. fuit un. Burgenſ. pro pred. Burgo de Dorcheſter in pred. Com. Dorſ. in pred. Parliament. deſervitur, prout per information. pred. ſuperius mentionatur. Quodque idem D. tempore reſid. ſuppoſit. offenſ. tranſgr. & contempt. pred. ei in forma pred. impoſit. ac duran. toto tempore Parliament. pred. apud Weſtm. pred. fuit & remanſit un. Burgenſ. pro pred. Burgo de Dorcheſter in pred. Com. Dorſ. in Parliament. pred. Et hoc parat. eſt verificare. Unde & ex quo in Informatione pred. evident. apparet & plene liquet quod pred. reſid. ſuppoſit. offenſ. tranſgr. & contempt. pred. in Informatione pred. mentionat. eidem D. in forma pred. impoſit. per eandem Informationem ſuppon. fore commiſſ. in pred. domo Commun. Parliament. pred. in Parliament. pred. idem D. pet. Judic. ſi dictus Dom. Rex nunc de reſid. predict. ſuppoſit. offenſ. tranſgr. & contempt. in Informatione pred. mentionat. eidem D. in forma pred. impoſit. in Parliament. pred. in forma pred. fieri ſuppoſit. in Cur. Dom. Regis hic reſponderi velit aut debeat, &c.

The Attorney-General demurs to the Pleas ſeverally.

Et prefat. Robertus Heath Mil. qui ſequitur, &c. quoad pred. placitum pred. J. Elliot pro eodem Dom. Rege dic. quod placitum ill. prefat. J. in forma pred. ſuperius placitat. materiaque in placito pred. content. minus ſufficien. in lege exiſtunt ad precludend. Cur. hic a Juriſdiction. ſua audiend. & terminand. offenſ. tranſgr. & contempt. in informatione pred. mentionat. eidem J. per eandem informationem in forma pred. impoſit. Unde pro defectu ſufficien. reſpon. in hac parte pet. Judic. Et quod prefat. J. dicto Dom. Regi in Cur. hic reſpondeat de & in premiſſ. &c.

Et prefat. R. H. Mil. qui ſequitur, &c. quoad pred. placitum prefat. B. V. pro eodem Domino Rege dic. quod placitum ill. prefat. B. in forma pred. ſuperius placitat. materiaque in eodem content. minus ſufficien. in lege exiſt. ad precludend. Cur. hic a Juriſdiction. ſua audiend. & terminand. offenſ. tranſgr. & contempt. pred. in Informatione pred. mentionat. eidem B. per eandem Information. in forma pred. impoſit. Unde pro defectu ſufficien. Reſponſ. in hac parte pet. Judic. & quod prefat. B. dicto Dom. Regi in Cur. hic reſpondeat de & in premiſſ. &c. Et ſimile quoad placitum Denzil Holles.

The Defendants ſeverally join in Demurrer.

Et pred. J. Elliot Mil. ut prius dic. quod placitum pred. per ipſum J. ſuperius in forma pred. placitat. materiaque in placito pred. content. bon. & ſufficien in lege exiſtunt ad precludend. Cur. hic a Juriſdiction. ſua audiend. & terminand. offenſ. tranſgr. & contempt. pred. in Informatione pred. mentionat. eidem Johanni per eandem Informationem in forma pred. impoſit. Quod quidem placitum materiamque in eodem placito content. idem J. E. Mil. parat. eſt verificare. Unde ex quo idem Attorn. dicti Dom. Regis pro eodem Dom. Rege ad placitum ill. non reſpond. nec ill. aliqualit. dedic. ſed verification. ill. admittere omnino recuſat pet. Judic. & quod ipſe idem J. de offenſ. tranſgr. & contempt. pred. in informatione pred. mentionat. eidem J. per eandem informationem in forma pred. impoſit. per Cur. hic dimittatur, &c. Et ſic de verbo in verbum pro Valentine & Holles ſeparatim.

Cur. adviſare.

Et quia Cur. Dom. Regis hic de Judic. ſuo inde reddend. nondum adviſatur dies inde dat. eſt tam prefat. Roberto Heath Mil. qui ſequitur, &c. quam pred. J. E. B. V. & D. H. in ſtatu quo nunc, &c. uſque Octab. Sancti Hillar. coram Dom. Rege ubicunque, &c. de Judicio ſuo inde audiend. eo quod Cur. nondum, &c. Ad quas quidem Octab. Sancti Hillar. coram Dom. Rege apud Weſtm. ven. tam prefat. R. H. qui ſequitur, &c. quam pred. J. E. B. V. & D. H. in propr. perſon. ſuis. Et prefat. R. H qui ſequitur, &c. pro eodem Dom. Rege pet. Judic. Et quod pred. J. E. B. V D. H. dicto Dom. Regi in Cur. hic reſpondeant & eor. quilibet reſpondeat de & in premiſſ. &c. Super quo viſis lectis & audit. omnibus & ſingulis premiſſ. pro eo quod videtur Cur. hic quod ſeparal. placita pred. per prefat. J. E. B. V. & D. H. in forma pred. ſuperius placitat. materiaque in ſeparal. placitis pred. content. minus ſufficien. in lege exiſtunt ad precludend. Cur. hic a Juriſdictione ſua audiend. & terminand. offenſ. tranſgr. & contempt. pred. in informatione pred. mentionat. eiſdem J. E. B. V. & D. H. per eandem Information. in forma pred. impoſit. dictum eſt eiſdem J. E. B. V. & D. H. quod ipſi iidem J. E. B. V. & D. H. dicto Dom. Regi in Cur. hic reſpondeant & eor. quilibet reſpondeat de & in premiſſ. in informatione pred. ſuperius content. &c. Et ſuper hoc dies dat. eſt per Cur. eiſdem J. E. B. V. & D. H. coram Dom. Rege ubicunque, &c. uſque diem Veneris prox. poſt Octab. Pur. beate Marie Virgin. ad Information. predict. interloquend. & tunc ad reſpond. periculis ſuis. Ad quem diem coram Dom. Rege apud Weſtm. ven. tam prefat. R. H. qui ſequitur, &c. quam prefat. J. E. B. V. & D. H. in propr. perſonis ſuis. Et prefat. J. E. B. V. & D. H. licet ipſi ſepius premonit. & ſolempnit. exact. ad reſpond. nihil dicunt in Barr. ſive exoneration. Information. pred. per quod idem Dominus Rex remanet verſus eos indefenſe. Ideo conſ. eſt quod pred. J. E. B. V. & D. H. capiantur ad ſatisfaciend. Dom. Regi de finib. ſuis occaſione tranſgr. & contempt. pred. Ac quod habeant Impriſonament. corpor. ſuor. ad voluntat. ipſius Dom. Regis, & quod antequam deliberentur quilibet eor. inveniat. ſuffic. ſecur. de ſe bene gerend. erga dictum Dominum Regem & cunctum populum ſuum. Et quod pred. J. E. committatur locumtenen. Turris Domini Regis London. ſalvo cuſtodiend. quouſque, &c. Quodque pred. B. V. & D. H. committantur Mar. mareſc. Domini Regis coram ipſo Rege ſalvo cuſtodiend. quouſque, &c.

The Attorney-General prays that the Defendants may anſwer.

Judgment that the Pleas to the Juriſdiction of the King's-Bench are inſufficient.

The Defendants ordered to anſwer over.

Day given to the Defendants to anſwer *periculis ſuis.*

Judgment againſt them for want of Pleas in Chief.

Quod capiantur ad ſatisfaciend. de finibus.

That they be impriſoned during the King's Pleaſure, and find Sureties for their Good Behaviour before they be diſcharged. Sir *John Elliot* committed to the Tower, the other to the King's-Bench Priſon.

The Affeerment of their Fines by the Court.

Et finis ejuſdem J. E. afferatur per Cur. occaſione predict. ad 2000*l.*

Et finis ejuſdem B. V. afferatur per Cur. occaſione pred. ad 500*l.*

Et finis ejuſdem D. H. afferatur per Cur. ad. 1000 mercas.

Afterwards the Attorney-General comes into Court, and acknowledges that *Holles* has paid his Fine.

Poſtea ſcilicet die Lune prox. poſt Octab. Pur. beate Marie Virgin. Anno Regni Dom. Caroli nunc Regis Angl. &c. 12. coram Dom. Rege apud Weſt. ven. Johannes Banks Mil. Attorn. Dom. Regis nunc General. qui pro eodem Dom. Rege modo in hac parte ſequitur & pro eodem Dom. Rege dic. & cognovit quod pred. D. H. ſolvit & ſatisfecit pred. 1000 mercas recept. ad Scaccarii dicti Dom. Regis ad uſum dicti Dom. Regis in plen. ſatisfaction. pred. finis ſuper ipſum D. pro offenſ. pred. in informatione pred. ſuperius nominat. per Cur. hic in ipſum impoſit. prout per conſtat. ſub manu Edwardi Wardour Mil. Clerici pellium recept. Scaccarii dicti Dom. Regis hic in Cur. oſtenſ. plene liquet. Et pro eodem Dom. Rege idem Attorn. dicti Dom. Regis general. cognovit dictum Dom. Regem inde fore ſatisfactum. Ideo idem D. H. de eiſdem 1000 mercis eat inde quiet. Poſtea ſcilicet die Mercur. prox. poſt Quinden. Paſche Anno Regni dicti Dom. Regis nunc Angl. &c. 16 coram Dom. Rege apud Weſtm. ven. Johannes Banks Mil. Attorn. Dom. Regis nunc general. in propr. perſona ſua. Et protulit in Cur. dicti Dom. Regis coram Dom. Rege tunc ibidem quoddam breve ipſius Dom. Regis de privat. ſigillo ſibi & al. direct. & petiit illud irrotulari & allocari, cujus quidem brevis tenor ſequitur in hec verba: Charles, *by the Grace of God, King of* England, Scotland, France, *and* Ireland, *Defender of the Faith*, &c. *To the Lord High-Treaſurer of* England, *Chancellor, Under-Treaſurer, and Barons of our Exchequer, and all other Officers and Miniſters of the ſame Court for the Time being, and to the Chief-Juſtice, and the reſt of our Juſtices of our Court of King's-Bench, and to our Attorney-General, and all other Officers and Miniſters of the ſame Court for the Time being, Greeting. Whereas in* Michaelmas *Term, in the tenth year of our Reign, upon an Information in our Name exhibited in our Court of King's-Bench, againſt* Benjamin Valentine, *Eſq; and others, for divers Offences, Treſpaſſes, and Contempts therein mentioned, the ſaid* Benjamin Valentine, *by Judgment of the ſame Court, was fined to us in the Sum of* 500l. *and to be committed to our Priſon of our* Marſhalſea *during our Pleaſure; and that he ſhall find ſufficient ſecurity for his good behaviour to us and our People, as by the ſaid Information and Judgment thereupon remaining upon Record in our ſaid Court of King's-Bench, more at large may appear. And whereas the ſaid* B. V. *hath been reſtrained of his Liberty ſince the laſt Parliament for not ſatisfying the ſaid Fine ſo impoſed on him, as aforeſaid.* Now know ye, *That we of our ſpecial Grace have remiſed, releaſed, and quit-claimed, and by theſe preſents, for us, our Heirs and Succeſſors, do remiſe, releaſe, and quit-claim unto the ſaid* B. V. *the ſaid fine or Sum of* 500l. *by the Judgment of our ſaid Court on him the ſaid* B. V. *impoſed as aforeſaid. And all Commitment, Impriſonment, and other Matters whatſoever adjudged or inflicted upon him by our ſaid Court, for or by reaſon of the Treſpaſſes, Offences or Contempts aforeſaid. Wherefore we do by theſe Preſents will and require, as well the Lord-Treaſurer, Chancellor, Under-Treaſurer, and Barons of our Exchequer, as the Juſtices of our Court of King's-Bench, and the Officers and Miniſters of the ſaid ſeveral Courts reſpectively, to whom it ſhall or may appertain, that they, and every of them reſpectively, at all times hereafter do forbear, and utterly ſurceaſe to make or grant forth any Extents, Seizures, Executions, or other Proceſs whatſoever, againſt the ſaid* B. V. *his Heirs, Executors or Adminiſtrators, or his or their Lands, Tenements, Hereditaments, Goods or Chattels for or concerning the levying of the ſaid Fine or Sum of* 500l. *or any Part thereof. And that they take Order as well for his full and clear Diſcharge thereof, as of and from his Commitment and Impriſonment as aforeſaid. And theſe Preſents, or the Inrollment thereof, ſhall be unto them, and every of them to whom it ſhall or may appertain, a ſufficient Warrant and Diſcharge in that behalf. And laſtly, we will, and by theſe Preſents authoriſe and require our Attorney-General for the Time being, for us, and in our Behalf, to acknowledge Satisfaction upon Record of and for the ſaid Fine of* 500l. *on the ſaid* B. V. *by Judgment of our ſaid Court ſo impoſed as aforeſaid. Whereby he may be fully and abſolutely acquitted and diſcharged thereof againſt us, our Heirs and Succeſſors; and theſe Preſents, or the Inrollment thereof, ſhall be unto our ſaid Attorney-General for the Time being, a good and ſufficient Warrant in that Behalf. Given under our Privy-Seal at our Palace of* Weſtm. *the 7th day of* March, *in the fifteenth Year of our Reign.* Et ſuper hoc idem J. B. Miles Attorn. dicti Dom. Regis General. pro eodem Dom. Rege virtute brevis de privat. ſigillo predict. dicit & cognovit ipſum Dominum Regem fore plenar. ſatisfact. de pred. fin. 500*l.* ſuper ipſum B. V. pro offenſ. predict. in Informatione predict. mentionat. per Cur. hic ut prefertur impoſit. & pet. quod pred. B. V. virtute brevis pred. de Impriſonament. ſuo ads. ipſius Dom. Regis & de Judic. pred. exoneretur & dimittatur ſuper quo viſ. & per Cur. hic intellect. omnibus & ſingulis premiſs. conſ. eſt per Cur. quod pred. B. V. pro offenſ. pred. in Informatione pred. ſuperius mentionat. per Cur. hic ut prefertur impoſit. ſit inde quiet. & eat inde ſine die, & quod ipſe idem B. V. de Impriſonament. ſuo ad ſect. Dom. Regis & de Judic. pred. verſus ipſum B. in forma pred. reddit exoneretur & dimittatur, &c. Poſtea ſcilicet 12° die Febr' Anno Regni Dom. noſtri Caroli ſecundi nunc Regis Angl. &c. 20° Dominus Rex mandavit dilecto & fidel. ſuo Johanni Kelynge Mil. Capital. Juſtic. dicti Dom. Regis ad placita coram ipſo Rege tenend. aſſign. breve ſuum clauſum in hec verba, Carolus ſecundus, &c. dilecto & fidel. noſtro Johanni Kelynge Mil. Capital. Juſtic. noſtro ad placita coram nobis tenend. aſſign. ſalutem. Quia in record. proceſs. ac etiam in redditione Judicii ſuper quandam Informationem in Cur. Dom. Caroli primi nuper Regis Angl. patris noſtri prechariſſimi coram ipſo nuper Dom. Rege exhibit. per Robertum Heath Mil. tunc Attorn. General. ipſius nuper Dom. Regis, qui pro eodem Domino Rege in ea parte ſequebatur verſus Johannem Elliot nuper de London Mil. B. Valentine nuper de London pred. Ar. & D. Holles nuper de Lond. pred. Ar. de diverſ. malegeſtur. ut dicitur Error intervenit manifeſtus de grave dampn. ipſius D. H. modo Dom. Hollis Baron. de Ifeild ſicut ex querela ſua accepimus. Nos errorem ſiquis fuerint modo debito corrigi & eidem D. H. modo Domino

At another Time after the Attorney brings into Court the King's Letters Patents under his Privy-Seal, whereby the King remits to *Valentine* his Fine, and all the reſt of the Judgment; and prays the ſame may be inrolled and allowed.

Judgment of the Court at the Attorney's prayer, that *Valentine* be diſcharged.

D. Holles, now Lord *Holles*, brings a Writ of Error upon the ſaid Judgment, returnable in Parliament.

mino Holles Baron. de Ifeild plenam & celerem Juſtic. fieri volen. in hac parte vobis mandamus quod ſi Judic. inde reddit. ſit tunc record. & proceſſ. pred. cum omnibus ea tangen. nobis in preſent. Parliament. noſtrum diſtincte & aperte mittatis & hoc breve ut inſpect. record. & proceſs. pred. ulterius inde aſſenſu Dominor. Spiritual. & Temporal. in eodem Parliament. exiſten. pro Error. ill. corrigend. quod de Jure & ſecundum legem & conſ. Regni noſtri Angl. fuerit faciend. T. meipſo apud Weſtm. 12° die Febr. Anno Regni noſtri 20.

Norbury.

The Lord Chief-Juſtice delivers the Record.

Virtute cujus quidem brevis dictus Capital. Juſtic. record. pred. Dom. Regi in preſent. Parliament. propr. manibus protulit ſecundum exigenc. ejuſdem brevis & poſtea ſcilt. 8° die Martii Anno Regni Dom. Regis nunc Caroli ſecundi 20 coram ipſo Rege in preſenti Parliament. ven. pred' D. H. modo Dom. Holles Baro de Ifeild per Samuel. Aſtry Attorn. ſuum & dicit quod in Record. & proceſſ. pred. ac etiam in redditione Judicii pred. manifeſt. eſt Errat. videlicet in hæc verba in Informatione pred. mentionat. fore dicti & propalat. in domo Commun. Parliament. per pred. D. H. modo Dominum Holles tunc exiſten. Burgenſ. pro Burgo de Dorcheſter in tunc preſen. Parliament. deſervien' audiri & terminari in domo Commun. Parliament. debeant per legem terre & non in Cur. Domini Regis & in hoc quod per Information. in dicto Record. mentionat. idem D. H. modo Dominus Holles oneratur cum dictione & propalatione quorundam verbor. in domo Commun. Parliament. ac etiam cum tranſgrſ. & inſult. fact. vi & armis ſuper Johannem Finch prolocutor. ejuſdem tunc domus Commun. Parliament. Ad que idem D. H. modo Dominus H. duo ſeparal. placita placitabat tamen unicum tantum Judic. reddit. eſt de utroque per Cur. & unicus finis ubi duo Judicia reddi & duo fines imponi debuiſſent quia ſi forte tranſgr. & inſult. audiri & terminari forte poſſit aut debeat in Cur. Dom. Regis coram ipſo Rege tamen dictio & propalatio verbor. quorumcunque in domo Commun. Parliament. per Burgenſ. in eodem Parliament. deſervien. alibi quam in Parliament. audiri ſeu terminari non debent, &c.

Errors aſſigned.

In nullo eſt Errat' by the Attorney-General.

Et Galfridus Palmer Mil. & Bar. Attorn. Domini Regis nunc General. qui per eodem Dom. Rege in hac parte ſequitur preſen. in propr. perſona ſua pro eodem Dom. Rege dicti quod nec in Record. & Proceſs. pred. nec in redditione Judicii pred. in ullo eſt Errat. & pet. &c.

A Meſſage was ſent to the Houſe of Commons by Sir *William Child* and Sir *Juſtinian Lewin*, to acquaint them, that the Lords do agree to thoſe Votes which were delivered at the Conference yeſterday.

Die Mercurii, 15 *April*, 1668.

"WHereas Counſel have been this day heard at the Bar, as well to argue the Errors aſſigned by the Lord *Holles*, Baron of *Ifeild*, upon a Writ of Error depending in this Houſe, brought againſt a Judgment given in the Court of King's-Bench in 5 *Car.* I. againſt the ſaid Lord *Holles*, by the name of *Denzil Holles*, Eſq. and others; as alſo to maintain and defend the ſaid Judgment on his Majeſty's behalf: Upon due conſideration had of what hath been offered on both parts thereupon, the Lords Spiritual and Temporal in Parliament do order and adjudge, That the ſaid Judgment given in the Court of King's-Bench in 5 *Car.* I. againſt the ſaid *Denzil Holles*, and others, ſhall be reverſed."

The Form whereof (to be affixed to the Tranſcript of the Record) followeth:

ET quia Curia Parliamenti de judicio ſuo de & ſuper præmiſſis reddend' nondum adviſatur, dies datus eſt tam prædict' Galfrido Palmer *Militi & Baronet' qui ſequitur, &c. quam prædict'* Denzil *Domino* Holles *coram eadem Curia uſque ad diem* Mercurii *decimum quintum diem* Aprilis *tunc proximum ſequentem apud* Weſtmonaſt. *in Comitat'* Midd' *de judicio ſuo inde audiend' eo quod Curia prædict' nondum, &c. Ad quem diem coram Curia prædict' venit tam predict'* Galfridus Palmer *qui ſequitur, &c. quam prædictus* Denzil *Dominus* Holles *in propriis perſonis ſuis. Super quo, viſis, & per eandem Curiam nunc hic plenius intellectis omnibus & ſingulis præmiſſis, maturaque deliberatione inde habita, conſideratum eſt per Curiam prædictam, quod Judicium prædict' ob errores prædictos & alios in Recordo & Proceſſu prædictis compertos, revocetur, adnulletur & penitus pro nullo habeatur. Et quod prædict'* Denzil *Dominus* Holles *ad omnia quæ idem* Denzil *Dominus* Holles *occaſione Judicii prædict. amiſit, reſtituatur.*

Jo. Browne, *Cleric. Parliamentorum.*

XIX. The Trial of *James* Lord *Uchiltrie*, for Calumnies and ſlanderous Speeches againſt *James* Marquis of *Hamilton*; the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, tending to the ſowing of Sedition betwixt his Majeſty and the ſaid Noblemen; at *Edinburgh*, *Nov.* 30, 1631. 6 *Car.* I.

[From an Authentic MS.]

Curia Juſticiariæ S. D. N. Regis tenta in pretorio burgi de Edinburgh, *ultimo die menſis* Novembris, *Anno Dom. Milleſimo, Sexcenteſimo, Trigeſimo primo, per Honorabiles & Diſcretos Viros, Magiſtros* Alexandrum Colville *de* Blair, & Jacobum Robertoun *Advocatum, Juſticiarios deputatos nobilis & potentis domini* Willielmi *Comitis de* Stratherne & Monteith, *Dom.* Grahame, Kilbryde, & Kynpont, *præſidis ſecreti Concilii & Juſticiarii generalis Dom. S. D. N. Regis totius Regni ſui* Scotiæ, *ubilibet conſtitut. Sectis vocatis & Curia legitime affirmata.*

Intran'

JAMES Lord *Uchiltrie* delaitit of the making of Leaſings, Calumnies and ſlanderous Speeches againſt *James* Marquis of *Hamilton*; the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*; tending to the ſowing of ſedition betwixt his Majeſty and the ſaid Noblemen, his Majeſty's loyal Subjects; in form and manner ſpecify'd and ſet down in his Dittay.

Purſuer, Sir *Thomas Hope* of *Craighall*, Knight and Baronet, Advocate to our Sovereign Lord for his Highneſs's entries.

My Lord Advocate produced an Act of ſecret Council, commanding him to purſue *James* Lord *Uchiltrie*, now entered upon pannel for the Crimes contained in his Dittay, of the which Act of Council the tenor follows. *Apud* Halyrudhouſe *Viceſimo 2do die menſis* Novembris *Anno Dom. Milleſimo, Sexcenteſimo, Trigeſimo primo.* Foraſmekill as the King's Majeſty, by his Letter directed to the Lords of his Privy-Council, having ſignified his royal pleaſure and direction, that *James* Lord *Uchiltrie*, whom his Majeſty has ſent home to be kept in cloſe ward, ſhall be try'd and cenſur'd according to the Laws of this Kingdom, for ſome Informations given by him, reflecting upon ſome Noblemen and Counſellors of the ſame, before what Judicatory and Judges the ſaid Lords ſhould think fit and competent for that purpoſe: and his Majeſty having, to that end, ſent down to the ſaid Lords ſome depoſitions under the Lord *Uchiltrie*'s own hand; and the authentick copies of others, whereof the principals are retained by his Majeſty, becauſe they likewiſe concern other perſons. And the ſaid Lords having read and conſidered the ſame depoſitions, and having taken into their conſideration, which is the moſt proper judgment for trying and cenſuring of matters of this kind; they have all with one voice found, and by the tenor of this Act, finds and declares, that the Trial and Cenſuring of the ſaid Lord upon the particular aforeſaid, is moſt proper and competent to be followed out before his Majeſty's Juſtice: and therefore ordains Sir *Thomas Hope* of *Craighall*, Knt. his Majeſty's Advocate, to form and draw up the ſaid Lord *Uchiltrie*'s Dittay; and to purſue him criminally thereupon, before his Majeſty's Juſtice, upon the laſt day of *November* inſtant; and ordains his Majeſty's ſaid Advocate to give a juſt copy of the Dittay to the ſaid Lord *Uchiltrie*, betwixt and the 24th of *November* at night; to the intent he may have time to be adviſed therewith, and to conſult his Advocates, anent his lawful defences competent to him againſt the ſame. Anent the doing whereof, the extract of this Act, ſhall be unto his Majeſty's ſaid Advocate a Warrant, *extractum de Libris actorum ſecreti Concilii S. D. N. Regis, per me* Jacobum Prymrois *Clericum ejuſdem ſub meis ſigno & ſubſcriptione manualibus, ſic ſubſcribitur* James Prymrois. After production and reading of the which Act of Council, my Lord Advocate alſo produced his Majeſty's Letter, directed to the Lords of his Majeſty's Privy-Council of this Kingdom, dated the 24th of *September* 1631, together with two depoſitions of the Lord *Uchiltrie*'s, the one dated the 20th of *June* 1631, the other upon the 24th of *June* 1631. Then three ſeveral depoſitions made by *Donald* Lord *Rea*, whereof two thereof dated upon the 21ſt of *June* 1631, and the third upon the 24th of *June* 1631, all true copies thereof under the hands and ſubſcription of the Committee of the Council of *England*. Of the which depoſitions and Letter above-written, directed by his Majeſty to the Council, the tenor follows. In the firſt, the depoſition made by *James* Lord *Uchiltrie* upon the 20th of *June* 1631.

Copia vera. The Examination of James *Lord* Uchiltrie, *taken the 20th of* June 1631.

THE ſaid Examinant ſaith, That on or about the 6th or 7th of *May* laſt, at the ſign of the *Bear* near the *Bridge-foot*, the Lord *Rea* told this Examinant, that ſoldiers and travellers did often hear thoſe things, where of thoſe that ſtaid at home had no notice; and ſaid, he did believe there was a plot againſt this Land. This Examinant wiſh'd him, if he had any good grounds ſo to think, that he ſhould not fail to diſcover it. The Lord *Rea* ſaid, he had no certain ground, but if he had ſtay'd but five weeks longer in the *Low Countries*, he would have known the certainty; and that he would have hazarded his life but he would have had the certainty.

The

The 13th of *May* the Lord *Rea* came to this Examinant's Chamber, and there putting this Examinant in mind of the former Speech between them, he told this Examinant, that he had learned more certainty than ever he had before ſince the Time of their laſt Speech; whereupon divers Paſſages were between his Lordſhip and this Examinant about the Diſcovery of it, and the Manner. In the End his Lordſhip told this Examinant, that the Purpoſe of the Marquis of *Hamilton*'s Levies (as divers of his Commanders and Followers had informed him the ſaid Lord *Rea*) was, that either they ſhould not go out of *England* and *Scotland*, or if they did, they ſhould return to *England* or *Scotland*, and ſurprize the King's Houſes in *Scotland*, *viz.* the Caſtles of *Edinburgh*, *Striveling*, and *Dunbarton*; and fortify themſelves in *Leith*, under Pretence of training; and ſhould take *Berwick*, and ſo march forward into *England*. And this Examinant aſking what could be their Intention ſo to do; the Lord *Rea* ſaid, that he was informed they meaned to take the King's Perſon, and to immurate him, to ſend the Queen into a Cloiſter, and to captivate the young Prince with his Father, and to ſtrike off the Heads of all the Principal Men about the King, both *Engliſh* and *Scots*: And in particular the Lord-Treaſurer of *England*, the Earl of *Monteith*, Sir *William Alexander*, and Sir *Thomas Hope*. And this Examinant ſaith, That before the Lord *Rea* diſcovered the Particularities aforeſaid to this Examinant, this Examinant uſing Perſuaſions to him to reveal it, aſked the Lord *Rea* what it might be, ſaying, it was either a *French* or a *Spaniſh* Faction. To which the Lord *Rea* ſaid, It was neither; but told this Examinant what it was, and ſo revealed the Particulars above-mentioned. Whereupon the Lord *Rea* being fully reſolved to proceed to a further Diſcovery, and thinking it fitter to be done by this Examinant than by himſelf, leſt thoſe whom it concerned might ſooner ſuſpect it, deſired this Examinant to acquaint his Majeſty or the Lord-Treaſurer therewith.

On the Morrow, being *Saturday* the 14th of *May* at Night, this Examinant came to have ſpoken with the Lord-Treaſurer; but his Lordſhip being gone to Bed, by his Appointment, this Examinant came the next Morning, and told him, he had ſomewhat to reveal that concerned his Majeſty, and all his Kingdoms and Poſterity. The Lord-Treaſurer thereupon went inſtantly up to the King, and after, the ſame Day, told this Examinant, that his Majeſty had given him Commiſſion to hear this Examinant's Relation. This Examinant further ſaith, That the Lord *Rea* told this Examinant, that he had much of this beyond Sea from *Robert Meldrum* and *David Ramſay*. But ſince his coming into *England* (as he ſaid) he had ſpoken with Sir *James Ramſay*, Sir *James Hamilton*, Colonel *Alexander Hamilton* and Captain *Douglas*, and had gotten ſomewhat out of every one of them: He alſo ſaid, he had ſpoken with the Lord *Seaforth*, and underſtood ſomewhat from him.

On *Monday* the 16th of *May*, this Examinant attended the Lord-Treaſurer at *Whitehall*; and entering into a Relation, in the very Beginning diſcovered, that the Matter which he was to relate concerned the Lord Marquis of *Hamilton* and his Actions; which ſo ſoon as he had named, the Lord-Treaſurer commanded him to ſay no more, until he had acquainted the King again; but wiſhed this Examinant that he and the Lord *Rea* ſhould go preſently to *Greenwich*, where the Lord-Treaſurer would meet them. But the King being come towards *Whitehall*, this Examinant and the Lord *Rea* came back again, and were then appointed by the Lord-Treaſurer to attend his Majeſty on *Thurſday* at ten o'Clock, which they did. The Examinant further ſaith, That on *Monday* the 16th of *May*, this Examinant delivered to the Lord-Treaſurer a Liſt of Names, to repreſent to his Majeſty the Strength of the Lord *Hamilton*'s Party and Adherents in *Scotland*. At this Examinant's coming to his Majeſty, this Examinant told the King, that the Buſineſs was a Treaſon intended againſt his Majeſty, and the Party was the Marquis of *Hamilton*, as this Examinant was informed; and that it was the filthieſt Treaſon that ever was intended, and was ſorry that any *Scottiſh* Man ſhould have a Hand in it, for it was a Shame to the whole Nation. And then the Lord *Rea* himſelf coming in, made relation to his Majeſty, who remitted him to the Lord-Treaſurer; whereupon this Examinant coming to the Lord-Treaſurer, and telling him the King had remitted the Lord *Rea* unto him; the Lord Treaſurer wiſhed, that the Lord *Rea* would put his Relation in writing. Whereupon the Lord *Rea* and this Examinant went together, and ſat up all Night; and the Lord *Rea* firſt putting it into writing, this Examinant wrote it out of the Lord *Rea*'s Papers, who on the Morrow brought the ſame to the Lord-Treaſurer: But this Examinant was not then preſent; but the next Time that he came to the Lord-Treaſurer's, being aſked by him whoſe the Hand-writing was, this Examinant ſaid, it was his own Hand; and the Lord-Treaſurer telling him that the Lord *Rea* had not ſubſcribed it, this Examinant ſaid, he would without doubt ſubſcribe it. And about two Days after he brought the Lord *Rea* to the Lord-Treaſurer, who read over the whole writing, and ſubſcribed his Name to it, ſaying, he would ſeal it with his Blood.

This Examinant further confeſſeth, That he told the Lord-Treaſurer, that the Lord *Rea* told him he had yet more, and would ſay ſo much, that the Marquis ſhould not have the Face to deny it: which the Lord *Rea* then preſent affirmed; inſomuch as the Lord-Treaſurer ſaid, Then is the Buſineſs at an End, there needs no writing.

This Examinant further ſaith, That on the *Sunday* Morning, when the Marquis of *Hamilton* came out of *Scotland*, the Lord *Rea* told this Examinant, that he had ſpoken with the Lord *Seaforth*, who aſſured him their Purpoſe was to take the King, the Queen, and the Prince; and this Examinant aſking how they ſhould effect it, the Lord *Rea* replied, the Lord *Seaforth* had told him, they were great with the Earl of *Dorſet*, who had the Cuſtody of the Prince. And this Examinant further ſaith, That the Lord *Rea* told him, that he was aſſured by my Lord of *Roxburgh*, that the Marquis and his Company would haſten their Purpoſe; and the Lord *Rea* ſaid, that ſurely the *Hamiltons* had taken ſome Vent of the Buſineſs, and that Sir *James Ramſay* had told him, he had 1500 Men in Readineſs upon an Hour's Warning, but they ſhould not come about *London* till their Buſineſs was ready withal; which this Examinant the ſame Morning acquainted the Lord-Treaſurer, to the Intent that his Majeſty might know thereof.

And further ſaith, That ſhortly after the Lord *Rea* told him he had ſpoken with the Lord *Seaforth*, who told him, that the Matter which he had formerly told him concerning the Earl of *Dorſet*, was but a diſguis'd thing.

This Examinant further ſaith, That on that *Sunday* Morning he wiſhed the Lord-Treaſurer to adviſe the King, that he ſhould go to *London* for more Safety; and underſtanding the King had ſent for the Lord *Rea*, this Examinant wiſhed the Lord *Rea* were not ſent for, becauſe the Lord *Rea* was gone to the Lord *Seaforth*'s to learn more: And further ſaith, That the ſame time being in the End of the King's Dinner, this Examinant told the King in theſe Words: *Sir, now we know the Buſineſs, but know not the Time; and therefore, Sir, either do or die.*

Copia Vera, my Lord Rea's *firſt Examination, 21ſt of June, 1631* *.

IN the Examination of *Donald* Lord *Rea*, taken the 21ſt of *June*, 1631, the ſaid Examinant ſaith, that having heard in *Sweden* from *David Ramſay*, ſuch things as are contained in the written Relation which hath been delivered to his Majeſty; and before having heard in *Pomerland* thoſe Paſſages from *Robert Meldrum* which are in the ſame Relation, this Examinant having a Reſolution to come for *England* about *December* laſt, was ſtayed in *Denmark* by Reaſon of the Ice, ſo as he came not to *Holland* till about *March* laſt, where he had Conference with *David Ramſay*, and heard from him ſuch other Paſſages as are contained in the ſame Relation. And after coming into *England*, becauſe *David Ramſay* had told this Examinant, that he would write to the Marquis of *Hamilton*, how far forth the ſaid *David Ramſay* had treated with this Examinant, this Examinant expected that the Marquis would have ſpoken thereof unto him; he did therefore forbear to ſay any thing thereof; yet about two or three Days before the Lord Marquis went into *Scotland*, this Examinant did ſpeak to the Lord *Uchiltrie* to this Purpoſe: That his Lordſhip was better acquainted than this Examinant with the Faſhions and Laws of this Land; and deſired to know what Danger it was, if any Man hearing beyond Sea of Things that might be dangerous to the King or State, ſhould not ſpeak of it. To which the Lord *Uchiltrie* anſwered, No leſs than your Head and Eſtate. And this was all that paſſed between them at that Time, being the firſt Time they ſpake thereof; and the Place was (as he thinketh) at the Lord *Uchiltrie*'s own Lodgings.

He further ſaith, That about eight or ten Days after, this Examinant coming to the Lord *Uchiltrie*'s Lodgings to talk of ſome other Buſineſs, after Speech thereof, ſpake to this Effect: My Lord, you remember I aſked you a Queſtion a while ſince, what the Danger might be, not to ſpeak of Matters dangerous to the King or State, which he had heard beyond the Seas, and I would now again have your Advice therein: And the Lord *Uchiltrie* promiſing his readineſs to adviſe him, ſo as he might be acquainted with the particular, this Examinant told him, he would acquaint him with the particular, if he would ſwear not to diſcover it but as he ſhould direct; adding, That if he did otherwiſe, this Examinant would pay him. The Lord *Uchiltrie* then ſaid, and proteſted, That he would not diſcover any thing but as this Examinant ſhould appoint, whereupon this Examinant declared the particular to him, who hearing it, told this Examinant it was neceſſary to be revealed, and doubted leſt this Examinant had kept it too long already: But then this Examinant ſaid, Conſidering it concerned one ſo near the King as the Marquis of *Hamilton*, he thought it not fit that this Examinant ſhould himſelf break it to the King, leſt the King ſhould at firſt reject it; but it would be fitter for ſome other to do it, and therefore deſired his Opinion how to diſcover it. The Lord *Uchiltrie* adviſing a while, ſaid, He thought it beſt it were diſcovered to ſome of the Privy-Council; whereupon this Examinant ſaid, That he would not diſcover it to any *Scotſman*, but thought it beſt to reveal it to the Lord-Treaſurer, becauſe he thought the Lord-Treaſurer was no way in the Plot.

According to which Reſolution the Lord *Uchiltrie* (as he after told this Examinant) did, according as was agreed between him and this Examinant, repair to the Lord-Treaſurer the ſame Night; but failing then to ſpeak with him, he went the next Morning, before this Examinant ſaw him, and returning, told this Examinant he had been with the Lord-Treaſurer, and in general imparted to him, that he had a Matter to diſcover which nearly concerned his Majeſty: And ſaid further, it was no *Engliſh* Buſineſs, but it was (to his own Shame he ſpake it) a *Scottiſh* Buſineſs, neither was it any Popiſh Plot: And the Lord-Treaſurer then refuſed to hear it, till he had Warrant from the King.

After the Lord *Uchiltrie* and this Examinant were appointed to wait on the King at *Greenwich*, whither this Examinant coming, found the Lord *Uchiltrie* within with his Majeſty, and then this Examinant coming in, made a full Relation to his Majeſty; who aſking this Examinant wherefore he had not himſelf told his Majeſty ſooner of it, this Examinant anſwered, That conſidering the nearneſs of the Marquis of *Hamilton* to his Majeſty, this Examinant was afraid leſt his Majeſty would have been impatient towards this Examinant; and beſought his Majeſty to forgive this Examinant, if he had thought he had done amiſs therein. His Majeſty thereupon referred this Examinant to the Lord-Treaſurer, and bid this Examinant put the Relation in Writing. Whereupon that Night this Examinant and the Lord *Uchiltrie* ſat up all Night, and this Examinant writing it firſt down, the Lord *Uchiltrie* wrote it Sheet after Sheet, out of this Examinant's Paper. And this Examinant brought the ſame written Relation to the Lord-Treaſurer, and read it unto him, and left it with him. And a Day or two after, this Examinant and the Lord *Uchiltrie* came again together to the Lord-Treaſurer; the Lord *Uchiltrie* having told him, that this Examinant had forgotten to ſign it; and then this Examinant ſigned it, ſaying, he would make it good with his Blood.

At which Time this Examinant remembers the Lord *Uchiltrie* told the Lord-Treaſurer, that this Examinant had more to ſay yet, which this Examinant did then alſo affirm; and the Cauſe wherefore he did affirm it, was, becauſe this Examinant had ſpoken with the Lord *Seaforth*, and had ſome Particulars from him, which he did not particularly tell to the Lord *Uchiltrie*, but affirmed to him in the general, that he could ſay no more; but a Day or two after, this Examinant went again to the Lord *Seaforth*, and ſpake with him, and then he told the ſame, firſt to the Lord *Uchiltrie*.

He further ſaith, That the Lord *Uchiltrie*, on *Sunday* Morning, told this Examinant, that he had been with the Lord-Treaſurer, and had told him of the Paſſages with the Lord *Seaforth*, and of the Marquis's Return, and that he conceived it might be dangerous at that time for his Majeſty. But this Examinant told him, he had done evil therein, for there was no ſuch ſuddenneſs to be feared: And on the ſame

* See the Trial of *Rea* and *Ramſay* by Combat, in *Ruſhworth*'s Collections, Vol. II. page 113. which Method of Trial being now diſuſed, is not inſerted in this Work.

ſame *Sunday* in the afternoon, this Examinant coming to his Majeſty, and hearing from him, that he had been advertis'd of ſomewhat importing matter of preſent danger; this Examinant ſaid, he had been with the Lord *Seaforth*, but had not the certainty of things, but pray'd his Majeſty to give him leave to go again to the Lord *Seaforth*'s, and then he would learn all. And at the ſame time his Majeſty telling what danger had been ſuggeſted to him, now upon the Marquis's return; this Examinant proteſted he knew nothing againſt the perſon of the Marquis; but that he was, for aught this Examinant knew, as good a ſubject as any the King had.

Copia Vera. My Lord Rea's *ſecond Examination, the 21ſt of* June 1631.

THE Examination of *Donald* Lord *Rea*, taken the 21ſt of *June* 1631. The ſaid Lord *Rea*, having deliberately heard read the Examination of *James* Lord *Uchiltrie*, taken the 20th of this inſtant month, doth acknowledge the ſame to be true in all points, ſo far as the ſame concerneth the knowledge, words or acts of this Examinant, ſaving the explanations hereafter following: He ſaith, that as touching the conference between the Lord *Uchiltrie* and this Examinant the 13th of *May* laſt, where it is therein mentioned that this Examinant told him, that ſince the time of their laſt ſpeech, he had learned more certainty than ever he had before; this Examinant did not ſay, that he had learned more certainty ſince their laſt ſpeech, for in truth he had not learned any thing within that time. But thinks he might ſay, that he had learned more certainty ſince he came to *England*, than he had before; and therefore takes it, that the Lord *Uchiltrie* did miſtake in that point.

And whereas in the ſame conference it is ſet down, that this Examinant ſhould ſay that he was inform'd, that they meant to ſtrike off the heads of all the principal men about the King; this Examinant ſaid, that he was inform'd they would ſtrike off the heads of the *Spaniſh* faction; and that he named the Lord-Treaſurer, the two Biſhops, the Earl-Marſhal, the Earl of *Carliſle*, Sir *Francis Cottington*, the Lord *Monteith*, Sir *William Alexander*, and Sir *Thomas Hope*, and likewiſe Sir *Kenelm Digby*, and ſpake of none other, neither in general nor particular; and ſaith, that he was ſo inform'd touching the *Spaniſh* faction by Mr. *Meldrum*, and *David Ramſay*; and touching the *Scots* by the Earl of *Seaforth*. And ſaith, that *Meldrum* and *David Ramſay* did name the aforeſaid *Engliſhmen* to be of the *Spaniſh* faction. And whereas it is ſaid, that this Examinant deſired the Lord *Uchiltrie* to acquaint his Majeſty or the Lord-Treaſurer with the matter; this Examinant did deſire him to acquaint the Lord-Treaſurer, but did not mention his Majeſty, but that it ſhould come by the Lord-Treaſurer to his Majeſty.

He confeſſed, he ſaid, that ſince his coming into *England*, he had ſpoken with Sir *James Ramſay*, Sir *James Hamilton*, and Capt. *Douglas*, and gotten ſomewhat out of every one of them; but did not ſay he had ſpoken with *Alexander Hamilton*, or gotten any thing out of him ſince this Examinant's coming into *England*.

This Examinant denieth, that he either ſaid himſelf, or affirm'd its being ſaid by the Lord *Uchiltrie*, that he could ſay ſo much as the Marquis ſhould not have the face to deny it; but ſaid, he could bring as honeſt a man as this Examinant, that would tell to the Marquis's face more than this Examinant would do: and thus he meant by the Lord *Seaforth*.

He confeſſed that he ſaid, Sir *James Ramſay* told him he had fifteen hundred men in readineſs, but would not bring them together, till the parties in *Scotland* were firſt ready; and ſaith, Sir *James* told him as much, and that there were good officers, and the Earl of *Eſſex*, and the Archbiſhop of *Canterbury* were ſureties for ſome of them; and other than this, he ſpake not touching the 1500 men.

He ſaith, he was not acquainted with the liſt of the Names delivered by the Lord *Uchiltrie* to the Lord-Treaſurer, nor had any thing to do therein.

Copia vera. The ſecond Examination of James *Lord* Uchiltrie, *taken the 24th of* June 1631.

THE ſaid Examinant confeſſeth, that the underſtanding which he had of the buſineſs, concerning the Marquis of *Hamilton*, whereof he hath been ſo often examined, came to him from the Lord *Rea*.

He confeſſeth further, that the paper of Names which he did deliver to the Lord-Treaſurer, was made by this Examinant himſelf, and the Lord *Rea* was not privy to the making of it, or to the delivery thereof to the Lord-Treaſurer, till after it was done.

He ſaith, that the cauſe wherefore he did in that paper mention the Lord Marquis to be prime Agent, was, for that the Lord *Rea* had told him, the Lord Marquis's followers had ſaid, the intent of the Marquis's levies was to invade *Scotland*. Being told, that the Lord *Rea* hath been ſo far from charging the Marquis, that he hath affirm'd before his Majeſty, that for aught he knows, the Marquis is as good a ſubject as any the King hath; he anſwereth, if in tenderneſs and care of the King's ſafety, and upon ground of the Lord *Rea*'s relation, for the Lord Marquis's followers, he have gone any thing too far, he truſteth his Majeſty will impute it to his duty.

Being aſk'd, why, in the aforeſaid paper, he makes the Earl of *Melros*, the Earl of *Roxburgh*, and the Earl of *Buccleugh* to be plotters, ſaith, that the Lord *Rea* told him, the Lord *Seaforth* had affirm'd it to him, that the Earls of *Melros* and *Roxburgh* were acquainted with the particulars and ſecrets of the buſineſs. And further ſaith, the Lord *Rea* had told him, he could not gueſs who elſe ſhould be in the plot, unleſs it were the Lord *Buccleugh*; of whom the Lord *Rea* ſaid, he heard him ſpeak terrible and preſumptuous words againſt the King, at his own table in *Holland*.

He ſaith, the Lord *Rea* did affirm to this Examinant, that he had the aforeſaid report of the Earls of *Melros* and *Roxburgh* from the Lord *Seaforth*, before he, this Examinant, made or delivered the ſaid Paper to the Lord-Treaſurer: The ſaid Examinant doth avow, that on the 13th of *May*, the Lord *Rea* had affirm'd to him, that ſince their former ſpeech, (which was the 6th or 7th of *May*) he had learned more certainty than ever he had before.

He confeſſeth, that whereas in his former Examination, he ſaid, the Lord *Rea* told him, he was inform'd that they meant to ſtrike off the heads of all the principal men about the King; he was miſtaken in mentioning all, and did not well mark himſelf when he ſo expreſſed it; his purpoſe being to have ſaid, they would ſtrike off the heads of many; for ſo, he takes it, was the ſcope of the Lord *Rea*'s ſpeech.

Being told that the Lord *Rea* denieth, that he ſpake with Col. *Alexander Hamilton* ſince his coming into *England*, he ſaith, it is poſſible that this Examinant might miſtake in adding that name to the reſt, and therefore will not conteſt about that. He doth avow, that in the preſence of the Lord *Rea*, before the Lord-Treaſurer, this Examinant ſaid, the Lord *Rea* could ſay ſo much as the Marquis ſhould not have the face to deny it; and what this Examinant ſaid, the Lord *Rea* being then preſent, and hearing it, did not gainſay.

He ſaith, the Lord *Rea* told him, Sir *James Ramſay* ſaid to him, that he had 1500 men in readineſs, and the firſt time ſaid, upon an hour's warning. But at a ſecond time, the Lord *Rea* ſpoke of eight days warning; and further, that he would not bring them to *London* till their buſineſs was ready.

Being acquainted with what *John Macky*, ſon to the Lord *Rea*, had confeſſed to have been told him by this Examinant, he doth acknowledge it, and that he ſaid it to *John Macky*, after the Lord *Rea* and this Examinant had attended his Majeſty about the ſame buſineſs, but did not think his ſpeech thereof to *John Macky* ſhould have done any hurt to the buſineſs.

Copia vera. The third Examination of Donald *Lord* Rea, *taken the 24th of* June 1631.

HE ſaith, that the firſt time that the Lord *Seaforth* had any ſpeech with this Examinant, touching the Earls of *Melros* and *Roxburgh*, being privy to the particulars and ſecrets of the Lord *Hamilton*'s buſineſs, was on *Monday* after the Marquis's coming out of *Scotland*, and not before.

He further ſaith, that the Lord *Uchiltrie* having ſome ſpeech with this Examinant, who might be like in *Scotland* to take arms, if the Marquis of *Hamilton* ſhould take up arms; the ſaid Lord *Uchiltrie*, and not this Examinant, named the Lord *Buccleugh*: whereupon this Examinant told him, that at the ſiege of the *Buſſe*, this Examinant heard the Lord *Buccleugh* uſe ſome words, whereby this Examinant took him to come male-content out of *England*.

The Tenor of his Majeſty's Letter directed to the Lords of his Majeſty's Council of Scotland.

Charles R.

"RIGHT truſty and right well-beloved Couſins and Counſellors; right truſty and well-beloved Couſins and Counſellors; and right truſty and well-beloved Counſellors, we greet you well. The Lord *Uchiltrie* having been examined before our Council here, touching ſome informations given by him, reflecting upon ſome of the Nobility of that our Kingdom; we have been pleas'd to remit him thither, to be try'd according to the Laws thereof; having to that purpoſe ſent you herewith inclos'd ſome depoſitions under his own hand, and the authentick copies of others, whereof the principals we cauſe to be reſerved here, becauſe they likewiſe concern other perſons. Our pleaſure is, that having given order for receiving and committing him to ſafe cuſtody, you cauſe try and cenſure him according to our ſaid Laws, before what Judicature and Judges you ſhall think fit and competent for that purpoſe; and for your ſo doing theſe ſhall be ſufficient Warrant. Given at our Honour of *Hampton-Court*, the 24th of *September* 1631."

After this, my Lord Advocate produced the liſt of Names, or repreſentation written and given in by him to the Lord-Treaſurer of *England*, upon the 16th of *May* 1631. together with the Lord *Uchiltrie*'s dittay, of the which liſt or repreſentation and dittay aforeſaid, the tenor followeth:

The tenor of the Liſt.

Repreſentation for my Lord-Treaſurer.

The Marquis of *Hamilton* is prime Agent.

Plotters.

The Earl of *Melros*.
The Earl of *Roxburgh*.
The Earl of *Buccleugh*.

Adherents to *Hamilton*, by new blood and affinity, and dependance.

The Earl of *Kinghorne*.
The Earl of *Abercorne*.
The Earl of *Glencairne*.
The Viſcount *Lauderdale*.
The Marquis of *Huntley*.
The Earl of *Wigton*.

By near Alliance by his two Siſters.

The Earl of *Eglington*.
The Viſcount *Drumlangrig*.
The Earl of *Melros* hath Alliance and Affinity.
The Earl of *Caſſils* his Son-in-Law.
The Lord *Carnegie* his Son-in-Law.
The Lord *Lyndeſay* his Grandchild by his Daughter.
The Lord *Boyd* his Grandchild by his Daughter.
The Lord *Ogilvie* his Son-in-Law.

His eldeſt Son married to the Earl of *Marr*'s Daughter;

And ſo Brother-in-Law to the Lord *Erſkyne*, now Keeper of his Majeſty's two principal Caſtles of *Striveling* and *Edinburgh*; and ſo Commander of all almoſt of his Majeſty's Ordnance in *Scotland*.

The Earl of *Melros*'s ſon; likewiſe Brother-in-Law to the Earl-Marſhal, and to the Earls of *Rothes* and *Kinghorne*.

The Earl of *Melros*'s ſecond Son, married to the Lord *Wanchton*'s Daughter.

The Earl of *Melros* himſelf Brother-in-Law to the Earl of *Somerſet*, and to the Lord *Balmerinoch*.

The Earl of *Roxburgh*,

Brother-in-Law to the Earl of *Perth*.
Father-in-Law to the Conſtable of *Dundee*.
Father-in-Law to the Lord *Pitcairn*.

And the ſaid Lord *Roxburgh* able to raiſe of his own friends and followers above 1000 Gentlemen in two days.

The Earl of *Buccleugh*.

The Earl of *Buccleugh*, Nephew to *Roxburgh*.
The Earl of *Buccleugh*, Brother-in-Law to the Lord *Erſkyne*.
The Lord *Hayes*.
The Earl of *Winton*.
The Lord *Sempill*.
The Lord *Roſs*.

Apud Edinburgh Vigeſimo nono Novembris 1631.

In preſence of the Biſhop of Dunblane, *my Lord of* Carnegie, *my Lord Juſtice Clerk, and Juſtice Depute.*

The whilk day *James* Lord *Uchiltrie* being preſent before the Lords Examinators above-named; and the liſt of Names before mentioned being

ſhew'd unto him, and he required to declare if he would recognize and acknowledge the ſame to be his own hand-writing; the ſaid Lord *Uchiltrie*, after inſpection and conſideration thereof, declar'd that liſt of Names was written with his own hand, and delivered by him to the Lord-Treaſurer of *England*; *ſic ſubſcribitur* J. Uchiltrie; *ad B. of* Dumblane, Carnegie; Geo. Elphinſton; A. Colville.

The Tenor of the Lord Uchiltrie's *Dittay or Indictment.*

James Lord *Uchiltrie*,

YE are indicted and accuſed foraſmekill as by divers Acts, Statutes and Conſtitutions of Parliament, made and publiſhed in the days of our ſovereign Lord's moſt royal Progenitors, ſpecially by the 43d Act of the ſecond Parliament of King *James* I. of worthy memory, it is enacted, ſtatute and ordained, That all Leaſing-makers and tellers of them, whilk may engender diſcord betwixt the King and his People, wherever they may be gotten, ſhall be challenged by them that power has, and tyne life and goods to the King. And likewiſe by the 83d Act of the ſixth Parliament of King *James* I. of eternal memory, bearing touching the article of Leaſing-makers to the King's Grace, of his Barons, great Men and Lieges, and for puniſhment to be put to them; therefore it is thereby declared, that the King's Grace, with advice of his three Eſtates, ratifies and approves the Acts and Statutes made thereupon of before, and ordains the ſame to be put to due execution in all points; whilks Acts of Parliament, in the 205th Act of the 14th Parliament of our ſovereign Lord's deareſt Father King *James* the VI. of happy and never-dying memory, and with advice of his Highneſs's Eſtates in that Parliament ratify'd, approved, and confirm'd, and ordain'd to be put in execution in all time thereafter following, as in the ſaid Laws and Acts of Parliament, at length is contain'd. Notwithſtanding whereof, it is of verity, that he the ſaid *James* Lord *Uchiltrie*, having in the month of *May*, the year of God 1631, laſt paſt, heard by relation of *Donald* Lord *Rea*, that certain ſpeeches, ſurmiſes and informations were made to him by *David Ramſay*, with the head of Mr. *Robert Meldrum*, and certain other perſons beyond ſea, in *Sweden*, *Pomerland* and *Holland* reſpectively; and by the ſaid *David Ramſay* and certain other perſons within the Kingdom of *England*, anent ſome plot and dangerous purpoſe intended againſt the ſacred perſon of our gracious Lord and Sovereign, the King's moſt excellent Majeſty, his gracious Queen, and their deareſt ſon the Prince, and againſt the Land, by ſurprizing the King's Majeſty's Houſes and Caſtles of *Edinburgh*, *Striveling*, and *Dumbarton*, and for ſeizing of the Town of *Leith*. Ye not being content to retain yourſelf within the bounds of a faithful ſubject, by revealing of that, whereof ye had received information from the ſaid Lord *Rea*, out of a malicious policy and deſign, tending to the ſowing of diſcord and ſedition betwixt his Majeſty and his moſt loyal ſubjects, the Lord Marquis of *Hamilton*, the Earl of *Haddington*, the Earl of *Roxburgh*, and the Earl of *Buccleugh*; did at your firſt meeting with his Majeſty, which was upon the 17th of *May* laſt paſt, ſignify to his Highneſs, that the buſineſs was a Treaſon intended againſt his Majeſty; and that the party was the Marquis of *Hamilton*, as ye was inform'd. And to the effect his Majeſty might be put in better aſſurance of the truth of your ſaid ſpeeches, ye upon the 16th of *May* preceding, delivered to the Lord-Treaſurer of *England*, a Liſt of Names, to repreſent to his Majeſty, the ſtrength of the ſaid Marquis of *Hamilton*'s Party and adherents in *Scotland*. Whilk is all written with your own hand, and intitled, *Repreſentation for my Lord-Treaſurer*. Wherein ye name the Marquis of *Hamilton* to be the prime Agent, and names the Earl of *Melros*, now Earl of *Haddington*, the Earl of *Roxburgh*, and the Earl of *Buccleugh*, to be Plotters. Likewiſe upon *Sunday*, being the 22d of *May* laſt paſt, at which day the Marquis of *Hamilton* (having come poſt from *Scotland* in three days) was to preſent himſelf to his Majeſty. And ye thinking that ye had poſſeſs'd his Majeſty ſufficiently with your malicious Leaſings and Calumnies againſt the ſaid Lord Marquis; and that his Majeſty being ſo inſtigate and irritate againſt him, would follow your cruel and malicious Counſel; ye came to his Majeſty about the end of his dinner, and moſt boldly and male-pertly ſpake to his Majeſty theſe words, 'Sir, now ye know the 'buſineſs, but knows not the time, and therefore, Sir, either do or die.' By the whilk malicious Counſel (if God by his Grace had not rul'd and directed the heart of our gracious Sovereign to proceed in the buſineſs with greater wiſdom, calmneſs and moderation, ye by your former wicked Counſel intended) ye thereby did what in you lay, to move and cauſe his Majeſty, to put in practice ſome ſudden and violent courſe, for ſubverſion of the life and honour of the ſaid Lord Marquis, his Majeſty's moſt loyal ſubject. Like as all the preſent articles and paſſages in your proceedings, in the premiſes, were maliciouſly forged, invented and practiſed by yourſelf; without any warrant ariſing to you from the relation of the ſaid Lord *Rea*'s; whilk is manifeſt by your own depoſition, made in the preſence of a number of the Council of *England*, deputed by his Majeſty for your examination, upon the 20th and 24th of *June* laſt paſt: By the which ye have granted and confeſſed the premiſes laid to your charge to be of verity: and alſo does grant, that the paper of Names which ye did deliver to my Lord-Treaſurer, as ſaid is, was made by yourſelf. And that the Lord *Rea* was not privy to the making thereof, nor to the delivery of the ſame, to the ſaid Lord-Treaſurer. And ſiclike in your examination, ye being inquired for what cauſe, ye did name the ſaid Lord Marquis to be prime agent, ye could aſſign no true reaſon, nor cauſe, by any warrant of the Lord *Rea* againſt the Marquis. But by the contrary, the ſaid Lord *Rea* being examined upon the 21ſt of *June*, in preſence of his Majeſty's Council, declared that he knew nothing againſt the perſon of the Lord Marquis; but that the ſaid Lord Marquis was as good a Subject as any the King's Majeſty had: And likewiſe ye being aſk'd by what warrant ye did call the Earls of *Melros*, *Roxburgh*, and *Buccleugh* to be Plotters; ye anſwered thereto, that the Lord *Rea* had told you, that the Lord *Seaforth* had affirm'd to him, that the Earls of *Melros* and *Roxburgh* were acquainted with the particulars and ſecrets of that buſineſs, declaring thereby that the Lord *Rea* had affirm'd that to you, before you gave in, and delivered your paper of repreſentation to the Lord-Treaſurer. And further, ye declar'd, that the Lord *Rea* had told you, that he could not gueſs who elſe ſhould have been upon the plot, unleſs it were the Lord *Buccleugh*. Albeit the Lord *Rea* being examined in preſence of his Majeſty's Council upon the 24th of *June* laſt paſt, declar'd, that the firſt time the Lord *Seaforth* had any ſpeech with him, anent the Earls of *Melros* and *Roxburgh*, and their being privy to the Marquis of *Hamilton*'s buſineſs, was upon the *Monday* after the Marquis of *Hamilton*'s coming out of *Scotland*, and not before: and the Marquis having come to Court from *Scotland* upon *Saturday* the 21ſt of *May*, and the repreſentation given by you to the Lord-Treaſurer, containing the liſt of the plotters and actors, being given in by you to the ſaid Lord-Treaſurer, upon the 16th of *May* before; ye could never truly affirm, that ye had named the ſaid Earls to be plotters, upon pretence of any information received from my Lord *Rea*, who did not ſpeak to you anent them, at the time of the giving of the ſaid repreſentation; but eight days thereafter, and ſuch like. The ſaid Lord *Rea* depon'd upon the ſaid 24th of *June*, that ye, and not he, did name the Earl of *Buccleugh*, as one who would take arms in *Scotland* to aſſiſt the Marquis; by the whilk Leaſings, Calumnies and ſlanderous Speeches, untruly plotted, deviſed and vented by you, againſt the ſaid Marquis of *Hamilton*, the Earls of *Haddington*, *Roxburgh*, and *Buccleugh* in manner foreſaid; all of them being his Majeſty's faithful Councillors and loyal Subjects; ye have manifeſtly controverted the tenor of the ſaid Laws, and Acts of Parliament, and incurr'd the pains and puniſhment mention'd therein, *viz.* the deſerv'd puniſhment of death, which ought and ſhould be execute upon you with all rigour, to the terror and example of others.

The Juſtice at command of a warrant and direction of the Lords of the ſecret Council, whereof the tenor follows, *Apud* Halyrudhouſe, *Viceſimo quinto die menſis* Novembris 1631. The Lords of the ſecret Council, for ſome ſpecial cauſe, and conſiderations moving them, ordains and commands his Majeſty's Juſtice, Juſtice-Clerk and their Deputes, to prorogat and continue the Dyet appointed for the Trial of *James* Lord *Uchiltrie*, until *Thurſday* next, the 1ſt of *December* next to come: whereanent this extract of the Act ſhall be unto the ſaid Juſtice, Juſtice-Clerk and their Deputes, *a Warrant extractum de libris Actorum ſecreti Concilii S. D. N. Regis, per me* Jacobum Prymroſe, *Clericum ejuſdem, ſub meis ſigno & ſubſcriptione manualibus, ſic ſubſcribitur* Jacobus Prymroſe. Prorogates and continues the Trial of *James* Lord *Uchiltrie*, now impannell'd, to the Morn the 1ſt of *December* next to come, and ordain'd him to be return'd back to Ward, to be kept in ſure firmance, in the mean time: the Jury or Perſons of Aſſize ſummon'd to this day, are warn'd, *apud acta* to compear the ſaid firſt day of *December* next to come: ilk perſon under the pain of ſix Marks. Whereupon the Advocate aſked Inſtruments.

Curia Juſticiaria S. D. N. Regis tent' in pretorio burgi de Edinburgh, *primo die menſis* Decembris, *Anno Dom. Milleſimo, Sexcenteſimo, Triceſimo primo, per Honorabiles & Diſcretos Viros, Magiſtros,* Alexander Colville *de* Blair, *&* Jacobum Robertoun, *Advocatum, Juſticiarios deputatos nobilis & potentis Comitis* Willielmi *Comitis de* Stratherne *&* Monteith, *Dom.* Grahame, Killbryde, *&* Kynpont, *præſidis ſecreti Concilii & Juſticiarii generalis dict. S. D. N. Regis, totius ſui Regni* Scotiæ, *ubilibet conſtitut. Sectis vocatis & Curia legitime affirmata.*

Intran'

JAMES Lord *Uchiltrie*, delated of the Crimes foreſaids, contained in his Indictment preceding.

Purſuer.

Sir *Thomas Hope* of *Craighall*, Knight and Baronet, his Majeſty's Advocate for his Highneſs's Entries.

Prolocutors in Defence.

Mr. *Robert Nairne*,
Mr. *Alexander Pierſon*,
Gilbert Neilſon,
} Advocates.

The Prolocutors for the impannell'd, produc'd an Act of the Lords of ſecret Council; ordaining and commanding them to compear and aſſiſt him, by proponing of all lawful defence, competent to him on his Trial, and deſired the ſame might be inſert and remain on proceſs, whereof the tenor follows: *Apud* Halyrudhouſe *Vigeſimo quinto die menſis* Novembris, 1631. Whereas *James* Lord *Uchiltrie* has made choice of Mr. *Robert Nairne*, Mr. *Alexander Pierſon*, and *Gilbert Neilſon*, Advocates, to concur and join with him, for proponing of his lawful defences, competent to him againſt the Dittay, whereupon he is to be accus'd before his Majeſty's Juſtice, upon the 1ſt of *December* next: therefore the Lords of ſecret Council ordains and commands the ſaid three Advocates to confer and meet with the ſaid Lord *Uchiltrie*, to receive his informations; to accompany and aſſiſt him at the Bar; and to do their duty and office in all and every thing lying to their charge, concerning the proponing of all lawful defences, competent to the ſaid Lord in his Trial. Whereanent the extract of this Act ſhall be to them a Warrant *extractum de libris Actorum ſecreti Concilii S. D. N. Regis per me, Magiſtrum* Gilbertum Prymroſe, *Clericum ejuſdem, ſub meis ſigno & ſubſcriptione manualibus, ſic ſubſcribitur* M. Prymroſe. After reading of the whilk Act of Council, the ſaid Prolocutors proteſted, becauſe the preſent matter of diſputation *eſt res ardua*, anent Treaſon and Relations thereof, from party to party; that whatever the exigence of the cauſe requires from them, as proofs to ſpeak herein, for clearing of the Nobleman impannelled, his innocence, and of the warrants of his information; that it is not with any thought of wronging, or taſking of any parties, Noblemen or others; but to do that whilk their duty as Prolocutors craves of them to be done, being commanded hereto by the Lords of his Majeſty's ſecret Council: and that the purpoſe and ſpeeches that ſhall by God's aſſiſtance be uttered and delivered by them in this matter, may be ſo accepted of my Lord Juſtice.

Thereafter the Indictment of the Lord *Uchiltrie*, being read judicially, and he accuſed of the Crimes therein contained; my Lord-Advocate aſked Inſtruments

ſtrument, of the reading thereof, and of the Acts of Parliament ſet down in the propoſition of the ſaid Indictment. And becauſe the ſubſumption of the ſaid Indictment is founded upon certain depoſitions made in *England*, in preſence of five of his Majeſty's Councillors, deputed by his Majeſty to that effect; he therefore repeats the examinations of the Lord *Uchiltrie* produced yeſterday in proceſs, dated the 20th and 24th of *June* laſt; with the three Examinations of my Lord *Rea*'s, whereof two are dated the 21ſt of *June*, and the third upon the 24th of *June:* And declared, that he uſed theſe depoſitions under the hands and ſubſcriptions of the five Councillors of *England*, as authentick copies, whilk ſhould make as good faith, as if the principal were produced.

It is alledged by Mr. *Alexander Pierſon*, as Prolocutor for the Pannel, that it cannot, nor ſhould not be proceeded againſt the Impanelled here in *Scotland*, but conform to the Laws and Statutes of *England*; the place of the Pannel his offence, (if any be) and not conform to the municipal Laws of *Scotland*. 'Quia de jure Judex originis vel domici-'lii non poteſt punire ſubditum delinquentem extra territorium, niſi ſe-'cundum pœnam impoſitam a jure communi, vel ſecundum ſtatuta Loci 'in quo deliquit non; autem ſecundum ſtatuta ipſius loci originis, vel 'domicilii.' Julius Clarus, Queſt. 85. Numb. quarto.

It is anſwered by my Lord Advocate, that the Alledgente is no ways relevant, except the Pannel will condeſcend to the relevance of the dittay; and of his own conſent be content, that the ſame paſs to the knowledge of an Aſſize. Next, it is anſwered by his Majeſty's Advocates that he oppones his Majeſty's Letter direct to the Council, bearing, that the Impannelled ſhall be tried according to the Laws of this Kingdom. And in the one place it ſhall be juſtified, that his Majeſty's Letter ſhall be grounded upon the Civil and Common Law.

It is anſwered thereto by the Lord *Uchiltrie* and his Prolocutors; that the King's Majeſty's Letter is, and muſt be underſtood, without prejudice, of the Pannel's lawful defences.

Item, That the alledged Crimes contained in the dittay are, or perchance may be, lawful in *England*, and yet criminal in *Scotland*; and it carries no reaſon that the Pannel ſhould be puniſhed here in *Scotland*, for any fact committed in *England*, not puniſhable by the Laws of *England*, where the Pannel is *tutus ratione Loci*.

Secundo, It is alledged by the Pannel, that the ſubſumption of the Indictment has no dependance upon the propoſition thereof; becauſe the particulars contained in the ſubſumption are no ways the Leaſings mentioned in the ſaid Acts of Parliament, whereupon the propoſition is founded, eſpecially ſeeing the Leaſings mentioned in the ſaid Acts, are Leaſings tending to diſcord betwixt the King and his people: and the telling whereof is unlawful and prohibit. But the particulars of the Dittay or Indictment are no ways ſuch. But by the contrary, the matter thereof being an heinous Treaſon againſt the King's Majeſty and Eſtate; in favour of both, *propter publicam utilitatem*, it is incumbent to every ſubject that ſhall hear ſpeeches of ſuch matter, though the matter itſelf be a lie and untruth, whilk is alike to the hearer, neither does it belong to him, to judge or diſcern therein; it is incumbent, I ſay, to every ſubject incontinently to tell the ſame; the telling whereof tends not to diſcord between the King and his People; but to ſuppreſs and prevent the ſame, and the chief cauſe thereof, which is Treaſon; and the not telling and revealing whereof is puniſhable by the Law of all Nations, by our municipal Laws and Acts of Parliament; yea, by the ſame Acts, whereupon the dittay is founded, *viz. James* VI. Parliament 14. *cap.* 205. And therefore the telling thereof is no ways prohibited and puniſhable by the ſaid Acts; neither are theſe particulars in the Indictment, the Leaſings mentioned in the ſaid Acts, whilk is *medium concludendi* in the dittay. And whilk laſt Act being the laſt in time, as it ratifies, ſo it explains the true ſenſe of the former.

And further, it is alledged by *Gilbert Neilſon*, Prolocutor for the Pannel, that not only by the foreſaid Act, of the 14th Parliament of King *James* VI. whereupon the dittay is founded, is there a neceſſity laid upon the Impannelled, and all his Majeſty's Lieges to reveal what they hear, concerning his Majeſty's prejudice; but likewiſe by the 134th Act of *James* VI's 8th Parliament, it is ſpecially ſtatute, that whoſoever hears any ſpeeches to the harm or prejudice of the King's Majeſty's Eſtate, ſhall with all diligence reveal the ſame to his Majeſty, or to ſome other, the King's Majeſty's Officers, that may make the ſame manifeſt to his Majeſty, with this ſpecial addition, that in caſe the ſame be not done, the perſon concealer, and not teller or revealer, ſhall incur the like puniſhment, contained in the ſaid Acts, ſet down againſt the principal Leaſing-makers. And ſo the Impannelled was neceſſitate, upon no leſs pain than his life and eſtate, to reveal the ſame. It is anſwered by his Majeſty's Advocate, That this preceding defence can elude no part of the dittay: becauſe the firſt part thereof anent the lawfulneſs or neceſſity of revealing of Treaſon is granted in the Dittay or Indictment. And if the Pannel had contained himſelf within the duty of revealing, albeit the Plot and Treaſon revealed had been falſe, yet he would have deſerved commendation and reward from his Maſter. But the Indictment is founded upon three particulars, to the whilk no anſwer is made; and whilks three particulars agrees and quadrates with the natural quality of the Leaſings, contained in the Act of Parliament, whereupon the dittay is founded. Becauſe they are ſuch, as might have engendered diſcord betwixt his Majeſty and his loyal ſubjects; in ſo far as it is qualified in the dittay, that the Impannelled having only had his relations from the Lord *Rea*, and whilk relations had no warrant againſt the Marquis of *Hamilton*'s perſon, as author or actor of the Treaſon, nor againſt the three Noblemen as Plo ters, but depended *ex auditu auditus, vel relatione relati ab altero*; that is, from *David Ramſay*, and Mr. *Robert Meldrum*, of whom neither of them did relate any thing that could prove againſt the Marquis; but ſimply upon the ſpeeches and report of ſome, whom they call his followers, or upon their imagination, or poſſibly fooliſh and perverſe wiſhes, that the Nobleman who was imployed for the levying of an army for aiding the King of *Sweden*, ſhould employ his forces to the deſtruction of the King, his Queen, the Prince their deareſt Son, and Kingdom. Yet the Impannelled, when as he might have ſufficiently expreſt his loyal duty to his Maſter, by bringing the Lord *Rea* to his Majeſty, to make his own relation, did at the firſt appearance before his Majeſty turn the uncertain report and relation to a poſitive ſpeech: ſhewing that the buſineſs was a Treaſon, and the party the Marquis of *Hamilton*. Next, the Pannel, by his repreſentation all written with his own hand, and delivered to my Lord-Treaſurer of *England*, to be ſhewn to his Majeſty, he has expreſſed the Lord Marquis to be prime Agent; and the Earls of *Haddington*, *Roxburgh*, and *Buccleugh* to be plotters; and hath added to the number of twenty or thirty Noblemen, as adherents to them. And laſt, when his Majeſty had received this poſitive information, and was poſſeſſed with appearance of the truth thereof; to add a ſpark to the fuel, the Motto was given, *Sir, now either do or die*; whilk words could not contain any other intention or event (if his Majeſty had not been graciouſly and wiſely diſpoſed), but either to have uſed ſome violent courſe againſt the Marquis's perſon and life, or to commit him to priſon, and to cauſe him to make anſwer as to Treaſon, *ex Vinculis*; whilk is the condition of Traytors, both by the Common Law and by the Act of Parliament, made by King *James* II. Parliament 12. *cap.* 49. whereby it is ordained, that perſons ſlandered of Treaſon, ſhall be taken and remain in firmance, while they thole an Aſſize. And all thir proceedings are directly contrary to the Act of Parliament, whereupon the dittay is founded, eſpecially ſeeing the Pannel, by his depoſition made the 20th of *June*, *Articulo primo*, in relating the Lord *Rea*'s firſt ſpeeches, declared that the Lord *Rea* granted that he had no certain ground for the Treaſon alledged by him; and it is an heinous and odious fact, puniſhable by all laws, to turn relation into delation, and to be an author or adviſer to a ſovereign Prince, to begin at execution before Trial. And all the particular points of the dittay are clear, and evident by the depoſition of the Impannelled, made upon the 20th and 24th days of *June*; whilk are the true copies of the original and authentick depoſitions, made in the preſence of five of his Majeſty's Council in *England*; like as the copies produced and read in preſence of the Pannel, and his Prolocutors, are ſubſcribed by the ſaid five Councillors; and alſo are declared by his Majeſty's Letter, directed to his Council the 24th of *September*, to be true copies of the ſaid depoſitions; whereof the principals are retained by his Majeſty, for the cauſes mentioned in the ſaid Letter. And therefore ought to have full faith, as if the principals were produced; like as the Pannel by his Acts *de calumnia* will not refuſe, but that the repreſentation containing the liſt of the names was given in by him, without the privity of the Lord *Rea*, and alſo that he ſpake theſe words to his Majeſty upon the *Sunday* after dinner, being the 22d of *May*; which was the ſelf-ſame day that the Marquis came from *Scotland* to *England*, and was to preſent himſelf to his Majeſty, *viz.* the purpoſe is known, the time not known; *Sir, either do or die*; in reſpect whereof the alledgente ought to be repelled.

'Tis duplyed for the Pannel by his Prolocutors, as to the particulars contained in my Lord Advocate's anſwer, they ceaſe to anſwer him now in the general, ſeeing they are upon the relevancy of the Dittay and Indictment, and ſhall anſwer every one, *ſingulatim*, as they lie in the Indictment, *ſuo loco*.

Tertio, It is alledged for the Pannel, that the Particulars contained in the Indictment are not Leaſings, 'quoad referentem neque id genus referens 'mentitur, quoniam quantum in ipſo eſt non fallit, ſed fallitur, & quicquid 'falſitatis vel mendacii in relatis ineſt, id ad ſuos authores referendum, 'cap. Is autem 22 Queſt. 2. & cap. 55. Beatus Paulus ibidem, ubi di-'citur, non mentiri eum qui animum fallendi non habet quod eſt eſſen-'tiale & formale mendacii, impoſtura ſcilicet & intentio fallendi.' And the telling and revealing of the whilks matters aforeſaid, 'nullum habet in 'ſe delictum, ſed eſt de natura boni;' being commanded, and therefore in the hearer and relater, 'preſumitur omnis dolus abeſſe, quia parere ne-'ceſſe habet.' And ſpecially in ſuch a buſineſs as this, whilk ſo highly concerns the King's Majeſty and Eſtate. Whereof there was ſo great appearance, by the relation made by the Lord *Rea*, whilk the Pannel craves may be read to the Judge.

It is anſwered by my Lord Advocate, that if the defence means of the Treaſon related by the Lord *Rea*, the Pannel cannot be quarrelled for it, nor for telling thereof, albeit it were a lye. But the Leaſings and Calumnies aſſumed upon in the dittay, ariſes upon the contradiction, betwixt that which was related by the Lord *Rea*, and that whilk was ſpoken and affirmed poſitive to his Majeſty. And where it is alledged, that 'menda-'cium eſt ſemper cum animo fallendi,' that is, 'in diſcrepantia inter in-'tellectum & vocem ejuſdem perſonæ;' where he thinks one thing, and ſpeaks another, whilk is not our caſe. But *mendacium vel falſitas*, whereupon we diſpute, is the diſcrepance and the contrariety betwixt the relation made by the Lord *Rea*, and that which is related by the Pannel: wherein the Pannel was obliged, as a faithful ſubject, to make a ſimple or true relation, 'ſine Paraphraſi, vel Periphraſi, ſine Interpretatione, vel 'Circumlocutione, & ut in Apographa vel exemplari committitur falſi-'tas, ſi tranſcriptio differt ab exemplari, ita committitur falſitas ubi re-'latio poſitive refertur;' whilk is the Leaſings, whereupon the dittay ſubſumes. And where it is deſired that the Lord *Rea*'s relation may be produced and read to the Judge, if it be meant of that relation whilk is ſubſcribed by the five Counciliors of *England*; and if the Pannel will acknowledge it, to make faith as the principal, together with the remanent depoſitions of the Pannel, and the Lord *Rea*, whilk are all ſubſcribed by the ſaid five Councillors, and already produced and read to the Judge; the Pannel ſhall receive ſatisfaction of his deſires, otherways not.

It is duplyed for the Pannel, that the foreſaid alledgeance is to anſwer that part of the dittay, bearing the heads thereof to be forged and vented by the Pannel.

Quarto, It is alledged by the Pannel, that as to the ſubſumption of the dittay, bearing, that all the articles and paſſages of proceeding therein mentioned, were maliciouſly invented and practiſed by the Pannel, whilk is qualifyed by the Pannel's own depoſition and alledged confeſſion againſt himſelf, and by the Pannel's depoſition freeing the Lord *Rea*, and the Lord *Rea*'s depoſition freeing himſelf thereof; the qualification inforces not the Pannel in the particulars to be a Leaſing-maker, and to have forged lyes.

Firſt, For the Pannel's own depoſition, it inforces the juſt contrary, to wit, that the Lord *Rea* was the Pannel's informer in all. As for the Lord *Rea*'s depoſition againſt the Pannel, proported in the dittay; that inforces not forging of lyes againſt the Pannel, neither can the Lord *Rea*'s depoſition have any force againſt him; firſt, becauſe the Lord *Rea* is party, and the Pannel is a witneſs againſt him for the King, and whoſe depoſition cannot be reſpected

ſpected againſt the teſtimony, made againſt himſelf, for the King's Majeſty: and in effect is but a denial, whilk can neither liberate himſelf, nor weaken the Pannel's depoſition. *Et omnibus in re propria dicendi teſtimonii facultatem jura ſubmoverunt, lege* 10. *Cod. de teſtibus. Item*, The Lord *Rea*'s depoſition made by him, not being ſworn, and ſo is null of the Law; *Quia teſtis injuratus examinatus non probat nec fidem faciat, Lege Jaris-Jurandi*; *nona Cod. de teſtibus & Lege teſtium* xviii^a. *Cod. eodem.*

Item, The Lord *Rea*'s depoſition not made in the preſence of the Pannel, and ſo *non valeat authentica, ſed etſi, Cod. de teſtibus. Item*, Although the Lord *Rea* were not party, he is but *teſtis ſingularis & nihil probat. Item*, The Lord *Rea*'s depoſitions produced cannot be reſpected, becauſe they are not the principal ſubſcribed by my Lord *Rea*, but relations, and doubtleſs from the Council. *Et in criminalibus aliorum Judicum relationibus credere non oportet, Lege ſingul.* xiv. *Cod. de accuſationibus & inſcriptionibus.*

It is declared by the Lord *Uchiltrie* himſelf, now upon Pannel, that the depoſitions whilk he made in *England*, and ſubſcribed with his hand, are true in themſelves, as he there depon'd, according to the relations and grounds of Information, which he received from the Lord *Rea*. The reconciliations which are ingroſſed in the ſeveral depoſitions, being allowed and admitted for reconciling of any apparent contrariety, without prejudice of what explanation of the ſame depoſitions he may juſtly make further; he declares, that the alledged copies of the Pannel's own depoſitions, under the hand of the five Councillors, ſo far as his memory can ſerve him, are not different in the ſubſtance of them, from the original. But that there is no more in his depoſitions, nor that whilk the ſubſcribed copies contain, that he cannot ſay. And this his Lordſhip does according to his memory, and in reverence of his Majeſty's Letter, and Noblemen's hands thereat.

My Lord Advocate takes Inſtruments of the Impannell'd's declaration in that part, whereby he grants that the copies of his depoſitions made by him, under the hand of the five Councillors, is not different in ſubſtance, according to the Pannel's memory.

Thereafter, my Lord *Uchiltrie* and his Prolocutors craved that the Lord *Rea*'s relation made upon the 18th of *May*, whilk is under the hand of the five Councillors, might be read to him, becauſe he minds to found exceptions thereupon.

To the whilk, it is anſwered by his Majeſty's Advocate, that he cannot be compelled to produce the ſaid relation, in reſpect no part of the qualification of the Dittay is founded thereupon. And yet according to his former anſwer, ſays, if the Pannel will acknowledge the ſame, as it is under the hands of the five Councillors, to make as great faith as the principal, he is content, that the ſaid relation be read; of the whilk relation the tenor follows.

The true Relation of ſuch paſſages, as I Donald *Lord* Rea *have heard or learned, which may concern my moſt dread Sovereign, or his Eſtate, beyond Seas and elſe-where*, as I will be ready to take my Oath upon, and ſeal with my blood againſt all opponents. *Written this* 18*th of* May, 1631.

IN the month of *April*, 1630, or thereby, at my coming from *Stockholm*, I found Colonel *Alexander Hamilton*, Brother to the Earl of *Haddington*, Sir *James Hamilton*, Son to the ſaid Earl, Sir *James Hamilton* of *Reidhall*, Nephew to the ſaid Earl, and one *Hamilton* the Lord of .....; who were all Officers under the King of *Sweden* then. But before my coming there, they had all caſhier'd themſelves, not having ſerved one year.

At this time the Laird of *Benſho*, *Lyndeſay*, my Lieutenant-Colonel, being Bed-fellow and Comrade to Sir *James Hamilton* Son to the Earl of *Haddington*, keeping a chamber in *James Mackleane*'s a *Scotſman*'s Houſe in *Stockholm*, *Lyndeſay* did inform me, that the reaſon why the *Hamiltons* had caſhier'd themſelves, was becauſe their Chief, the Marquis of *Hamilton*, was to be a Soldier, and they would follow his fortunes. I aſked *Lyndeſay* who had told him ſo much; he told me, Sir *James Hamilton* of *Prieſtfield*, *Haddington*'s Son: and *Lyndeſay* told me withal, that all theſe *Hamiltons*, and Sir *John Hamilton*, another Son of *Haddington*'s, had denuded themſelves of their Fortunes and Eſtates, ſome of them to their friends, but the Earl of *Haddington*'s children to their father.

Moreover, *Lyndeſay* told me, that Sir *James Hamilton*, *Haddington*'s ſecond Son, had told him, that Sir *James Spence*, now Lord *Spence*, had directed Mr. *Robert Meldrum* with Letters into *England*; and that thereafter they did expect *David Ramſay* with the head Couſin to the Lord *Spence*, as Ambaſſador from the Marquis of *Hamilton*: And all the *Hamiltons* did expect *David Ramſay*'s coming.

Alſo *Lyndeſay* did inform me, that Sir *James Hamilton* did deſire him to join with them, and that they would give him a Regiment; which he did accept, and did deſire my conſent, which I did yield unto.

Alſo ten or twelve days after we did hear from *Denmark*, that there was an Ambaſſador coming from *England*, who proves to be *David Ramſay*; who did give himſelf out, all the way as he came, to be an Ambaſſador: which to prove, he did ſtand in competition with his Majeſty, our dread Sovereign's extraordinary Ambaſſador Sir *Thomas Roe*; both the ſaid Sir *Thomas* and *David Ramſay* encountring in the Town of ..... in *Denmark*: yet *David Ramſay* would never do ſo much as viſit the other Ambaſſador. Upon which overſight I did queſtion *David Ramſay*, whoſe anſwer was, he did not deſire to be ſeen of any man that would diſcover him; affirming to his Couſin Sir *Robert Anſtruther* (as *David Ramſay* told me) that no honeſt man could live at home. *David Ramſay*, Colonel *Alexander Hamilton*, and Sir *James Hamilton*, attending their diſpatch from the King of *Sweden* at *Elſmeby*, were forc'd to reſide with me in my ſhip, for at this time we were all on ſhip-board.

And one night drinking ſome healths, amongſt the reſt, the Marquis's health coming by courſe, I aſk'd Col. *Alexander Hamilton*, the Marquis's Chriſtian name; he anſwer'd me, *James, by the Grace of God*; Sir *James* added, *King of Scotland:* therefore his health paſſed under that name, till I did take exceptions, and did deſire them to alter their title; Sir *James Hamilton* anſwered *nolens, volens*, it ſhould be ſo, and did laugh. I did deſire them to drink it more covertly, thus, *To the happy event of all Good Intentions*; ſo *David Ramſay* ſaid it ſhould be ſo.

That night, after the two Colonels *Hamiltons* went to bed, *David Ramſay* and I being alone on the hatches above, *David Ramſay* and I drinking and ſmoaking a Pipe of Tobacco, told me many abuſes in the Court of *England*; laying the whole blame upon the Lord-Treaſurer. He told me, that the Marquis had ſent him with a Challenge to the Treaſurer, and that *Popery* and *Arminianiſm* had ever come the moſt part from the Biſhops; and that there was nothing look'd for but deſolation and change of Religion, and that the poor ſoul the King was blinded to his ruin; and that he had been plain with the King, till he did give him no ear; therefore he ſaid, he had retir'd himſelf from thence, ſince no honeſt man could live there, and with many ſuch diſcourſes he laboured to poſſeſs me. My anſwer was, The Lord amend thoſe evils, and no remedy but patience. By God, *Donald*, (ſaid he) I will uſe your own phraſe, We muſt help God to amend it. He told me, he had brought as much Gold with him, as would maintain him at the rate of ſix pound a-day for three years, and did aſſure me that before that time would expire, that God would raiſe up ſome men to defend his Church, and liberate honeſt men from ſlavery. Withal he told me, that his Majeſty at his parting with him, told him, that he would do with him as King *Henry* IV. ſaid to *Colvil*, I will think on thee in abſence as preſent.

Thereafter I did deſire one favour of him, that he would tell me if the Marquis of *Hamilton* would come over; he ſaid, he would tell me to-morrow. The next night after, I did renew my former queſtion of the Marquis's coming over, and he ſaid he would. I aſk'd him what content my Lord Marquis had at Home? He ſaid none; for the King had forced him to marry a Wife, and to acknowledge her, who he ſaid was a very beaſt.

I aſk'd him of what Religion my Lord Marquis was? He ſaid, a good Proteſtant, and before it were long, he would let the world ſee his aim was the defence of his Religion. I told him, it did avail us little to make the Goſpel a fair paſſage in *Germany*, if we loſt it at home. He ſaid, there were many honeſt men in our land, and that the Marquis would uſe his army to protect them, which was his only aim. I deſir'd him to go no further on with me; for I would not deſire more truſt of it, but that I would ſpend my blood in my Lord Marquis's quarrel. Well, my Lord, I will go no further, for my Maſter's ſecret no Man ſhall get.

The third night, on land in an Iſle, he told me, that *Alexander Hamilton* and Sir *James* were to go for *England*, and he to *Holland*; yet if I had any thing to do in *England*, that he would be willing to do me ſervice. I told him I had a mind to ſeek the reverſion of *Orkney* from the King my Maſter, if the Marquis would mediate with my Maſter; for it were good for my Lord to have a friend in that place for his ends. He ſaid, By God it was to be thought upon; and he did deſire me to give him leave to think upon it that night. On the morrow, he and *Alexander Hamilton* did deſire me to write a general Letter to the Marquis, with the two Colonel *Hamiltons*, with great aſſurances of true friendſhip from their Maſter, if I would continue conſtant in reſolution; I did give them my Letter, and ſo we parted.

In the month of *July*, a day or two after the taking of *Stetin*, I did encounter Mr. *Meldrum* who came from *England*: after Salutations, I did aſk him what news? He anſwered me, matters are worſe and worſe; the King giveth greater way to *Papiſts* and *Arminians* than before; that *Cottingham* was gone to beg peace with *Spain*; that *Pembroke* was dead; that the Marquis govern'd all, and was made Keeper of *Windſor*, and was made Knight of the Garter, and was to be Admiral of *England*. He did aſk me where his Couſin *David Ramſay* was: I told him he was gone for *Holland*; he did aſk me, what he had done: I did anſwer, that all was ended to his mind, and that *Alexander Hamilton* was to get Powder, Arms, and Munition with him from *Sweden*, to the Marquis. At theſe news, he did throw his Cap to the ground, and cut a caper, calling aloud, Good news! good news! I am a happy man! I am happy and made for ever! I thank God my five years pains is not for nothing; good my Lord *Rea*, is this true? Yes, ſaid I, for I have one double of the Contract, I am ingaged in the buſineſs to *David Ramſay*, and *Alexander Hamilton* and Sir *James Hamilton*, and by Writ to my Lord *Hamilton*. O my Lord, (ſaith he) that was the work of God and not man, to inſpire your Lordſhip to go with us!

At that time I caſt *Lyndeſay* looſe, to find more of *Meldrum*; who told *Lyndſay* that ſix thouſand trained Soldiers would do the turn with their own faction in the Country.

The next day at Colonel *Leſlie*'s Tent, I encountered *Meldrum*, whom I did call out, and he told me that King *Charles* was good and created for nothing, but for deſolations and undoing of Kingdoms, Religion, and People. There was no way but to immurate him within a Wall or Dungeon for ever. I aſked what way we might do that? He ſaid the way was eaſy: firſt, after the men were liſted in *Scotland*, that they might take on month's time to learn to handle their arms at *Leith*, without any ſuſpicion: then they might ſeize on the Caſtles of *Edinburgh*, *Sterling*, and *Dumbarton* in one night, and upon *Berwick*; and having the Caſtle of *Edinburgh*, the Town durſt not ſtir; then to fortify *Leith*; thereafter into *England* per force. I anſwered, the Plot was good if it held.

He told me further, that he was writing a declaration of the Juſtneſs of the Marquis's quarrel, with the tyrannical uſing and ſuffering of the Church under King *James* in his laſt days, and now worſe groaning under his Son; with the *Hamiltons* clear title to the Crown. I allowed of all. But I did demand who I thought would take our parts; he ſaid, he did know nine of the beſt Earls in *Scotland* that would live and die with us. As alſo that the body of *England* was with us, and ſome of the Nobility for evil will of the Treaſurer. The next day there came news of the birth of the Prince; I did aſk *Meldrum* if that would cool the Marquis's intentions: he ſighed and ſaid, not if the King and Queen of *Bohemia* will give their Daughter to the Marquis, as they had promiſed. Is that true, ſaid I? He anſwered, I ſhould ſee ere it were long. That night I did deſire *Lyndeſay* to drink with *Meldrum*, which he did, and *Harry Muſchampe* an *Engliſh* Gentleman was with them. *Lyndeſay* told me on the morrow, he did think *Meldrum* to be the worſt Secretary in the world, for he did reveal this laſt night all he did think. I do not remember the night's diſcourſe; but do remit to *Muſchampe*'s relation.

A week after, I did ſpeak with *Meldrum* again in *Leſlie*'s tent; ſo he did deſire me to walk forth, and told me he had been with Secretary *Sadeler*, to whom

whom *Meldrum* did deliver a private packet of Letters, and did require anſwer. But the Secretary told him, that the King of *Sweden* would write none, till he heard from the Marquis of his laſt Letters, ſent with *David Ramſay*.

Meldrum went further with the Secretary of *Sweden*, telling him, that it was greatly for the advantage of the King of *Sweden*, whoſe ambition was without limits, that the Marquis did raiſe war in *Britain*; for if the King of *Sweden* had a mind to take *Denmark*, the King of *Britain* ſhould not be able to help his Uncle. The Secretary of *Sweden* did anſwer, that we care not for, neither do we fear your King; for he that would not help his own Siſter, will never help his Uncle.

I did aſk *Meldrum*, what they did intend to do with the Prince and Queen of *Britain?* He anſwered, the Child ſhould be caſt in with his Father, and the Queen ſent home to her Mother to be put in a Monaſtery.

I did aſk him, what charge he would have in thoſe employments? He ſaid, he ſhould be Secretary of State, and have a Horſe-Troop.

Meldrum did ſhew me alſo, that all who would not take our part, of *Scotſmen* in *Scotland*, ſhould be put in the *Baſs*, or ſome other priſon, till all were ours; and that the Marquis would take pledges of all who in *Scotland* did lie by as neutrals at the firſt.

At my coming to *Holland* in *March* laſt, *David Ramſay* did leave word at *Amſterdam*, when I did come, to ſend him word; which I did: he came from the *Hague* to *Amſterdam*, and ſtayed with me eight days, where he did deliver me a Letter from the Marquis only of compliment and thanks. He told me all went right with the Marquis; that he had gotten from his Majeſty 10,000*l.* in *England*, and the Wine-Cuſtoms of *Scotland* for ſixteen years; which the Marquis would ſell, and that all things went on without any obſtacle; and that the only ſtay was for want of Arms and Munition, and eſpecially Powder; and deſired me to put on hard for this, with the *Swediſh* Ambaſſador, which I did. Thereafter he told me, he had evil news to tell me, that the Marquis's wife was brought to bed of a child.

I did aſk him, where our forces ſhould meet; he ſaid upon the Sea, and thereafter land in *Scotland* or *England*, he would tell me no more: but that for my buſineſs of *Orkney*, I might have it better cheap than to pay the duties of it; and he told me, that when I ſhould meet with the Marquis, he would infuſe in me that which he durſt not; ſince he would have the Marquis to take the thanks to himſelf. And withal he did deſire me, that I ſhould not tell the Marquis what had paſt between him and me.

I did aſk him, what part of *England* we ſhould beſt land at? He ſaid at *Yarmouth* or *Harwich*, or thereby. He told me that *England* had made a peace with *Spain* very prejudicial to *Holland*; and that the Treaſurer and ſuch of the *Spaniſh* faction, as *Carliſle*, and *Cottington*, and *Kenelm Digby*, had muffled the King to bar the *Hollander* from the fiſhing; which he ſaid might fall out happily for them, and he did deſire me to aſſiſt them at the Prince of *Orange*'s hand, as a ſpecial ſervice to the Marquis, to make the States contribute with the Marquis: and I did ſpeak to the Prince of *Orange*, and his Excellency told me, that he would do his beſt therein.

He told me, that *Spain* and *France* were ſtriving who ſhould firſt drink up *England* in their ambition; but he hoped the Marquis ſhould prevent them both. He did aſk my advice, whether it were beſt to croſs the Seas once, or to go on bravely? I anſwered, delays were not good, which he did ſubſcribe to; and ſo we concluded, and I came for *England*.

At my coming to *England*, my Lord *Hamilton* did give me many thanks, aſſuring me, that he would not want me; and that I ſhould have what conditions I would deſire, for he ſaid, that ſhould not ſeparate us.

I did deſire his Lordſhip to go on with me really, if he meant to have my ſervice, he ſhould have it without conditions; he did anſwer, My Lord, I will not want you, for I have written to the King of *Sweden*, with *Elphingſton* and *Meldrum*, that I will detain you with me, and aſſure your Lordſhip, that he that will hazard with me now in this buſineſs, it ſhall be a tye to me and my poſterity, to hazard my fortune and eſtate with him and his. The ſame word the next day he ſent to me, with Sir *James Hamilton*, the Earl of *Haddington*'s ſon.

The ſaid Sir *James Hamilton* and I being together, I did much commend a ſuit of apparel which Sir *James* had; his anſwer was, I have them on, pay them who will, I have taken them up, it may be a Merchant of *London* will pay for them, ere it be long; my Lord, take one alſo on luck's head.

The firſt day, my Lord Marquis went down to *Greenwich* in a barge, accompany'd with Sir *James Ramſay*, Sir *James Hamilton*, Sir *Robert Ballenden*, Capt. *Douglas*, and (I do think) *Ludowick Leſlie*, the King our maſter having gone before; the diſcourſe was moved, if they were to make an inſurrection, where would they begin? The Marquis anſwered, he would march to *London* directly; and one of them (I think Capt. *Douglas*) ſaid, that he knew a houſe in *London* ſhould make them up for ever.

That day my Lord Marquis told me, he would ſell the Wine Cuſtoms, for he expected no more from *England*.

Capt. *Douglas* told me, that they would have from the King an hundred barrels of Powder, and that they would make ſhift for arms.

Sir *James Ramſay* told me, on *Sunday* laſt at *Greenwich*, that he had 1500 men in readineſs on a week or leſs advertiſement; and that his ſtay only was here, till he heard the men in *Scotland* were ready, and that his rendezvous would be at *Norwich*, and meet the reſt. Sir *James Hamilton* told me, that the *Engliſh* rendezvous ſhould ſhip at *Harwich*, for he ſaid, the Devil have his part of the river of *Thames*, he did not like it.

The Earl of *Roxburgh* told me, that he and others the Marquis's friends, were at firſt againſt the Marquis's courſes; but now ſince they ſaw his Lordſhip ſo far engaged, and that he only aim'd at the glory of God, that he and all others his friends would put to their helping hand.

On *Thurſday* laſt, the Earl of *Roxburgh* told me, that the Marquis would haſten his reſolution, and ſaid, that he would aſſure me, my Lord Marquis thinks himſelf for ever bound to me, and ſo do all his friends, for his Lordſhip's cauſe; and I will aſſure your Lordſhip he truſts you, and that you never took a more faſt and real friend by the hand.

My Lord *Roxburgh*, Sir *James Ramſay*, and Capt. *Douglas* queſtioned me, what was the reaſon, that I had taken on Sir *Pierce Croſby*, ſince the Marquis had caſt him off? This day ſeverally, I told them, I was forc'd, in honour and conſcience, to keep my promiſe to the King of *Sweden*; ſo that I did take on Sir *Pierce Croſby*, to ſend him thither with *Iriſh* and *Engliſh*, and that myſelf was minded with all the *Scots* that I could get, to follow the Marquis's fortunes; the which anſwer ſeverally given, gave them all content.

In witneſs of the truth of theſe, I have ſign'd it with my hand, day and year aforeſaid.

Sic ſubſcribitur, D. Rea.

After reading of the whilk relation judicially, the ſaid Lord *Uchiltrie* declared, that ſo far as his memory ſerves him, there is no difference betwixt the foreſaid copy of relation, ſubſcrib'd by the five Councillors, and the principal, or original, ſet down and ſubſcrib'd by the ſaid *Donald* Lord *Rea*: upon the making of the whilk declaration, his Majeſty's Advocate aſk'd inſtruments.

Thereafter his Majeſty's Advocate anſwering to the former alledgeances proponed by the Pannel, and to the firſt part thereof, he opponed the Pannel's own depoſitions, made upon the 20th and 24th of *June*, ſubſcribed by the five Councillors; and whilk are granted by the Pannel to be true copies, together with the repreſentation ſubſcrib'd and written with the Pannel's own hand, whilk verifies the firſt and laſt points of the particulars concerning the Pannel's poſitive affirmation of the Treaſon. And that the Marquis was prime Agent thereof, together with the ſpeeches ſpoken to his Majeſty, upon the *Sunday* after dinner; and as to the third particular point of the Dittay, anent the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, who are called Plotters; that is verified by the relations made by the Lord *Rea* the 18th of *May*, acknowledg'd alſo by the Pannel, and by the Lord *Rea*'s depoſitions, whilks are uſed conjunctly, for verifying the ſecond particular point of the Judgment, anent the three Noblemen who are call'd Plotters, the one thereof, *viz.* the relation to prove the negative part of the Dittay, and that the Pannel had no warrant from the Lord *Rea*: and for verifying the affirmative, that the Lord *Rea* diſclaimed the ſame uſes, the ſaid Lord *Rea*'s depoſitions. And where it is alledged, that the Dittay, ſo far as it is founded upon the Lord *Rea*'s depoſition, is not relevant againſt the Pannel, becauſe he is the Pannel's party, and becauſe he was not ſworn, and not in preſence of parties, *quod eſt teſtis ſingularis*, and not ſubſcribed by him; it is anſwered, firſt, That the negative point *per ſe* is ſufficient to infer the relevancy of the Dittay in this point; that he gave them up as Plotters, without any warrant of the relation from the Lord *Rea*. whilk is clear, by conferring the liſt of repreſentation, given in by the Pannel (wherein they are called Plotters), with the ſaid Lord *Rea*'s relation. Whereby it is evident that the repreſentation, given in upon the 16th of *May*, could have no warrant of the relation, whilk in the Pannel's depoſitions is affirmed to have begun upon the 13th of *May*, and cloſed the 18th of *May*, and deliver'd to the Lord-Treaſurer to be given in to his Majeſty. Within the whilk relation there is not a word of the ſaid three Earls; neither can the Pannel pretend ignorance hereof, in reſpect he in his own depoſition grants and confeſſeth, that the Lord-Treaſurer, to whom they were remitted by his Majeſty, deſired to give in the relation in writing, conform to the whilk the Pannel and the Lord *Rea* went together and conſumed the whole night in drawing the ſaid relation; whilk night was the night or evening of the ſaid 17th of *May*, whereupon firſt they appeared before his Majeſty. And the Pannel having given in the repreſentation of the prime Agent and the Plotters upon the 16th day preceding, he could not have omitted ſuch a ſubſtantial point of the relation, which ſo nearly touch'd the Marquis and the three Noblemen aforeſaid, and the Pannel's own exoneration. Like as the Pannel himſelf with his own hand wrote up and drew off the ſaid Lord *Rea*'s Papers the ſaid relation of the 18th of *May*: So that the Pannel can never affirm, that he had any Warrant from the ſaid relation for branding the Marquis as prime Agent, and the ſaid three Noblemen as Plotters. And as to the Arguments made againſt the Lord *Rea*'s depoſition;

Firſt, the ſame is not uſed *per ſe*, but jointly with the other, *Et juncta plena faciunt fidem.* Next the Lord *Rea* is not the Pannel his party, *ſed eſt author & mandator quem tenebatur edere*, otherways he would have been himſelf culpable of Treaſon, or, a delator of Treaſon againſt the ſaid Noblemen, *pœna talionis vel tautopatheias* by Act of Parliament, made by King *James* VI. *Par.* 11. *Cap.* 42. Next, *Nulla neceſſitas jurisjurandi quia non teſtis ſed author a reo nuncupatus.* And the ſingularity cannot be objected, becauſe he uſed him *tanquam ſingularem & ſolum*, to warrant his declaration; and for preſent he could not be, if the Lord *Rea* had been examined *tanquam teſtis*, as the Pannel alledges: and as to the authenticknes of the Copy of the Relation, it is approven by the Pannel, and he cannot be heard to object againſt the authenticknes thereof, nor of the other Copies; becauſe they are ſubſcribed by the ſaid five Councillors, and have the Warrant of his Majeſty's miſſive Letter directed to the Council: which the Pannel for reverence of his Majeſty's Letter, and of the Councillors ſubſcribers of the ſaid Copies, has acknowledged as true. And therefore cannot be heard to object againſt the remanent, whilk has the like ſolemnity of his Majeſty's Letter, and conſequently the fourth Alledgeance ought to be repelled.

Quinto, It is alledged for the Pannel by his Prolocutors, That as to the particulars of his Dittay, the Pannel purges every one of them in manner following; *viz.* The firſt particular point is not relevant, becauſe that the Pannel at his firſt meeting with his Majeſty upon the 17th of *May* did ſignify to his Majeſty, that the buſineſs was a Treaſon againſt his Majeſty, and that the Party was the Marquis of *Hamilton*, as he was informed. This Article enforces not againſt the Pannel, that he is a Leaſing-maker and Forger, but clearly frees him thereof, bearing *as he was informed.* Whilk Article being the Sum and Subſtance of the whole Dittay, having the aforeſaid Clauſule (as he was informed) annex'd thereto, inforces of neceſſity the ſame Clauſule to all the particulars of the Dittay comprehended under the ſaid General, *quia ſemper ſpecialia generalibus inſunt.* And that the Pannel ſpake it by information, it is clear by the Pannel's Depoſitions upon the 20 and 24 Days of *June*, and by the Lord *Rea*'s Depoſition the 21 of *June*, acknowledging the Pannel's Examination to be true in all Points, in ſo far as the ſame concerns the Knowledge, Words and Acts of the Lord *Rea*, and by the Relations made by the Lord *Rea* and ſubſcrib'd by him, and other Relations made by the ſaid Lord *Rea* to the Pannel by Word, as the Pannel's own Depoſition bears. Neither was it ever heard

heard or practis'd, that any Subject being neceſſitated by the Law to reveal what may concern the King's Majeſty or the State, and revealing the ſame with his informer therein, and conſtantly abiding thereat, and willing to maintain the ſame upon any Torture or Trial whatſomever; that the Revealer, upon the Party's denial, ſhould be call'd in queſtion of his Life, as the Deviſer and Forger, or the ſame to work any ways againſt the Revealer; and which if it ſhould now take place, and begin to be a preparative againſt the Pannel; it were to give way and occaſion to all treaſonable Exploits, and that ſecurely, becauſe none would or durſt reveal the ſame.

Next, as for the Liſt of Names of the principal Agent and Plotters repreſented to the Lord-Treaſurer the 16th of *May*, affirmed to be forged and invented by the Pannel himſelf without any Warrant from my Lord *Rea*, conform to the Pannel's depoſition upon the 20th and 24th days of *June* laſt, none of the Pannel's depoſitions foreſaid, to the whilk the Dittay remits, bear any ſuch Confeſſion or Forging by the Pannel; but bears expreſsly the Lord *Rea*'s relation to him in both the Pannel's depoſitions, which is ſufficient for an informer.

It is aſked by the Pannel, That whereas it is alledged by my Lord Advocate, that the Pannel could never aſcribe any true Cauſe or Knowledge in the Liſt or Repreſentation where the Lord Marquis is named prime Agent, and the ſaid Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, Plotters; becauſe the Lord Advocate affirms, that the relation was given in upon the 18th day, and the Liſt preſented to the Treaſurer the 16th day; and ſo the Pannel could have no juſt reaſon why theſe contained in the Liſt, were not contain'd in the relation, which was poſterior. The Pannel affirms, that howſoever the Liſt was given in before, the reaſon thereof is thus: The Lord Advocate making mention of his relation, diſtinguiſhes not betwixt a relation by Word, and another by Writ; but ſo it is, that my Lord *Rea* made relation to the Pannel upon the 13th of *May* of the whole things contain'd in the Relation upon the 18th of *May*, as appears evidently by the Pannel's 1ſt and 2d Depoſitions, and upon the 14th and 15th days my Lord *Rea* renewed the diſcourſe concerning my Lord *Seaforth*, and explains himſelf in theſe particulars concerning the Earls of *Haddington* and *Roxburgh*, anent their being upon the Secret and Counſel of the Marquis's courſes; That it was repreſented upon the 14th and 15th days, the Lord *Rea* and the Pannel being both at *Greenwich*, return'd upon *Monday* morning, being the 16th day, to *London*; at which time the Pannel went unto the Lord-Treaſurer, and there fell in diſcourſe with the Treaſurer on the Buſineſs concerning the Marquis's Power in *Scotland*, and Friendſhip with the Pannel, and to ſhew his Lordſhip he would let him know was very great; and ſo came forward to the Pannel's own Houſe, and wrote the Repreſentation, and delivered the ſame to the Lord-Treaſurer, which was done upon the 16th day, being *Monday*. And where my Lord Advocate alledges, that there could be no ground for this repreſentation before the giving in thereof from my Lord *Rea*'s written relation, becauſe the repreſentation preceded it in time, and the Plotters were not nam'd in the relation, whilk therefore followed upon the 18th of *May*, anſwers the verbal relations concerning the Plotters made by the Lord *Rea* to the Pannel preceded the ſcriptural relations given in to the Treaſurer; yea and the repreſentation both, becauſe done upon the 14th and 15th days of *May*, the repreſentation being upon the 16th, and the written relation upon the 18th. Neither was it needful to the Lord *Rea* to make that relation in this paper, which he had made to the Pannel before by word, like as there are ſundry other things in the Pannel's depoſitions, whilk are not ſet down in that written relation. Firſt, becauſe in all the written relation, no mention is made of my Lord *Seaforth*, or any thing proceeding from him; if of nothing from him, why then of the Grounds of the Pannel's repreſentation, whilk was had from my Lord of *Seaforth*?

The Juſtice continues all farther diſputation and reaſoning in this matter (by reaſon of the lateneſs of the Night) to the Morn the 2d of this Month of *December*, and ordains the Pannel to be returned to Ward, to remain therein in the mean time; the Perſons alſo warn'd *apud Acta* to the morn, all Perſons under the pain of a thouſand Marks.

Curia Juſticiaria S. D. N. Regis tent' in prætorio burgi de Edinburgh, *ſecundo die menſis* Decembris, *Anno Dom. Milleſimo, Sexcenteſimo, Triceſimo primo, per Honorabiles & Diſcretos Viros, Magiſtros,* Alexandrum Colville *de* Blair, *&* Jacobum Robertoun, *Advocatum, Juſticiarios deputatos nobilis & potentis Comitis Willielmi Comitis de* Stratherne, *&* Monteith, *Dom.* Grahame, Kilbryde, *&* Kynpont, *præſidis ſecreti Concilii & Juſticiarii generalis dict. S. D. N. Regis, totius ſui Regni* Scotiæ, *ubilibet conſtitut. Sectis vocatis & Curia legitime affirmata.*

Intrdn'

JAMES Lord *Uchiltrie*, delated of the Crimes foreſaids, contained in his Dittay.

Purſuer.

Sir *Thomas Hope* of *Craighall*, Knight and Baronet; his Majeſty's Advocate for his Highneſs's Entries.

Prolocutors in Defence.

Mr. *Robert Nairne*,
Mr. *Alexander Pierſon*,
Gilbert Neilſon, } Advocates.

The ſaid *James* Lord *Uchiltrie* by himſelf repeats the former firſt alledgeance, word by word, as it ſtands, and eikis thereto, that he can no ways be in *mala fide:* That the Grounds of his repreſentation preceded not his written repreſentation *hoc Argumento*, as it is alledged, becauſe the Lord *Rea* had omitted in his relation to make mention thereof; whereas my Lord *Rea*'s facts cannot make the Pannel guilty ſimply; neither can his omiſſions take away the ſtrength of the Pannel's Arguments of his innocency: For it was the Pannel's part to follow him, and not to lead him; to reveal aſſertions, and not to indite aſſertions to him. Neither was the Pannel under any juſt cauſe of fear that his omiſſion could endanger him in the point; becauſe he was conſcious to himſelf, that my Lord *Rea* had told him the grounds of his repreſentation of before, *viz.* upon the 14th and 15th days of *May*, by verbal relations thereof upon the ſaid days. The Pannel likewiſe knew that there was a ſecond relation wrote of ſundry other particulars to be made by my Lord *Rea* ſubſequent; among the whilk he knew the Grounds of his preceding verbal relations of his repreſentation was to be juſtified and cleared. So by theſe reaſons the Lord *Rea*'s omiſſion of the grounds of the Pannel's repreſentation out of his ſcriptural relation, *eo tempore*, can give no juſt ground to invalid or infringe the truth of the Pannel's aſſertion. That my Lord *Rea* by verbal relation preceding both the repreſentation and that written relation, had told him, that the Earls of *Haddington* and *Roxburgh* were upon the Council and ſecret of the buſineſs informed againſt the Lord Marquis. The ſame laſt Argument holds good likewiſe for my Lord *Buccleugh*; and as to the repreſentation in general, the Pannel declares, That it was written and given in upon a Diſcourſe of my Lord Treaſurer's inquiry for the Friendſhip of the Marquis in *Scotland* by Blood or Intereſt; whereby conjecture might be made of his power ſuppoſitive, if his Friends had joined to him. And this is clear by the very Writ itſelf, in naming it a repreſentation, and not an information, accuſation, nor relation. The general ſtrain of the Writ likewiſe evidences, that there was no intent by that Writ to reflect in any thing concerning the Lord Marquis or thoſe three Noblemen. Becauſe the repreſentation containing one ſide and a half of paper, that whilk concerns theſe Noblemen originally will ſcarce take up two long lines. Whereby it is manifeſt, that the intent of the Pannel was more to illuſtrate other things, *viz.* The alliance and intereſt in blood of the Noblemen to theſe firſt four, than any intent of either delating or inſerting any crime or fact againſt theſe firſt four; but to diſtinguiſh by way of narration betwixt the one and the other. And altho' this be ſaid, the Pannel atteſts, that the mentioning of theſe Noblemen ſucceeding the firſt four, be taken in no evil part, for he atteſts no meaning to that effect, whilk the Pannel thinks Chriſtian Charity will not preſume; his Wife's Son, his Children's Brother, the prop of his providence under God, and of his Wife and Children, the Earl of *Caſſils* being one; and the Marquis of *Huntley* his Chief by his Mother, his good Dame, Brother's Son, who ſaved the Pannel's life, and for whom the Pannel has ventur'd his life, or any of his; can it be preſumed that the Impannelled would have intended malice to that Maſs, wherein theſe two helped to make up the conſtruction? Neither doth it appear by any intent, that any thing was meant by the repreſentation, but an explanation of Noblemen's power in *Scotland*. Neither let this be thought any new invention, or new explanation; becauſe it is mentioned before that alledged by my Lord Advocate in the Dittay, and acknowledged thereby; neither can it be preſumed, that theſe words, prime Agent and Plotters, can import an information of any thing, becauſe all direct affirmations muſt be enunciation, and muſt have *ſuum vinculum* to join the Subject and the Attribute together. Which *Vinculum* and connection of it want no enunciation; if no enunciation, no affirmation, nor lye. But ſo it is, the Words prime Agent have no *Vinculum*, nor the word Plotters ſimply has no *Vinculum* betwixt them as Attributes, and the perſons named as the Subject, and therefore no enunciation, nor affirmation, nor lye. And where my Lord Advocate in his Dittay affirms, that it is manifeſt by the Pannel's own depoſition, the truth of the Dittay; and in the diſpute yeſterday, produces a particular, that the Pannel ſhould have deponed, that the Lord *Rea* ſaid, that he had no certainty of the buſineſs; this can no ways fortify the aſſumption of the Dittay. Becauſe the Pannel's depoſition ſays not that the Lord *Rea* had certainty, but whether he had certainty or no, the words whilk the Pannel alledges was told to him by the Lord *Rea*; for the Pannel's depoſition depends not upon a *ſcientia certa*, but *relatio certa*, that he ſpake it to the Pannel as he has deponed. As to the third Article of the Dittay, anent the Pannel's proceeding and ſpeeches to his Majeſty the 23d of *May*, to-wit, *Sir, ye know the buſineſs, but know not the time; Sir, either do, or die;* this Article enforces not upon the Pannel lying to his Majeſty. For the Lord *Rea*, and the Pannel upon his information, both had acquainted his Majeſty with the buſineſs, ſo that the Pannel might truly ſay, *Sir, ye know the buſineſs*; and it is as true, that the Pannel knew not the time. As to the words *do or die*, that is a uſual phraſe of ſpeech, and imports, *Sir, ſee to your ſafety*, till theſe informations had been clear'd, and is of itſelf a faithful advice to his Majeſty, and not a malicious Counſel; and advice for to prevent the King's Majeſty his harm, and not to draw harm upon any other: like as the words themſelves inforces not againſt the Pannel, as the Dittay bears; but does very well admit a harmleſs ſenſe, and ſhould be interpret to the beſt meaning the words may admit. *Quia de jure etiam in dubiis & obſcuris quod minimum & benignius ſequimur. Lege nona &* 56 *de Regulis juris; & in ambiguis orationibus maxima ſententia ſpectanda eſt ejus qui eas protulet. Lege* 96. *ibidem; & quoties idem ſermo duas ſententias exprimit, ea potiſſimum accipienda eſt, qua rei gerendæ aptior eſt, dabit autem operam exprimi reus dicta verba at cui licito*; to-wit, the revealing of purpoſes, he heard againſt the King and State. *Denique in pœnalibus cauſis ſemper benignius interpretandum eſt.* And therefore the Pannel's ſpeaking and inſiſting with the King's Majeſty to ſee to his own ſafety, ſhould be referred to its own cauſe; to-wit, the Pannel's moſt bounden duty and tender love to the King's Majeſty, his welfare, and to the State of the Kingdom, fearing their faith, upon that relation that had been made to him. And alſo fearing his own faith, if that he ſhould have been found any ways remiſs or ſlack in not inſiſting with his Majeſty to prevent thoſe evils and treaſonable plots, ſo often related and repeated to him; and whilk the Pannel then feared to have been Treaſon, and to have come beyond Sea. And ſhould not be attributed, as the Dittay bears, to any malicious Counſel, or Purpoſe of the Pannel, for inſtigating, or ſtirring up of his Majeſty, to any ſudden and violent courſe againſt the Marquis's life and honour; as the Pannel atteſted before God, to have been his true meaning. Like as he in his Examination in *June*, upon the 21ſt thereof, depones, that upon *Sunday* Morning, whilk was that day he adviſed the King's Majeſty with theſe former words, was, that he ſhould go to *London* for more ſafety, and that the Pannel had no other end of ſpeaking of the words foreſaid.

Item, The words *do or die*, can be no Leaſing, becauſe they are not words of affirmation, but of counſel or advice.

As to the Paper of Names, whilk the Dittay affirms; the Pannel has confeſſed to be made by himſelf, and that the Lord *Rea* was not privy to

the making thereof nor delivery of the ſame to the Lord-Treaſurer; it is anſwered, theſe words made by yourſelf, is written with your own hand, ſo purported to be by the Dittay itſelf, in that article anent the liſt of names delivered to the Treaſurer. To the writing of the whilk paper with Pen and Ink, and to the inſtant delivery thereof, by the Pannel to the ſaid Lord-Treaſurer, the Lord *Rea* was not privy, he not being preſent with the Pannel at that time; but does no ways enforce, that the names and matter of that written paper was forged and deviſed by the Pannel. But by the contrary, the Pannel by his depoſition, made the 20th of *June*, whilk bears, that after the Lord *Rea* had revealed to him the particulars, he deſired the Pannel to acquaint his Majeſty, or the Lord-Treaſurer therewith; leaving to the Pannel his own free-will, whether he ſhould acquaint him therewith by word or writ. *Et hic maxime ſpectanda eſt ſententia proferentis*, who is no ways contrary to himſelf in his depoſitions; but whilks both ſubſiſts in their own true ſenſe.

As to the Article bearing the Pannel in his Examination, being inquired for what cauſe he did name the Lord Marquis to be prime Agent; and that the Pannel affirmed, that he could aſſign no true reaſon nor warrant from the Lord *Rea:* it is anſwered, that the Pannel is not obliged to give any true cauſe. But that the Lord *Rea*'s relation to him *qualis qualis* is a ſufficient Warrant.

Secundo, The Pannel's depoſition upon the 24th of *June* bears the contrary of the ſaid Article, and aſſigns the cauſe to be, that the Lord *Rea* had told him, that the Lord Marquis's followers had ſaid, the intent of the Marquis's Levies was to invade *Scotland* or *England*. As alſo the Pannel's Examination upon the 20th of *June* purports, that upon the 13th of *May*, the Lord *Rea* came to the Pannel's chamber, and there putting the Pannel in mind of their former ſpeeches, told the Pannel that the purpoſe of the Marquis of *Hamilton*'s Levies, as divers of his Commanders and Followers had inform'd him, was, that either they ſhould not go out of *England* or *Scotland*, or if they did, they ſhould return to *England* or *Stotland*, and ſurprize the King's Houſes in *Scotland*, *viz.* the Caſtles of *Edinburgh*, *Striveling* and *Dumbarton*, and fortify themſelves in *Leith*, under the pretence of training, and ſhould take *Berwick*, and ſo march forward into *England:* and that the intention ſo to do, was, as the Lord *Rea* ſaid, that he was ſo informed, and as the depoſition in itſelf bears.

Tertio, The Lord *Rea*'s written relations of divers perſons diſcourſes to the ſame purpoſe, of the whilk he was informed by themſelves; whilks written relations, although they be written on the 18th of *May* laſt, yet are of matters and purpoſes that paſſed long before, and related of before to the Pannel by word, by the ſaid Lord *Rea*.

Quarto, The Lord *Rea* at his firſt coming to his Majeſty in this buſineſs, in the Pannel's hearing, being aſked of the King's Majeſty, why he had not told his Majeſty ſooner of it; the ſaid Lord *Rea* anſwered, becauſe it concerned ſo near the Marquis of *Hamilton*, who was ſo near to his Majeſty; he was afraid to communicate the ſame to his Majeſty immediately, as the ſaid Lord *Rea*'s depoſition taken upon the 21ſt of *June* purports.

Item, The Lord *Rea*'s depoſition made upon the 21ſt of *June*, wherein he depones, that he ſaid he ſhould bring as honeſt a man as himſelf, that would tell to the Lord Marquis's face more nor the Lord *Rea* would do; ſo all that the Pannel ſpake herein, was by Information, and ſo therein is no Forger, nor maker of Leaſings.

Item, The Pannel's depoſition, taken upon the 20th of *June*, bearing that the Pannel told the Lord-Treaſurer, That the Lord *Rea* told him, he had yet more, and would ſay ſo much, as the Lord Marquis would not have a face to deny it; whilk the Lord *Rea* then preſent affirmed, in ſo much as the Lord-Treaſurer ſaid, then is the buſineſs at an end, there needs no more writing. And this Article before repeated, the Pannel affirms, that the Lord-Treaſurer of *England* heard theſe words, and did affirm the ſame before the King's Majeſty and Council of *England*, upon the peril of the Pannel's head.

Item, As to the Article bearing the Lord *Rea*'s declaration upon the 21ſt of *June*, that he knows nothing againſt the perſon of the Lord Marquis, but that the Marquis was as good a Subject as any the King had: it is anſwered thereto by the Pannel, that his depoſition and repreſentation depends not upon the Lord *Rea*'s knowledge, but upon his relation made to the Pannel. And that declaration of the Lord *Rea*'s takes not away the relation made by him to the Pannel, and doth not infer making and forging of Leaſings in the Pannel without warrant from him; this ſpecially being conſidered, for weakening and infringing of the Lord *Rea*'s oppoſitions to the Pannel's depoſitions, that my Lord *Rea* having ſaid theſe words in preſence of the Treaſurer of *England*, and juſtified by the Lord-Treaſurer of *England*, in preſence of his Majeſty and Council of *England*, that the Lord *Rea* would ſay ſo much, as the Marquis ſhould not have the face to deny it; and now he ſays that he knows nothing anent the Marquis's perſon: whilk are contradictory to himſelf, and renders himſelf not ſufficient to improve the Pannel's depoſitions.

Item, Here the Pannel, in this place, repeats the objections of the nullities, made againſt the Lord *Rea*'s depoſitions, ſo far as the ſame may be prejudicial to the Pannel.

Item, As to the Article, bearing that the Pannel being aſk'd, by what warrant, he call'd the three Earls Plotters; and that he anſwer'd that the Lord *Rea* had told him, that the Lord *Seaforth* had affirm'd to him, that the Earls of *Melros* and *Roxburgh* were acquainted with the particulars and ſecrets of that buſineſs; declaring therewith, that the Lord *Rea* had affirm'd the ſame to him, before he gave in the paper of repreſentation to my Lord-Treaſurer. Albeit the Lord *Rea*, by his depoſition the 24th of *June*, declar'd, that the firſt time the Lord *Seaforth* had ſpeech with him, anent the ſaid two Earls, and their being privy to the Marquis's buſineſs, was upon the *Monday* after the Marquis's coming out of *Scotland*, and not before; and ſo after the repreſentation given in to the Treaſurer upon the 16th of *May*, containing the names of the Plotters and Actors; at whilk time the Pannel could not truly affirm any information from my Lord *Rea:* to the whilk it is anſwer'd by the Pannel, that he, by his depoſition made the 24th of *June*, has declar'd, that all the underſtanding the Pannel had in the huſineſs, came to him from the Lord *Rea*, alſo by his depoſition the 20th of *June*.

Item, The Lord *Rea*'s granting of the ſpeech himſelf, anent the two Earls, makes preſumption againſt the ſaid Lord *Rea*, likewiſe for the time, *Quia dicta facta preſupponunt & trahunt ſe cum ſuis circumſtantiis:* neither is it probable nor ordinary, that there ſhould be that ſagacity of ſpirit in the Pannel, as to preſs what the Lord *Rea* ſhould make to him ſo long before, *Quod non præſumitur, ſed præſumptio, pro eo eſt, quod maxime eſt, ſecundum naturam toto; titulo de preſumptionibus.* And ſo this article enforces not againſt the Pannel, that he is maker and forger, becauſe the Lord *Rea* denies not ſimply, but the time of the Pannel's depoſition thereanent, whilk is no Leaſing.

Item, The Pannel in his Examination upon the 20th of *June*, in the courſe and order of the depoſitions thereof, whilk is the order of time, before the article anent the repreſentation of the liſt of names to the Lord-Treaſurer; he depones, that the Lord *Rea* had told him, that he had ſpoken with the Lord *Seaforth*, and had underſtood that from him; whilk general has no other meaning but that whilk is particulariz'd, by the ſaid Lord *Rea*'s Examination upon the 24th of *June*; in that article thereof, bearing that the Lord *Rea* did affirm to the Pannel, that he heard the aforeſaid report of the two Earls, before the Pannel made or deliver'd the paper of repreſentation.

Item, The Lord *Rea*'s depoſition upon the 24th of *June*, bears not the Lord *Rea* to deny, that he did affirm to the Pannel, that he heard the report of the ſaid two Earls from the Lord *Seaforth*, before the Pannel made or deliver'd the paper of repreſentation to the Treaſurer. But purports, that the firſt time that the Lord *Seaforth* had any ſpeech with the Lord *Rea*, touching the two Earls, their being privy to the particulars and ſecrets of the Lord *Hamilton*'s buſineſs, was upon *Monday* after the Marquis's coming from *Scotland*. And ſo that the Lord *Seaforth* had not ſpoken with the Lord *Rea* thereanent at that time; whilk is nothing to the Pannel, whether the Lord *Seaforth* had ſpoken with the Lord *Rea* or not. But denies not the foreſaid report of the two Earls made by the Lord *Rea* to the Pannel, whilk the Lord *Rea* did then affirm, that he had the ſame by information of the Lord *Seaforth*; neither is the Pannel obliged to make good the Lord *Rea*'s warrant herein, that the Lord *Rea* had the ſame by information of the Lord *Seaforth*; but the queſtion is, if the Pannel heard the ſame from the Lord *Rea*, before the giving in of the repreſentation to the Treaſurer. Whilk the Pannel affirms and abides at, conform to his depoſitions, made upon the 20th and 24th of *June*, as ſaid is.

Item, The Pannel here alſo repeats all the objections againſt the Lord *Rea*'s depoſitions, *ut ſupra*.

Item, Anent the Article, bearing, the Lord *Rea* to have told the Pannel, that he could not gueſs who elſe ſhould have been in the plot, unleſs it were the Lord *Buccleugh*; and that the Lord *Rea*, who by his depoſition upon the 24th of *June* depones, that the Pannel, and not he, did name the Earl of *Buccleugh*, as one would take arms in *Scotland* to aſſiſt the Marquis: It is anſwered thereto, *ut ſupra*, that the Pannel by his depoſition has declared, that all the underſtanding he had in the buſineſs, came to him from the Lord *Rea*; as the Pannel's Examination bears, and whilk he abides at as moſt true.

Item, The Pannel's depoſition upon the 24th of *June*, bearing the Lord *Rea* told him, anent the Earl of *Buccleugh*, is not ſimply, but *cum cauſa*, bearing the Lord *Rea*'s reaſon, wherefore he named him: and whilk reaſon in ſubſtance is granted by the Lord *Rea*, although with ſome diverſity of words, at the leaſt not denied in his Examination upon the 24th of *June*. And therefore, the ſaid Lord *Rea*'s depoſition affirming the reaſon, but denying the naming the ſaid Lord *Buccleugh*, ought not to be credited in his denial; but the Lord *Rea*'s affirming of the reaſon, inforces upon him the naming of the ſaid Earl. *Quia ratio confeſſa dicti præponderat & præſumit contra proferentem.*

Item, The Lord *Rea*'s ſpeeches to the Pannel, anent the Lord *Buccleugh*, though conjectural, neceſſitate the Pannel to the repreſentation, and revealing of the ſame to his Majeſty; eſpecially ſeeing the Lord *Rea* ſtrengtheneth the ſame with reaſon wherefore he ſo ſpake, to wit, that he heard the Lord *Buccleugh* ſpeak terrible and preſumptuous words againſt the King's Majeſty, at his own table in *Holland*; as the Pannel's depoſition upon the 24th of *June* purports, and whilk is granted by the Lord *Rea* himſelf in ſubſtance, at the leaſt not denied.

Item, The Pannel repeats here again all his objections againſt the Lord *Rea*'s depoſitions; and alledges that it was never heard nor practis'd, that a ſubject being neceſſitate by the Law, to reveal what may concern the King or State, and revealing the ſame with his informer therein, and conſtantly abiding thereat, and willing to maintain the ſame by any trial or torture, that the revealer, upon the party's denial, ſhould be called in queſtion of his life, or the ſame any ways work againſt the revealer. And whilk if it ſhould now take place, and begin a preparative againſt the Pannel, the ſame were to give way and occaſion to all treaſonable exploits; and that ſecurely, becauſe none would or durſt reveal the ſame.

And further, where it is affirm'd by the Dittay, that in the liſt preſented by the Pannel to the Lord-Treaſurer, there is deſign'd the Earls of *Haddington*, *Roxburgh* and *Buccleugh* to be Plotters; the Pannel had ground to make the relation, no ways affirming any thing poſitive; becauſe in the Pannel's depoſition made the 24th of *June*, being examined and aſked why in the aforeſaid paper, he makes the ſaid Earls plotters;

It is anſwered in the depoſition, that the Lord *Rea* had told the Pannel, he could not gueſs who elſe ſhould be in the Plot, unleſs it were the Earl of *Buccleugh*; whilk word Plot, having had relation to the Earl's buſineſs, muſt alſo have relation to the other two Earls, ſeeing they were ſpoken of all at one time.

It is anſwered by his Majeſty's Advocate, firſt, to the firſt Article of the fifth exception, anent the purging of the Pannel's ſpeech to his Majeſty, upon the 17th of *May:* By this word that is ſubjoined, as the Pannel is informed, whilk the proponer for the Pannel will have to be repeated in all the ſubſequent paſſages concerning the buſineſs; firſt, that this word, *as he is informed*, cannot purge him, becauſe he received no poſitive information from the Lord *Rea* againſt the Marquis, nor no warrant to call him Party, Prime Agent, and to affirm to his Majeſty the buſineſs was known; to whilk laſt he ſubjoins his Counſel, very dangerous for the life and eſtate of the Marquis; whilks three are conjoin'd to infer againſt the Pannel, an exceeding of the relation made to him by the Lord *Rea*, and the exceeding of it, with the Peril of the Noble-

man, his life and eſtate; there being neither word nor paſſage in the Lord *Rea*'s written relation, whilk may either warrant their ſpeeches, or infer them by conſequence. And in matters of this high ſtrain, as of Treaſon, no illation by conſequence is permiſſable, but upon the peril of him that infers. For in all the written relation there is not a direct word ſpoken againſt the Marquis, neither by *David Ramſay*, nor by Mr. *Robert Meldrum*; but allanerly ſome mad and frantick ſpeeches utter'd by *Meldrum* upon his own imagination, or wiſh to have it ſo, for diſturbance of the eſtate, by expreſſing the manner how ſuch an enterprize, according to his fooliſh opinion, might be performed; but not one word or ſyllable, that *Meldrum* heard it from the Lord Marquis, or from any who declar'd they heard the Marquis ſpeak it. And as to *David Ramſay*, the worſt word that is in his relation, is anent the Marquis's miſcontentment, and all the Marquis's aim was to uſe his Levy for the protection of Religion; whilk aim and intention the Lord *Rea*, after his coming to *England*, clearly underſtood by the Lord Marquis himſelf; who employ'd him to be a Colonel in his company, and gave him this aſſurance, that he that would hazard with him in that glorious buſineſs for aſſiſtance of the King of *Sweden*, ſhould make uſe of him, with the hazard of his fortune and eſtate: and none of theſe paſſages will quadrate with thoſe ſpeeches ſpoken by the Pannel to his Majeſty; That it was a Treaſon, an odious Treaſon, and the Lord Marquis Party, as the Pannel was inform'd; and that it was the filthieſt Treaſon that ever was intended, and that the Pannel was ſorry that any *Scotſman* ſhould have fallen into it, it being a ſhame to the whole Nation: whilk is a poſitive affirmation, not as the Pannel was informed, but as he himſelf did infer, upon the relation made to him by my Lord *Rea*, who would give the Pannel no aſſurance he had any certain ground, whilk is manifeſt by the Pannel's depoſition upon the 20th of *June* laſt. And as to the relation, albeit it avow'd with theſe words (as he is inform'd) could give the Pannel no warrant to expreſs theſe poſitive ſpeeches to his Majeſty, upon the 17th of *May*; ſo far leſs to the other of prime Agent, and known buſineſs, with the ſubſequent counſel. *Firſt*, Becauſe they are poſitively ſpoken without adjection, (as he is inform'd), and where the proponer for the Pannel urges that theſe words *as he is informed*, muſt be repeal'd in all ſubſequent paſſages; that has ſome probability, *in unico continuo actu, vel unica ſcriptura*. But here the Acts are diverſe, the days diverſe, the expreſſion of writing diverſe, the liſt being upon the 16th of *May*; the ſpeech with the King, as he is inform'd, upon the 17th of *May*; and the ſpeech of the known buſineſs with the Council being upon the 22d of *May:* and theſe three taken *conjunctim* evidently charges the Pannel with the exceſs of his duty. For he did all his duty that was required of him, as a faithful ſubject, when upon the 15th of *May*, whilk preceded all the expreſſions, he came to the Lord-Treaſurer and told him, that he had a buſineſs to reveal concerning his Majeſty, and whilk (as he ſaid) concern'd the Marquis of *Hamilton*'s actions, and that he had the ſame of the Lord *Rea*; after the whilk, he had no neceſſity as a loyal ſubject, to go further. And yet he goes on to the expreſſion of all theſe ſpeeches, and adds thereto his dangerous Counſel to his Majeſty; whilk can have no reſpect to the Lord *Rea*'s relation, nor to the Pannels' duty in revealing of it. And where the Pannel would purge his giving in of the liſts firſt, becauſe it is not an enunciative ſpeech, *quia caret vinculo*; this is contrary to the repreſentation, bearing the *vinculum* is the Marquis of *Hamilton* as prime Agent; and this word *is* muſt be repeated in the ſubſequent word Plotters; the ſentence being, the Earls of *Melros*, *Roxburgh*, and *Buccleugh* Plotters. Whilk is a ſentence that has a clear ſignification, affirming the attribute Plotters upon them three, in as evident and clear ſignification, as the clauſe ſubſequent, whilk names the whole Noblemen adherent by blood.

And where it is alledg'd, that albeit the Pannel named the Lord Marquis prime Agent, he did allanerly upon intention to diſtinguiſh the Marquis, and the other three Earls from theſe of their Adherents in blood; and urges that this intention ſhould be charitably expounded:

It is anſwered, that *crimen vel delictum non poteſt purgari bona intentione.* And if the points contained in the Dittay, whereupon the Pannel is accuſed, be in their own nature criminal, they cannot be purged by a good intention, nor yet by a proteſtation adjected, the time of the doing it. But the intention, with the fact and deed, are both alike judged odious, and puniſhable. *Et nunquam præſumitur bona intentio niſi probetur, ad eluendum crimen*; as it is inſtanced, by *Jul. Clarus de injuriis, tu mentiris ſalva reverentia.* This inſtance being adduced, whilk by the opinions of all the Doctors cannot excuſe the committers of the injury, and much leſs in this Dittay; whilk contains *Injuriam capitalem*, ſtriking upon the life and fame of the Noblemen. *Nam qui defamat, jugulat pluſquam maledicto quam in manu injuria eſt qui ſic incidiatur, ut nota et iamad poſteros tranſeat, quod eſt ſæpe eundem occidere:* and charity can have no place here, without the offence of Juſtice, whilk craves the due puniſhment from the offender. And where it is alledged, that the Pannel had no warrant, both to name the Marquis prime Agent, and the Earls Plotters, by a verbal relation from the Lord *Rea*, there can be no reſpect had to a verbal relation, except it were proven to the Judge, eſpecially in a matter *tantæ atrocitatis*. Neither can the Pannel alledge to a verbal relation, to colour his behaviour therewith; becauſe the Pannel affirms, that thir verbal relations were made upon the 14th and 15th of *May*; whilk precedes the relation exhibited in Writ, upon the 18th of *May*. In the whilk relation there is not a ſyllable of the three Earls as Plotters; albeit in the relation there is mention made of the ſpeeches ſpoken by the Earl of *Roxburgh* to the Lord *Rea*. And the Pannel having given in his liſt upon the 16th of *May*, and knowing the peril of adding or paring to that, whilk was related to him in a matter of this importance; whilk ſhould have been as tenderly handled, as the life, honour and ſafety of our gracious Sovereign upon the one ſide; and the care to eſchew the branding of Noblemen with the odious aſperſion of his Treaſon, did require of him, on the other part: And cannot pretend a colour of excuſe by the omiſſion of the names of the ſaid three Earls in the relation given in upon the 18th of *May* thereafter; ſpecially ſeeing the relation in effect was his own deed; becauſe he brought the Lord *Rea* to his Majeſty, to make the relation. And the Lord *Rea*, in his relation to his Majeſty ſpake never a word of the three Earls; nor yet the Pannel in his relation to the King's Majeſty, and the Lord-Treaſurer, ſpake not a ſyllable thereof: whilk is clear by the Pannel's depoſitions upon the 20th of *June*, which bears his relation, made in preſence of the Councillors his Examinators; wherein is no word of the three Earls. And likewiſe by the Examination of the Lord *Rea* upon the 21ſt of *June*, which is ſuch like; and when his Majeſty had remitted the Pannel and the Lord *Rea* to the Treaſurer, who directed them to draw up the Lord *Rea*'s relation in Writ; the Pannel confeſſeth, that he and the Lord *Rea* went home, and ſat up all night; and that the Pannel, after the Lord *Rea* had put the relation in writ, did write the ſame over with his own hand, out of the Lord *Rea*'s papers. And yet not a word of the relation of the three Earls; which would not have been omitted, if it had been truly done. And where the Pannel pretends, that the omiſſion thereof was in reſpect that the relation contains allanerly that which was related by the Lord *Rea* upon the 13th of *May*; but not that which was upon 14th and 15th of *May*; which was learned of the Lord *Seaforth*; that alledgeance hath no warrant of the relation, nor yet any appearance at all; becauſe in the Pannel's Examination upon the 20th of *June*, the Pannel doth condeſcend of that which was done upon the 14th and 15th of *May*; but not one word of the Earls, albeit in that ſame Examination he makes mention, that the Lord *Rea* had ſpoken with the Lord *Seaforth*. And ſic-like, in the Examination of *Donald* Lord *Rea*, upon the 21ſt of *June*, 1631, and alſo the Pannel's own depoſition foreſaid; that the Pannel two days after the relation, which behoved to be upon the 20th of *May* (relation being upon the 18th), the Pannel brought the Lord *Rea* to the Treaſurer, and cauſed him to ſubſcribe his relation; at which time the Pannel told the Lord-Treaſurer, that the Lord *Rea* had more to ſay: whereupon the Lord *Rea* being aſk'd what it was, and wherefore detained, the Lord *Rea* anwered, that he had ſpoken with the Lord *Seaforth*, and had ſundry particulars from him, which he did not tell to the Lord *Uchiltrie* in particular, but generally affirmed to him he would ſay more. But one or two days after, the Lord *Rea* went to the Earl of *Seaforth*, and then told the ſame, firſt to the Pannel. And that the Pannel, upon the *Sunday* of the Morning (which was the day of the Marquis's returning from *Scotland*) he had told the Lord-Treaſurer theſe particulars, ſpoken by the Lord *Seaforth*, and therewith alſo of the Marquis's return: whereby it is clear, that as nothing is contained in the relation touching the three Earls, neither in the verbal relation to his Majeſty and Lord-Treaſurer, nor in the ſubſcribed relation; ſo the ſpeeches thereanent ſpoken by the Lord *Rea* to the Pannel, was not till eight days after giving in of the liſt.

And where it is alledged by the Pannel, that as the Lord *Rea*'s fact cannot burden him, far leſs his omiſſion; it is anſwered, firſt, it muſt bind him, becauſe he has named him to be his Author: and wherein he is not his Author, the Pannel himſelf muſt needs be the forger. And next, becauſe the relation in effect is the Pannel's own deed, as ſaid is; and as to the purgation of the ſpeeches, that the buſineſs is known, *Sir, either do or die*; that the ſame muſt be interpret *ſecundum communem uſum loquendi*; and to mean as mickel as, ſee to your own ſafety: it is anſwered, that they muſt be taken properly, and not improperly, and muſt be ruled by the preceding ſpeeches of the party and prime Agent; as if the Pannel had ſaid to any perſon, this man ſlew your father, *do or die*. In the which caſe, the words would not be exponed ſafety, but revenge: and where it is alledg'd *quod in dubiis benignior fieri debet interpretatio*; this rule of law has only place *in contradictibus, ſed non in criminibus, præcipue atrocioribus*, as this is. But it is urged, *hic ſumus in facto licito*; but it is anſwered, *hic in maxime illicito.* Becauſe there was nothing required of the Pannel, but to reveal (whilk was done of before); and whatever was done after the revealing, that might tend to the hurt of the reputation of the Noblemen, or touch them in their life and eſtate, was altogether unlawful and capital; and the unlawfulneſs is manifeſt, by the ſubjoining of that pernicious Counſel, *to do or die:* whilk is not of the nature of a relation, but of the nature of the inſtigation, of a ſovereign Prince to a dangerous act, tending to the deſtruction of the life and honour of them, againſt whom the Counſel is given; and by their anſwers, the whole objections made againſt the particulars of the libel are ſolved. To the which is added, the Lord *Rea*'s declaration by Oath, freeing the Marquis, his Majeſty's Letter of the 29th of *June*, ſent down to the Council, declaring the Lord Marquis, and the ſaid three Earls of *Haddington*, *Roxburgh* and *Buccleugh* (to be as his Majeſty knows them to be) as good and faithful Subjects as any within his Majeſty's Kingdoms; and declaring his Majeſty's reſolution, to have thoſe who have given falſe information againſt them, to be puniſhed. After the which, did follow his Majeſty's Letter of the date of the 24th of *September*, for trying and cenſuring the Pannel, upon the particulars given forth by him againſt the Noblemen: wherein the Pannel, notwithſtanding of all his purgations, can have no juſt warrant againſt the Marquis, ſpecially in the two laſt points of prime Agent, and known buſineſs; nor pretext againſt the Earls of *Haddington* and *Roxburgh*; but (by the Pannel's confeſſion) leaſt of all againſt the Earl of *Buccleugh*, againſt whom he had nothing but a gueſs by his own confeſſion, and yet he makes him Plotter.

It is duplyed by Mr. *Robert Nairne* for the Pannel, that this Dittay conſiſts upon three deeds done and committed by the Pannel, together with his intention in the doing of them. As to the Pannel's intention, that it was not of purpoſe of making any Leaſing, againſt the Act of Parliament, but to the revealing of an alledged Treaſon againſt his Majeſty; the revealing whereof was neceſſitate by that addition adjoint to the laſt Act of Parliament libelled; for obedience of the whilk Act, the Pannel did whatever was done in this buſineſs by him, and that the firſt part of the Dittay is not relevant againſt the Pannel, to infer the puniſhment libelled againſt him, is clear, by retorting of the argument after this manner: A deed commanded by the Act of Parliament, cannot infer a puniſhment by the ſame Act of Parliament; true it is, that the firſt deed contained in the aſſumption of this Dittay was commanded by the Act of Parliament, imponing a neceſſity to all hearers of treaſonable ſpeeches againſt the King or State to reveal the ſame: *Ergo*, he did the ſame lawfully. Whereas it is alledged in the Dittay, that by and after the information which the Pannel had by relation, he has exceeded in the particulars expreſſed in the Dittay. And firſt, in the firſt particular, at the doing and ſpeaking whereof by and after the anterior information, which the Pannel had received, the Lord *Rea* his Author was preſent: who being inquir'd or

by

by his Majesty, why he was so long in revealing of the alledged Treasons; he answered, That he was afraid to do the same, in respect of the nearness betwixt his Majesty and the Marquis. So that that which the Pannel did for Obedience to the Law, and his Author being present beside him, is no ways relevant to infer the Punishment of Leasing-makers against him contained in the Act of Parliament. Like as also the said Lord *Rea*, after the said Relation to his Majesty being remitted to the Lord-Treasurer, declared that the Marquis was Party; and further said, That he would cause as honest Men as the Lord *Rea* himself to affirm the same.

Whereas my Lord Advocate, in his Reply, quarrels the former Words positively set down, and not by Relation; it is duplyed, That the Form of the Speech is not in question here, but the Matter; for albeit, that the Pannel had reported in other Words, or by a Description, or Paraphrase, that which my Lord *Rea* related unto him, without changing or altering of the Substance, commits no Fault, nor cannot be accounted therefore a Leasing-maker. And here the Proponer repeats the Words contained in the Relation and Depositions, which he remits to the Judges Consideration. And to the second Part of the Subsumption, anent the Delivery of the List of Names to the Treasurer, it is answered, That that Part of the Dittay is most irrelevant, and cannot be subsumed upon the Proposition of the Indictment; for to reason thus, all Leasing-makers should be punished. True it is, that the Pannel has written, and delivered a List of Names to the Treasurer: *Ergo*, he ought to be punished, is an evil Argument, which is remitted to the Judge, except it had libelled, that the said List contained Leasings, which is not libelled. And albeit it had been libelled, it is alledged, that the said List of Names as it is set down, contains no Purpose, for it is not written therein, prime Agent and Plotters in such a Treason; not only indefinite prime Agent and Plotters. And if the Pursuer will force these Words, to this alledged Treason contained in the Relation, the Pannel then will repeat the Word used of before (as he is informed). And here alledges, that it is as lesome, or rather more lesome to the Pannel, to erk true Words for the Pannel's good, nor to the Pursuer of the Dittay, to erk others for his Accusation. And albeit the said Words had been adjected, whereby the Sentence might have been filled against the Pannel; yet he closes himself with the Relation made by the said Lord *Rea* verbally, before making of the written Relation. And where it is disputed, that there cannot be a verbal Relation here respected; it is answered for the Pannel, that it is clear, that the written Relation we learned of the Marquis's Servants and Followers *tantum*.

And further alledges, That the Disputation of the Time of the giving in of the List upon the 16th Day, and the Time of the speaking of the Lord *Rea* with the Lord *Seaforth*, upon the 21st Day, is no ways relevant nor material; it being confessed, at the least not denied by my Lord *Rea*, that he had related of the three Earls to the Pannel: For the Deed being constant, the Circumstance of Time is not so material, and cannot be presumed that the Pannel should have any Knowledge thereof; who had of before been very long absent, and no ways interested in their Advice, and altogether ignorant of them; could of himself without any Information, named the same Persons whom the Revealer was to name, and none other.

It is answered by his Majesty's Advocate, That he oppones the Dittay, with the Reply made to the former Defences.

Lastly, It is alledged for the Pannel, That as it cannot be proceeded against the Pannel here in *Scotland*, but conform to the Laws and Statutes of *England*, the Place of the Pannel's alledged Offence, and according as the Fact is punishable, or not punishable, and more and less punishable in the Kingdom of *England*; so there can be no legal Accusation institute or laid against the Pannel here in *Scotland* for the said Facts and Deed, but upon the Laws of *England*, or at least upon the Common Law. And true it is, that the Dittay is not founded upon the Laws of *England*, nor yet upon the Common Law; but upon the municipal Laws of *Scotland*, and Acts of Parliament thereof: And therefore the Dittay is no ways relevant, subsuming and concluding upon the Acts of Parliament, mentioned in the Proposition of the Dittay.

Item, If the Relevancy of the Dittay all be sustained, it is alledged, that there can be no Pain inflicted, but that whereby the said Facts and Deeds are punishable by the Laws and Statutes of *England*, or by the Common Law, and no ways by the Pains mentioned in the said Acts of Parliament. *Quia judex originis vel domicilii non potest punire subditum delinquentem extra territorium, nisi secundum pœnam impositam a jure communi vel statutis Loci in quo deliquit, non autem secundum statuta ipsius Loci originis vel domicilii. Jul. Clarus, Quæstio* 85.

To the whilk it is answered by his Majesty's Advocate, That the first Part of the Alledgeance is altogether unreasonable and absurd; and as to the second Part of the Alledgeance, it is answered, That the Pannel, being a *Scotsman* by Birth, and also *quoad domicilium* being resident, by his Lady and Children in *Scotland*; and having committed the Crime libelled against four Noblemen in *Scotland*; he must be subject not only to the Laws of the Kingdom, but to the Pain and Punishment contained in the Laws: like as his Majesty by his missive Letter has ordained him to be tried and censured by the Laws of the Kingdom. And where it is alledged, that he is only punishable by the Pain inflicted in *England*, where the Crime is committed; and for this alledges *Jul. Cl.* in his 85th Question; first *Julius Clarus* in that Place calls the Matter disputable, *& egere decisione Cæsarea:* Next, he adduces the Number of Doctors, conflicting in divers Opinions *pro & contra*. And in the End he seems himself to incline to the punishment *Loci delicti*. And after it, cites *Marianus in cap. Postulasti extra de foro competenti: qui dicit generaliter esse communem conclusionem, quod delinquens debeat punire pœna imposita a Statutis Loci in quo delinquens punitur*. And this last Speech after his own carries *communem opinionem*, for his own is only given, *ad cautionem*, to free the Judges from Inquisition of Law. From whilk the Justice-General is well warranted, by his Majesty's Letter commanding the Pannel to be judged, conform to the Laws of the Kingdom.

And further, it is granted by *Jul. Clar.* to the which the Proponer assents in his Acceptation, *quod posset delinquens punire pœna juris communis vel pœna loci ubi delinquitur*. But so it is, that by the Common Law, *Calumniatores puniuntur pœna talionis, lege quisvis Cod. de Calumniatoribus, novella Leonis* 77. *Lege finali Cod. de accusationibus Leg.* 38. *digest. de pœnis.* And *Cicero* in his Fragments cites the Law in his Twelve Tables, in these Words: *Nostræ inquit, doudecim tabulæ cum per paucas res capite sanxissent in his hanc sanxiendam putaverint; si quis actitavisset quod infamiam fateret flagitiumve alteri, & præterea atrox injuria, de jure communi punibilis est pœnæ mortis. Jul. Clar. Quæstione* 83. *numero* 9. The Justice continues this Diet with all further Disputation and Reasoning in this Matter, to the Morn the third Day of *December* instant; and ordains the Pannel to be returned back to his Ward, therein to remain in the mean time. The Persons of Assize warned thereto, *apud acta*, as of before, ilk Person under the pain of one thousand Marks.

Curia Justiciaria S. D. N. Regis tent' in prætorio burgi de Edinburgh, *tertio die mensis* Decembris, *Anno Dom. Millesimo, Sexcentesimo, Trigesimo primo, per Honorabiles & Discretos Viros, Magistros* Alexandrum Colville *de* Blair, & Jacobum Robertoun, *Advocatum, Justiciarios deputatos nobilis & potentis Comitis* Willielmi *Comitis de* Stratherne & Monteith, *Dom.* Grahame, Kilbryde, & Kynpont, *præsidis secreti Concilii ac Justiciarii generalis dict. S. D. N. Regis, totius sui Regni* Scotiæ, *ubilibet constitut. Sectis vocatis & Curia legitime affirmata.*

Intran'

JAMES Lord *Uchiltrie*, delated in the Crimes foresaid, specified in his Dittay.

Pursuer,

Sir *Thomas Hope* of *Craighall*, Knight and Baronet; Advocate to our Sovereign Lord for his Highness's Entries.

Prolocutors in Defence.

Mr. *Robert Nairne*,
Mr. *Alexander Pierson*,
Gilbert Neilson,
} Advocates.

It is duplyed by the said *James* Lord *Uchiltrie* himself, being entered upon Pannel anent the first Part of my Lord Advocate's Reply, bearing, that the Clausule, as he was informed, can no ways be repeated in the Particulars. And although the Pannel so said, yet he has no positive Information from the Lord *Rea*; it is answered, the same ought to be repelled, because of the Clause *(as the Pannel was informed)* purported in the Dittay itself: For the Pannel in that whilk is the same, and Strength of the whole Dittay, is necessarily understood, and should be repeated in all the subsequent Passages of the Dittay; because it is *unicus actus continuatus*. And whilks whole three Parts of the Subsumption, as they are used conjunctly by my Lord Advocate against the Pannel; so the Pannel alledges that these Words, as he is informed, contained in the general, must be understood and repeated in all the three several Parts of the Subsumption; as being the Sum of all, whilk is after alledged, or was after imparted by the Pannel, and ought so to be understood. And where it is alledged, that where the Pannel, although he said, *as he was informed*, yet it is no positive Information from my Lord *Rea*, to ground a positive Assertion of the whole, contained in the Dittay.

It is answered thereto, He had positive Assertions and Information *quoad relationem*; *sed quoad veritatem* he was not bound to have it; sic-like many Parts of his Affirmations would be best cleared by the confronting of the Pannel and his Informer, whilk was never yet done. Neither are the chief of the Pannel's Affirmations, alledged by my Lord Advocate, simply taken, positive Affirmations, but with Interpretations, Constructions and Glosses, dipping *in mentem* of the Pannel: To which God is his only Judge, and it is an hard Matter by presumed Constructions, to draw the Pannel to the Question of his Life; *Nam non presumuntur delicta, sed probantur*. The Pannel refers himself to his Deposition, *in substantialibus*, undenied by the Lord *Rea*, as is clear by the Pannel's former Exceptions. Whereas my Lord Advocate mentions the Madness and foolish Imagination of *Meldrum*, as the Lord *Rea*'s Author of the Speeches; first, the Pannel protests, he urges nothing against those Noblemen from himself, *ab origine*. But he adheres to the Relations of the Lord *Rea*, verbal and by Writ; neither disputes he against *Meldrum*'s Sufficiency, or for it; but that *Meldrum*'s Words, related to him by the Lord *Rea*, gave him just Ground of revealing. And as to the Words alledged, related by the Pannel to the King, anent the odiousness of the Matter, and the Lord Marquis as Party; this can no ways be laid to the Pannel's Charge as a Fault, much less as a Crime capital, because the Informer, *viz.* the Lord *Rea*, was present at the Discourse; and related himself to the King, *eodem tempore*, the Particulars of what the Pannel had spoken; neither did he at that time oppose him, or contradict him in one Circumstance, whereby the Pannel was *bona fide* exonered, and therefore ought not now to be laid to his Charge. And further, in the Time of the Pannel's relating his own Words, the Pannel affirms, that he did it with Tears coming over his Cheeks, no Sign of Malice, or sowing Sedition, in expressing these Words to the King, like as his Majesty bare record thereof, before the Council of *England*, the Impannelled being present.

And to that Part of my Lord Advocate's Reply, anent the Lord Marquis to be prime Agent; the Pannel repeats the first Member of his Duply, together with the Impannelled's former Exceptions thereanent.

And where my Lord Advocate affirms, that the Pannel did his Duty sufficiently in the first Discourse, and might have acquiesced there with Duty; the Pannel affirms, that he could not, because all the time, from the 13th of *May* to the 20th, it was *actus continuatus*, by constant Information running from the Informer to the Pannel; and so required a constant Duty, whilk he durst not omit, neither with Safety nor Duty. And this is clearly by my Lord *Rea*'s own Deposition; who affirms the relating of several things, in several Days and Times, and is manifestly proven by the Pannel's own Depositions.

And where my Lord Advocate refuses to the Pannel the Exception of Charity, answering, That *crimen non potest purgari bona intentione, transeat*, where there is *crimen simplex*. But where there is *tantum crimen*, by Constructions, Periphrases, and Glosses, *supra mentem*, yea, *contra mentem* of the Pannel; there Charity justly may be admitted: For a good Intention, as it will not purge a manifest Crime, neither should the wresting of the Pannel's Intention inforce a Crime, and so not debar Charity.

And

And where my Lord Advocate doth urge againſt the Pannel's defaming of the Noblemen, it is anſwered by the Pannel, that the firſt Author muſt be the defamer, and not the revealer; the whole matter of the pretended defamation, being original acts of the Lord *Rea*'s *quod defenſorem*, upon Pannel, and not Acts of the Pannel; as it is evident, by the Pannel's two depoſitions, the Lord *Rea*'s firſt depoſition the 21ſt of *May*, where the ſaid Lord *Rea* doth acknowledge the examination of the Pannel, taken the 20th of *June*, to be true in all points, ſo far as the ſame concerns the knowledge, words and acts of the ſaid Lord *Rea*; upon the explanations then following. By which explanations, and notwithſtanding thereof, there is ſubſtance enough in the Pannel's depoſition, to prove that the Lord *Rea*, and not the Pannel, was Author to the whole matter of the pretended defamation. And whereas my Lord Advocate would in his reply ſeem to queſtion the verbal relations, flowing from the Lord *Rea* to the Pannel; to this the Pannel oppoſes his own depoſition, and the firſt article of my Lord *Rea*'s examination formerly cited, wherein the Lord *Rea* ratifies the Pannel's verbal aſſertions: if he ratifies them, they muſt be in *rerum natura*; if they be, my Lord Advocate's aſſertion is not relevant. And where my Lord Advocate alledges the leaving forth of the Lord *Rea*'s verbal relation, out of his repreſentation in writ, given in to the Lord-Treaſurer; the Pannel repeats his exception made thereanent of before. And to all my Lord Advocate's diſcourſe to that effect, containing one ſide of paper, the Pannel oppones his firſt anſwer, and his depoſitions, and the Lord *Rea*'s relations, and his examinations agreeing thereto. And whereas my Lord Advocate would bind the Pannel to anſwer for the Lord *Rea*'s omiſſions, becauſe the Lord *Rea* is his Author; the Pannel being ſitting behind at the time of the expreſſion, can hardly find means to be perſuaded that it came from his Majeſty's Advocate; and oppones and repeats the Pannel's exception herein. And where my Lord Advocate, upon theſe words, ye know the buſineſs, and not the time *(do or die)*, ſays, that theſe words ſhould have a proper interpretation; which is, ſays he, to be a Counſel given by the Pannel, for ſubverſion of the Marquis's honour and eſtate: the Pannel anſwers thereto, that he adheres to his exception already alledged; and further adds, that the Lord *Rea* ſaid to the Pannel that *Sunday* morning, that the Lord *Seaforth* had ſaid to the Lord *Rea*, their purpoſe was to take the King, the Queen, and the Prince: and ſo the information being given to the Pannel, furniſhed to the Pannel great cauſe of fear, and his fear the reaſon of the expreſſion of theſe words, of adviſing the King to prevent his danger; as the Pannel had formerly adviſed my Lord-Treaſurer of *England*, to adviſe his Majeſty to retire to *Whitehall* from *Greenwich*, as to a place of more ſafety. And this is clear, by the Pannel's depoſition the 20th of *June*, ratified by the Lord *Rea* in the firſt Article of his Examination the 21ſt of *June*.

And where my Lord Advocate alledges, that the Lord *Rea* and his Majeſty's Letter frees the Marquis of *Hamilton*, and the other Noblemen, by the Lord *Rea*'s Oath:

It is anſwered thereto by the Pannel, that the Pannel doth not charge them; he only charges the Lord *Rea* as his Informer and Author, humbly atteſting, that in what eſſential points the Lord *Rea* is contrary to the Pannel, he does the Pannel wrong: and therefore the Pannel declares, that whenſoever it ſhall pleaſe his Majeſty to permit the Pannel and the Lord *Rea* to be confronted, or if then upon difference, the matter be not cleared of the Pannel's innocency; the Pannel is ready to hazard his life in a duel, to the glory of God, and to the clearing of the truth of this buſineſs, his Majeſty commanding the ſame, with a proteſtation, that he carries no malice to the ſaid Lord *Rea*. If the buſineſs be not decided by this, or that if his Majeſty is pleaſed to admit torture before a duel-trial, the Pannel is ready with him to bear out the torture, and to be try'd thereby, with the ſaid Lord *Rea*, and let the truth then appear: which if it be not then, whenever it ſhall pleaſe God to call the Pannel to bear teſtimony thereof with his blood, if God be not graciouſly pleaſed to bear him up in it, let men ſo conceive: and if God bear him out in it, then will he be found meet after his death, to have been an honeſt man, and his Blood ſhall be required of the takers thereof.

My Lord Advocate, before any anſwer to be made by him to the Pannel's former duply, produced his Majeſty's Letter ſent down to the Lords of his Majeſty's Privy-Council, of the date of the 29th of *June*, 1631, and deſired the ſame to be judicially read, of the whilk the tenor follows.

" To our right truſty and right well-beloved Couſin and Counſellor; " to our right truſty and well-beloved Couſins and Counſellors; to our " right truſty and well-beloved Counſellors, the Viſcount of *Duplin*, our " Chancellor; the Earl of *Menteith*, Preſident of our Privy-Council; " and to the remanent Earls, Lords, and other of our Privy-Council, of " our Kingdom of *Scotland*."

Sic ſubſcribitur,

Charles R.

" RIght truſty and right well-beloved Couſin and Counſellor, and right " truſty and right well-beloved Couſins and Counſellors, and right " truſty and well-beloved Counſellors, we greet you well. Whereas we " are informed of a practice in appearance ſo pernicious, and nearly " concerning us, as we would not but take ſome trial thereof, both " by ourſelf, and ſome of our Council, appointed by us for that " purpoſe. But in the mean time, becauſe of ſome ſiniſtrous rumours " maliciouſly diſperſed thereupon, to the prejudice of our right truſty " and right well-beloved Couſins and Counſellors, the Marquis of *Ha-* " *milton*, and the Earls of *Haddington*, *Roxburgh*, and *Buccleugh*, and " ſome others; leſt the like reports be brought unto your ears, we " have thought good hereby to declare, that no tonly we have found by " the trial we ourſelves have taken, that they are altogether innocent and " clear thereof; but likewiſe that the prime informer thereof hath now " cleared them upon Oath, teſtifying them (as we know them to be) as " good and faithful Subjects, as we have in any of our Kingdoms. And " for the buſineſs itſelf, whenſoever it ſhall be fully tried, we will there- " after expreſs our further pleaſure concerning others intereſted therein, " according as we ſhall find juſt cauſe, either in puniſhing any perſon " that ſhall be found guilty, or in puniſhing any perſon that ſhall be " found to have given falſe information. And whereas we have formerly " by our Letters recommended unto you, our right truſty and right well- " beloved Couſin the Marquis of *Hamilton*, for furthering the ſpeedy levy " and tranſportation of his men with all poſſible diligence; theſe are again " to require you to contribute the beſt help that your authority or endea- " vours can afford for that effect. Whereof, both out of the regard we " have to him, and to that employment, being very confident of your " beſt care; we bid you farewel. From our Court, at *Greenwich*, the " 29th of *June*, 1631."

After reading of the which Letter of his Majeſty, it is anſwered by my Lord Advocate, that the urging of the Pannel to have the words (*as he is informed*) to be repeated in all the reſt of the Dittay, wants all reaſon; the points of the Dittay bearing relation of ſeveral deeds done in ſeveral times. And where it is alledged by the Pannel, that theſe words, *as he was informed*, were true, *quoad relationem & quoad veritatem*, there was no neceſſity: If this were true, the Dittay were eluded, for the Pannel is not accuſed of a Leaſing in reſpect of the verity of the matter related, but in reſpect of his diſcrepance from his Author, and that he affirms more than his Author, and with greater certainty than his Author: and that, not content with both theſe two exceſſes, he follows it out to the very point of execution, which is evident in the point of certainty, by theſe words ſpoken to his Majeſty, *the buſineſs is known*, whilk is more certain by the oppoſition of the uncertainty of time only, which redoubles the certainty of the buſineſs. And in the point of execution, by that pernicious and cruel Counſel, *do or die*: the effect of which pernicious Counſel, if God in mercy had not diſpoſed the royal heart of our wiſe and gracious Sovereign, would have produced more lamentable effects, nor could be quenched with the pity of tears ſhed by the Pannel. And the conferring of the Lord *Rea* (whom the Pannel calls the prime Author) with himſelf, in the progreſs of his behaviour, will manifeſt the Pannel's guiltineſs of the points of the Dittay, wherein he is accuſed: for the Lord *Rea*, who behoved to have greater certainty than the Pannel, never proceeded to the points of poſitive Party, prime Agent, Plotters; and to ſay to the ſupreme ſovereign Prince, that the buſineſs was known, in all which points the Pannel has involved himſelf; but the Lord *Rea* was content to reveal the reports made to him by *David Ramſay*, and Mr. *Robert Meldrum*, to the Pannel, without adding or paring. And when the Pannel, upon the 22d of *May*, which was the day of the Marquis's returning from *Scotland* to *England*, came to the Lord *Rea*, and told him, that he had been with the Lord-Treaſurer, and acquainted him with the paſſages, which he had from the Lord *Seaforth*, and of the Lord Marquis's return, and that he had conceived, that it might be dangerous at that time for his Majeſty; for the which cauſe the Pannel in his depoſition ſaith, that he did adviſe the King to remove from *Greenwich*, to *Whitehall* or *London*; my Lord *Rea* anſwered, that the Pannel had done evil therein, for there was no ſuch ſuddenneſs to be feared: yet notwithſtanding hereof, and that his Author had reproved his raſhneſs, the Pannel went thereafter and attended his Majeſty at dinner, and at the end of dinner ſpake theſe words of the certainty of the plot, uncertainty of the time, and added the Counſel. Like as the Pannel being aſked, hereupon granted that he met with the Lord *Rea* upon that *Sunday* the Marquis came to Court, and alſo that he met with the Lord-Treaſurer; and counſell'd his Majeſty's removing from *Greenwich* to *London*. But denies that the Lord *Rea* ſaid, that he thought it was evil done. Notwithſtanding hereof, the Pannel went thereafter and attended his Majeſty at dinner, ſpake the words and gave the Counſel; like as his Majeſty being ſomething wakened by that fearful Counſel, ſent for the Lord *Rea*, and did acquaint him, that ſome preſent danger was ſuggeſted to his Majeſty, upon the Marquis's returning. To the which the Lord *Rea* anſwered by Oath, that he knew nothing againſt the Marquis, for any thing he knew, but that he was as good a ſubject as any his Majeſty had.

And where the Pannel would labour to free himſelf, by denying the Counſel given to him by the Lord *Rea*; it cannot be a warrantable excuſe, except he would prove that his Author adviſed him to do it: which is improbable, ſeeing the Lord *Rea*, his Author, neither did it, nor allowed of its being done by the Pannel. And where it is alledged by the Pannel, that he had ſufficient warrant from his Informer, he cannot affirm it, as being contrary to the relation made by his Author: which is not a ſyllable of the Marquis as prime Agent, nor of the three Noblemen as Plotters. And whatever the Pannel did after the diſcovery of the buſineſs to the Lord-Treaſurer, which was upon the 15th of *May*; it was the Pannel's own word, work and deed, as the giving in of the liſt, expreſſing the certainty of the plot, and urging the putting in execution. And where the Pannel alledges, that all was done upon a good intention, and that God is only Judge of the mind; it is true, where the mind is not revealed by ſpeech or act puniſhable of the Law: but if either ſpeech or deed be done againſt the Law, the pretext of the mind will never excuſe it.

And albeit it be true, as the Pannel alledges, *Quod delicta non præſumuntur ſed probantur*, yet it is as true, *Quod in delictis præſumitur dolus niſi probatur contrarium*. And in the caſe of this Dittay, we have a Law prohibiting Leaſings and Calumnies under the pain of death; and ſeeing by the Dittay, there are three particulars libelled, which his Majeſty in his Letter of the date of the 29th of *June*, has called falſe informations, and which directly fall within the compaſs of the Law, as reflecting upon the life, honour and eſtate of the Noblemen; the Pannel's excuſe by intention is too ſlender, to free him from the puniſhment of the Law. And where it is alledged by the Pannel, that he has named his Authors, and that he was preſent the time of his relation, and did not contradict him therein, which the Pannel alledges for a ſufficient ground of his exoneration; the contrary is true: for the Lord *Rea*, in his examination upon the 21ſt of *June*, doth acknowledge the Pannel's examination to be true in all points, ſaving the explanations thereafter ſubjoined. But this approbation cannot exceed the ſubject; and alſo the ſubject muſt be reſtricted according to the conditions of the explanation; but ſo it is, that in the Pannel's examination, which is approven by the Lord *Rea*; there is not one ſyllable of the Lord Marquis as Party or prime Agent, or of the three Noblemen as Plotters.

And therefore that falls not within the compaſs of the approbation, and where it may appear that in the Pannel's examination upon the 20th of *June*, 'tis granted, that on *Monday* the 16th of *May*, he deliver'd to the Lord-Treaſurer the liſt of names; that is not a part of the Pannel's relation approven by the Lord *Rea:* but it is the Pannel's anſwer to an interrogatory, aſked of him by the Counſel, which could have no reſpect to the Lord *Rea*'s relation. Like as the Pannel being examin'd thereupon the 24th of *June*, grants that the liſt was made by himſelf: and that the Lord *Rea* was not privy to the making thereof, which is alſo confeſſed by the Lord *Rea* himſelf in his examination the 21ſt of *June*, 1631, and laſt article thereof. Wherein he depones, not only that he was not acquainted with the liſt of names deliver'd to the Lord-Treaſurer, but that he had nothing to do therein; which both excludes the concourſe of the making of the liſt, and his knowledge of the purpoſe of it. And where it is alledged by the Pannel that after the revealing to the Lord-Treaſurer, he could not abſtain from the remanent paſſages of his behaviour, becauſe it was *actus continuatus* by the Lord *Rea* to the Pannel, from the 13th of *May* to the 20th of *May*; it is anſwered, that after the firſt revealing, the Pannel had no more to do in the neceſſity of duty, becauſe his Author was revealed: and whatever followed after diſcovery made by the Pannel, would have tied the Author and not the Pannel; there being no Law that might have puniſhed the Pannel for ſhifting his courſe after the revealing. But there being manifeſt hazard and danger in Law, to follow further after the revealing of the buſineſs, which the Author thought neither clear nor certain; and the Pannel not being conſcious upon what mind the Lord *Rea* made his firſt Information to him, which might very readily have been upon malecontentment, grudging and malice, his credulity to him was cruelty aginſt the Noblemen. And his going forwards after the revealing, was a manifeſt engagement of himſelf, in the malice of the Author, and drawing upon himſelf the opinion of greater.

And where it is alledged by the Pannel, that his Behaviour cannot be counted in the nature of Leaſings, puniſhed by Act of Parliament, but allanerly by way of illation and ſiniſter conſtruction; the contrary is clear, by the three points of the Dittay. And the Purſuer, in his reply, has moſt juſtly challenged the Pannel as a defamer of Noblemen; becauſe their fame, honour and credit was unblameable before it was taxed by the Pannel; and the Lord Marquis brought under danger of the loſs of life, honour and eſtate.

And where it is pretended by the Pannel, that the cauſe of his ſpeaking of theſe words to his Majeſty, upon the *Sunday* of the Marquis's coming to Court, was becauſe the Lord *Rea* told the Pannel that the Lord *Seaforth* had aſſured him, that the Plot was for taking off the King and the Queen; firſt, that excuſe has no warrant from the Lord *Rea*'s depoſition; next, in that ſame conference betwixt the Pannel and the Lord *Rea* upon the ſaid *Sunday*, the Lord *Rea* told him it was an idle fear; and thirdly, it cannot be a pretext, becauſe that paſſage of the taking the King and Queen, is contained in the relation made by the Lord *Rea* upon the 18th of *May*; and ſo cannot be pretended as a new information lately come to his knowledge, to waken the Pannel to ſuch a pernicious Counſel. And this ſhall ſuffice for anſwer to the Duply, which is cloſed with that which is contained in the Reply; that the Pannel had no warrant of his ſpeeches and proceedings poſitive againſt the Marquis; nor colour of warrant againſt the three Earls, and neither warrant nor colour at all againſt the Earl of *Buccleugh*, againſt whom the Pannel, by his own confeſſion, had nothing but the gueſs of the Lord *Rea*; which the Lord *Rea* not the leſs refuſes, and affirms to be the nomination of the Pannel. But howſoever it is only a gueſs, by his own confeſſion, from his Author, and yet in his liſt he makes him a Plotter. And albeit the like evidence of the Pannel's Calumnies againſt the other two Earls being undoubted, as having no warrant at all from the Lord *Rea*'s relation, wherein there is no ſyllable of theſe Noblemen; and that the excuſe made by the Pannel of a verbal relation by the Lord *Rea*, has no probability, and alſo is contradicted by the Lord *Rea*, being poiſed thereupon: Yet in theſe two Noblemen the Pannel covers himſelf under the ſhadow of a verbal relation, againſt that which himſelf drew up in writing; but in the Lord *Buccleugh*'s he is excluded from all verbal relation, in reſpect of his own depoſition, whereby he is manifeſtly convinced of incurring the puniſhment of the Acts of Parliament, whereupon the Dittay is formed, as having named him Plotter, when by his own depoſition he grants it to be a gueſs of the Lord *Rea*.

It is quadruply'd by the Pannel, that for anſwer to the Triply, made by the Lord Advocate his Purſuer, he repeats and oppones his defences contained in the former exception and duply. And further the Pannel adds, that where it is objected by my Lord Advocate againſt the Pannel, that he had no ground nor cauſe from the Lord *Rea*'s relation, from the Pannel by word, to call the two Earls of *Haddington* and *Roxburgh* Plotters; but by the contrary, that the Lord *Rea* refuſes and denies the ſame; again the which objection, the Pannel does repeat and adhere to that article of his ſecond depoſition, dated the 24th of *June* in theſe words following: he ſaith, the Lord *Rea* did affirm to the Examinant, that he had the foreſaid Report, anent the Earls of *Melros* and *Roxburgh*, from the Lord *Seaforth*, before the Pannel then examined, made or delivered this ſaid Paper or Liſt to the Treaſurer. And in the article preceding, in the ſame depoſition, the Pannel affirms the Lord *Rea* told him this; whereby it evidently appears by the two articles joined together, that the Pannel had ground for that part of his repreſentation.

And whereas it is affirmed by my Lord Advocate, that the Lord *Rea* denies the ſame, this comparing of the Pannel's aſſertion, and the words of the Lord *Rea*'s denial together, the Lord *Rea*'s words will be found to import no direct nor clear denial; the Pannel affirms that the Lord *Rea* told him, that the Earl of *Seaforth* told him, that the ſaid two Earls were upon the ſecrets of the buſineſs of the Marquis; my Lord *Rea*'s words in his denial bearing, that the firſt time the Lord *Seaforth* had any ſpeech with him, touching the ſaid Earls of *Haddington* and *Roxburgh*, their being privy to the particulars and ſecrets of the Lord *Hamilton*'s buſineſs, was on the *Monday* after the Marquis's coming out of *Scotland*. The Pannel affirms, that the Lord *Rea* told him ſuch a thing; the Lord *Rea* ſays, the Lord *Seaforth* ſpake not to him any ſuch matter before ſuch a day: how do theſe two agree, or contradict one another? The Pannel affirms the Lord *Rea* told him; my Lord *Rea* affirms my Lord *Seaforth* told him not ſuch a thing, before ſuch a day: what is that to the Pannel, if the Lord *Seaforth* had never told that to the Lord *Rea*, the Lord *Rea* might have told it to the Pannel for all that? And where it is alledged for the fortifying of the Triply by my Lord Advocate, that the Lord *Rea* in his depoſition, denieth that he was acquainted with the liſt of names, delivered by the Pannel, or had any thing to do therein; the Pannel affirms, that this eludes not the particular words concerning the two Earls; becauſe of the denial of the general liſt, wherein they were ingroſſed: for the manner of the diſcovery was left to the Pannel, when the direction of the diſcovery was given him. And ſo it was not needful that the Lord *Rea* ſhould be acquainted with the Papers, with the Pen, the Ink, the Hour and the Manner of the writing; becauſe that was left to the Pannel. Neither can the general denial of one piece of Paper take away the Pannel's teſtimony of the certain, determined, condeſcended upon by word. And for his word that he had no hand therein, is not meant *de materia*, affirmed by the Pannel, reported to him againſt the ſaid two Earls; becauſe he grants the ſubſtance in the preceding depoſition made by him thereanent. And as to that relation by that liſt, concerning the Earl of *Buccleugh* as Plotter, for defence of the Pannel's depoſition, it is produced in theſe words, bearing, 'And further ſaith (to wit, the Pannel), that the Lord *Rea* had told him, he could not gueſs who alſo 'ſhould be in the plot, unleſs it were the Lord *Buccleugh*; of whom the 'Lord *Rea* ſaid, he heard him ſpeak terrible words againſt the King, at 'his own table in *Holland*.' There it is affirmed, that he ſuſpected the Lord *Buccleugh* to be upon the Plot: if ſuſpected to be on the Plot by the Lord *Rea*, and told by him to the Pannel; the Pannel was neceſſitated to reveal the ſame, yea *in iiſdem terminis*, to reveal him to be a Plotter; whom he ſaid, he ſuſpected to be upon the Plot. To this my Lord Advocate objected, my Lord *Rea*'s denial, which are in theſe Words: That the Pannel and Lord *Rea* having ſome ſpeech together, who might be look'd for in *Scotland* to take arms; the Pannel, and not the Lord *Rea*, named the Lord *Buccleugh*. Whereupon the Lord *Rea* told, that at the ſiege of the *Buſſe*, the Lord *Rea* heard the Lord *Buccleugh* uſe ſome words, whereby the Lord *Rea* took the Lord *Buccleugh* to have come malecontent out of *England*. In this preſumed denial, there is contained a diſcourſe betwixt the Pannel and the Lord *Rea*, as the Lord *Rea* alledges. And in this diſcourſe, that the Pannel ſhould have named the Lord *Buccleugh*, and not the Lord *Rea*; this naming, is a naming in the reſpect of time firſt or laſt; for the Lord *Rea* grants that he did name the Lord *Buccleugh*, becauſe of the laſt words of that clauſe; ſo that his denial reſpects only priority of time, but no ways the Pannel's aſſertion; for not a word of his aſſertion is denied. But by the contrary, for corroboration of the Pannel's juſt ground, concerning the Earl of *Buccleugh*; the Lord *Rea* makes addition of more nor the Pannel had remembrance of; and ſo fortifies his affirmation, and proves no denial thereof.

The Pannel adds further, for eluding of the miſtaking of theſe his words, *Sir, we know the buſineſs, but not the time, therefore do or die.* It is affirmed by the Lord *Rea*, that he did hear of his Majeſty, that there was a danger ſuggeſted to him; which danger my Lord Advocate alledges to have come from the Pannel's words. If a danger but by the King's ſelf apprehended, then not a perſecution, for a danger imports defenſive remedies, and not violent and malicious attempts; yea, it imports and implies a preventing, and not a perſecuting. And laſtly, it clearly confirms the mentioned intention of the Pannel's expreſſing of thoſe words, which was to prevent his Majeſty's danger. This the Pannel's alledgeance, is cleared in the Lord *Rea*'s depoſition, made the 21ſt of *June*; yea, this is my Lord *Rea*'s relation, to whom the Pannel never ſpake, ſince the Pannel and he entered to their Trial. As for the words, *Sir, we know the buſineſs infallibly, this is no lye*; becauſe the Pannel and the Lord *Rea* was at his Majeſty's ten days before, and affirmed the ſame: the Pannel by relation from the Lord *Rea*, and the Lord *Rea* from others, and *ſo that is no lye*. And that the Pannel did not know the time, it is alledged in the contrary, *Ergo*, not no lye. As for the words *do or die*, by my Lord Advocate's declaration, it is but *concilium perniciosum*. And that it is not *mendacium*, neither can it be made nor interpreted *mendacium*, by any probability or ſenſe, and no malicious Counſel, as is alledged againſt the Pannel; conſidering the Pannel's declared intent, and the Lord *Rea*'s before-mentioned examination, wherein it is called a danger, *ſo not a lye*, and therefore not rightly ſubſumed.

My Lord Advocate repeats his former replies and triplies, and deſires my Lord Juſtice to cloſe this proceſs, ſo that there be no further diſpenſation or reaſoning herein, till anent the relevance or irrelevance of the Indictment. The Juſtice by *Interloquitor* declares the proceſs to be cloſed; and continues *Interloquitor* upon the alledgeances proponed by the Pannel againſt the Dittay, and Anſwers made thereto by his Majeſty's Advocate, to *Wedneſday* next, the ſeventh of *December* inſtant; the perſons of Aſſize warned *apud Acta*, to compear the ſaid day in the hour of cauſe, ilk perſon under the pain of a thouſand Marks. And ordained the Pannel to be returned to Ward, therein to remain in the mean time: whereupon my Lord Advocate aſked Inſtruments.

Curia

Curia Juſticiaria S. D. N. Regis tent' in prætorio burgi de Edinburgh, *ſeptimo die menſis* Decembris, *Anno Dom. Milleſimo, Sexcenteſimo, Trigeſimo primo, per Honorabiles & Diſcretos Viros, Magiſtros* Alexandrum Colville *de* Blair, & Jacobum Robertoun *Advocatum, Juſticiarios deputatos nobilis & potentis Comitis* Willielmi *Comitis de* Stratherne & Menteith, *Dom.* Graham, Kilbryde, & Kynpont, *& Præſidis ſecreti Concilii & Juſticiarii generalis dict. S. D. N. Regis totius Regni ſui* Scotiæ, *ubilibet conſtitut. Sectis vocatis & Curia legitime affirmata.*

Intran'
JAMES Lord *Uchiltrie*, delated of the Crimes foreſaid, mentioned in his indictment.

Purſuer.
Sir *Thomas Hope* of *Craighall*, Knight and Baronet; his Majeſty's Advocate for his Highneſs's Entries.

Prolocutors in Defence:
Mr. *Robert Nairne.*
Mr. *Alexander Pierſon.* } Advocates.
Gilbert Neilſon.

The Lord *Uchiltrie* being entered upon Pannel, produced to my Lord Juſtice, an Act of the Lords of his Majeſty's ſecret Council, for continuation of this Diet, and of all further Trial or Proceeding againſt him, for the Crimes contained in his Dittay, to the firſt day of *February* next to come; of the whilk Act of Council the tenor follows: *Apud* Halyrudhouſe *ſexto die menſis* Decembris, *Anno Dom. Milleſimo, Sexcenteſimo, Triceſimo primo.* The Lords of the ſecret Council, for ſome ſpecial cauſes and conſiderations, ordains and commands his Majeſty's Juſtice, Juſtice-Clerk and their Deputies, to continue all farther Trial and Proceeding againſt *James* Lord *Uchiltrie*, upon the Crimes whereof he has been accuſed before them, till the firſt day of *February* next. Whereanent the extract of this Act ſhall be unto them a Warrant, *extractum de libris actorum ſecreti Conſilii S. D. N. Regis, per me* Jacobum Prymroſe *Clericum ejuſdem, ſub meis ſigno & ſubſcriptione manualibus, ſic ſubſcribitur* Jacobus Prymroſe. According to the which Act of Council, Warrant and Command aforeſaid, therein contained, the Juſtice continues all further Trial and Proceeding againſt the ſaid *James* Lord *Uchiltrie*, upon the Crimes aforeſaid, unto the ſaid firſt day of *February* next to come: And ordained him to be taken back again to his Ward, therein to remain in ſure firmance, till the ſaid day. The whole perſons of Aſſize, called upon by their names, are of new warned, *apud Acta*, to compear before his Majeſty's Juſtice, the ſaid firſt day of *February* next to come, in the hour of Cauſe; ilk perſon under the pain of one thouſand Marks. Whereupon my Lord Advocate aſked Inſtruments, *Extractum de libris actorum adjournalis S. D. N. Regis, per me* Johannem Bannatyne, *Clericum deputatum honorabilis viri, Dom.* Georgii Elphingſton *de* Blythiſwood, *militis, Clerici Juſticiarii principalis dicti S. D. N. Regis, & dictorum Curiarum, Teſtan. his meo ſigno & ſubſcriptione manualibus.*

Sic Subſcribitur,

Johannis Bannatyne *Clericus deputatus Clerici Juſticiariæ Generalis S. D. N. Regis, Teſtan. his meis ſigno & ſubſcriptione.*

The Lord *Uchiltrie* appearing on the ſaid 1ſt of *Feb.* was ſentenced to perpetual Impriſonment *.

" * The Lord *Uchiltrie*, a Man of a ſubtil Spirit and good Parts, had not thoſe endowments of his mind been ſtained with ſome ill Qualities; his Malice againſt the Marquis " of *Hamilton* was hereditary, he being the Son of Capt. *James Stewart*, who in King *James*'s minority, when the *Hamiltons* were groundleſsly and in a mock Parliament at- " tainted, carried the Title of Earl of *Arran*, and poſſeſſed their Fortunes." *Burnet*'s Memoirs of the Dukes of *Hamilton*, p. 11, and 12. where he relates the whole buſineſs; and *page* 12. ſays, " This was a Calumny, than which Hell could not have forged a fouler, for Lord *Uchiltrie* judged that this would infallibly have produced one of two ef- " fects, either raiſed ſuch a Jealouſy in the King's thoughts, as to have quite ruin'd the Marquis, ſince few Miniſters are proof againſt ſuch whiſpers, or at leaſt it would have " ſtopp'd his Voyage for a while, till he was tried, and the ſmalleſt delay in that would have ſcatter'd his Soldiers, (which the King was to ſend under the Marquis's com- " mand, to aſſiſt the King of *Sweden* to recover the *Palatinate*) ſo that this deſign failing, in which his Honour was now ſo far engag'd, a ſtain ſhould lie on him through all " *Europe*. Lord *Weſton* carried this ſtory to the King, whether provoked to it out of hatred to the Marquis, or mov'd from his zeal and duty to the King, ſhall not be de- " termined; though the laſt was pretended by him, in many of his Letters to the Marquis. But his Majeſty knew the Marquis too well, and underſtood all his motions and " the progreſs of this Affair, too exactly, to give any credit to this Forgery. And *page* 13. " But the Marquis was not able to lie under ſuch terrible Imputations, where- " fore he preſſed that *Uchiltrie* might be put to it, to prove what he had alledg'd: but all he offered againſt *Ramſay* was only a preſumption, which *Ramſay* denied, and *Rea* " affirm'd; ſo that they were both put under Bail, and nothing appear'd that did touch the Marquis: for though *Ramſay* had been as guilty as the Lord *Rea* call'd him, that " left no Imputation on him, ſince none can be made anſwerable for thoſe they employ, unleſs it appear that they followed the Inſtructions given them. So the Marquis was " diſpatched to *Germany*. Lord *Uchiltrie* had charged the Marquis with Treaſon, and failing ſo totally in his Probation, was ſent down to *Scotland* to be tried, where he had " a legal and free Trial for his falſe Charge before the Juſtice-General, and ſuch Aſſeſſors as were appointed to ſit with him, by the Privy-Council: and had the Marquis " repaid him in his own Coin, he could not have eſcap'd capital Puniſhment. But he was ſatisfied with his own juſtification, and ſuch a Cenſure put on the Calumniator, " as might deter others from the like Attempts. Wherefore he was condemn'd to perpetual Impriſonment in *Blackneſs* Caſtle, and he continued there for twenty Years."

XX. The Trial of *John Lilburn* and *John Wharton*, for Printing and Publiſhing Seditious Books. In the *Star-Chamber*, *Feb.* 9. 1637. 13. *Car.* I.

B E F O R E

The Lord Archbiſhop of *Canterbury.*
The Lord-Keeper, Lord *Coventry.*
The Lord-Treaſurer, Biſhop of *London.*
The Lord Privy-Seal, Earl of *Mancheſter.*
The Earl-Marſhal, Earl of *Arundel.*
The Earl of *Saliſbury.*
The Earl of *Dorſet.*
Lord *Cottington.*
Lord *Newburgh.*
Lord Chief-Juſtice *Bramſton.*
Sir *Henry Vane.*
Mr. Secretary *Cooke.*
Mr. Secretary *Windebank.*
Judge *Jones*, and others.

[Written by *John Lilburn.*]

UPON *Tueſday* the 11th or 12th of *December*, 1637, I was treacherouſly and Judaſly betrayed (by one that I ſuppoſed to be my friend) into the hands of the Purſuivant, with four of his aſſiſtants, as I was walking in *Soperlane* with one *John Chilburne*, ſervant to old Mr. *John Wharton*, in *Bow-lane*, a Hot-preſſer.

And about twelve of the Clock the next day, I was committed to the *Gatehouſe*, by Sir *John Lamb*, the Prelate of *Canterbury*'s Chancellor, with others, without any examination at all, for ſending of factious and ſcandalous Books out of *Holland* into *England*. And having not been at the foreſaid priſon above three days, I was removed, by a warrant from the Lords of the Council, to the *Fleet*, where I now remain. And after my being there ſome time, I drew a Petition to the Lords of the Council for my liberty: and their anſwer to it was, that I ſhould be examined before Sir *John Banks*, the King's Attorney: The copy of which examination thus follows.

Upon *Tueſday* the 14th of *January*, 1637, I was had to Sir *John Banks* the Attorney-General's Chamber, (now Lord Chief-Juſtice of the Court of Pleas) and was referred to be examined by Mr. *Cockſhey* his chief Clerk; and at our firſt coming together, he did kindly intreat me, and made me ſit down by him, and put on my hat, and began with me after this manner: Mr. *Lilburn*, what is your Chriſtian name? I ſaid *John*. Did you live in *London* before you went into *Holland?* Yes, that I did. Where? Near *London-ſtone?* With whom there? With Mr. *Thomas Hewſon*. What Trade is he? A dealer in Cloth, I told him. How long did you ſerve him? About five years. How came you to part? After this manner: I perceiving my Maſter had an intention to leave off his Trade, I often moved him that I might have my liberty, to provide for myſelf, and at the laſt he condeſcended unto it; and ſo I went into the Country, to have the conſent of my friends; and after that went into *Holland*. Where were you there? At *Rotterdam*. And from thence you went to *Amſterdam?* Yes, I was at *Amſterdam*. What Books did you ſee in *Holland?* Great ſtore of Books, for in every Bookſeller's ſhop as I came in, there were great ſtore of Books. I know that, but I aſk you, if you did ſee Dr. *Baſtwick*'s Anſwer to my Maſter's Information, and a Book called his Litany? Yes, I ſaw them there; and if you pleaſe to go thither, you may buy an hundred of them at the Bookſellers, if you have a mind to them. Have you ſeen the *Unbiſhoping* of *Timothy* and *Titus*, the *Looking-glaſs*, and a *Breviate of the Biſhop's late Proceedings?* Yes, I have, and thoſe alſo you may have there, if you pleaſe to ſend for them. Who printed all thoſe Books? I do not know. Who was at the charges of printing them? Of that I am ignorant. But did you not ſend over ſome of theſe Books?

Lilburn. I ſent not any of them over. Do you know one *Harguſt* there? Yes, I did ſee ſuch a man. Where did you ſee him? I met with him one day accidentally at *Amſterdam*. How oft did you ſee him there? Twice upon one day. But did not he ſend over Books? If he did, it is nothing to me, for his doings are unknown to me. But he wrote a Letter, by your directions, did he not? What he writ over I know no more than you: But did you ſee him no where elſe there? Yes, I ſaw him at *Rotterdam*. What conference had you with him? Very little. But why do you aſk me all theſe queſtions? Theſe are beſide the matter of my impriſonment; I pray come to the thing for which I am accuſed, and impriſoned. No, theſe are not beſide the buſineſs, but do belong to the thing for which you are impriſoned. But do you know of any that ſent over any Books?

Lilburn. What other men did, doth not belong to me to know or ſearch into; ſufficient it is for me to look well to my own occaſions. Well, here is the examination of one *Edmund Chillington*, do you know ſuch a one? Yes. How long have you been acquainted with him? A little before I went away, but how long, I do not certainly know. Do you know one *John Wharton?* No. Do you not? He is a Hot-preſſer. I know him, but I do not well remember his other name. How long have you been acquainted with him, and how came you acquainted? I cannot well tell you. How long do you think? I do not know. What Speeches had you with *Chillington* ſince you came to town? I am not bound to tell you: but Sir (as I ſaid before) why do you aſk me all theſe queſtions? Theſe are nothing pertinent to my impriſonment, for I am not impriſoned for knowing and talking with ſuch and ſuch men, but for ſending over Books; and therefore I am not willing to anſwer you to any more of theſe queſtions, becauſe I ſee you

you go about by this examination to inſnare me: for ſeeing the things for which I am impriſoned cannot be proved againſt me, you will get other matter out of my examination; and therefore if you will not aſk me about the thing laid to my charge, I ſhall anſwer no more. But if you will aſk of that, I ſhall then anſwer you, and do anſwer, that for the thing for which I am impriſoned, which is for ſending over Books, I am clear, for I ſent none: and of any other matter that you have to accuſe me of, I know it is warrantable by the Law of God, and I think by the Law of the Land, that I may ſtand upon my juſt defence, and not anſwer to your interrogatories; and that my accuſers ought to be brought face to face, to juſtify what they accuſe me of. And this is all the anſwer that for the preſent I am willing to make: and if you aſk me of any more things, I ſhall anſwer you with ſilence. At this he was exceeding angry, and ſaid, there would be a courſe taken with me to make me anſwer. I told him, I did not regard what courſe they would take with me; only this I deſire you to take notice of, that I do not refuſe to anſwer out of any contempt, but only becauſe I am ignorant of what belongs to an examination, (for this is the firſt time that ever I was examined;) and therefore I am unwilling to anſwer to any impertinent queſtions, for fear that with my anſwer I may do myſelf hurt.

This is not the way to get liberty: I had thought you would have anſwered punctually, that ſo you might have been diſpatched as ſhortly as might be.

Lilburn. I have anſwered punctually to the thing for which I am impriſoned, and more I am not bound to anſwer, and for my liberty I muſt wait God's time.

You had better anſwer, for I have two examinations wherein you are accuſed. *Lilburn.* Of what am I accuſed? *Chillington* hath accuſed you for printing ten or twelve thouſand of Books in *Holland*, and that they ſtand you in about eighty pound, and that you had a Chamber at Mr. *John Foot*'s, at *Delft*, where he thinks the Books were kept, and that you would have printed the *Unmaſking of the Myſtery of Iniquity*, if you could have got a true copy of it. I do not believe that *Chillington* ſaid any ſuch things; and if he did, I know and am ſure, that they are all of them lyes. You received money of Mr. *Wharton* ſince you came to Town, did you not? What if I did? It was for Books? I do not ſay ſo. For what ſort of Books was it? I do not ſay it was for any, and I have already anſwered you all that for the preſent I have to anſwer; and if that will give you content, well and good; if not, do what you pleaſe. If you will not anſwer no more (here I told him, if I had thought he would have inſiſted upon ſuch impertinent queſtions, I would not have given him ſo many anſwers) we have power to ſend you to the place from whence you came. You may do your pleaſure, ſaid I. So he called in anger for my Keeper, and gave him a ſtrict charge to look well to me. I ſaid, they ſhould not fear my running away. And ſo I was ſent down to Sir *John Banks* himſelf. And after he had read over what his man had writ, he called me in, and ſaid, I perceive you are unwilling to confeſs the truth.

Lilburn. No, Sir, I have ſpoken the truth. Sir *John Banks.* This is your examination, is it not? What your man hath writ, I do not know. Come near, and ſee that I read it right. Sir, I do not own it for my examination, for your man hath writ what it pleaſed him, and hath not writ my anſwer; for my anſwer was to him, and ſo it is to you, that for the thing for which I am impriſoned (which is for ſending over Books) I am clear, for I did not ſend any, and for any other matter that is laid to my charge, I know it is warrantable by the Law of God, and I think by the Law of the Land, for me to ſtand upon my juſt defence, and that my accuſers ought to be brought face to face, to juſtify what they accuſe me of: and this is all that I have to ſay for the preſent. You muſt ſet your hand to this your examination. I beſeech you, Sir, pardon me, I will ſet my hand to nothing but what I have now ſaid. So he took the pen and writ, "The "examined is unwilling to anſwer to any thing but that for which he is "impriſoned." Now you will ſet your hand to it? I am not willing, in regard I do not own that which your man hath writ; but if it pleaſe you to lend me the pen, I will write my anſwer, and ſet my hand to it. So he gave me the pen, and I begun to write thus: "The anſwer of me *John* "*Lilburn* is," and here he took the pen from me, and ſaid he could not ſtay, that was ſufficient. Then one of my Keepers aſked him if they might have me back again? And he ſaid yea: for he had no order for my inlargement.

And about ten or twelve days after, I was had forth to *Grays-Inn* again; and when I came there, I was had to the *Star-Chamber* office; and being there, as the order is, I muſt enter my appearance, they told me. I ſaid, To what? For I was never ſerved with any *Subpœna*; neither was there any Bill preferred againſt me, that I did hear of. One of the Clerks told me, I muſt firſt be examined, and then Sir *John* would make the Bill. It ſeems they had no grounded matter againſt me for to write a Bill, and therefore they went about to make me betray my own innocency, that ſo they might ground the Bill upon my own words: and at the entrance of my appearance, the Clerk and I had a deal of diſcourſe, (the particulars whereof for brevity ſake I now omit;) but in the concluſion he demanded money of me, for entering of my appearance: and I told him I was but a young man, and a priſoner, and money was not very plentiful with me, and therefore I would not part with any money upon ſuch terms. Well (ſaid he) if you will not pay your fee, I will daſh out your name again. Do what you pleaſe (ſaid I) I care not if you do; ſo he made complaint to Mr. *Goad*, the Maſter of the Office, that I refuſed to enter my appearance. And then I was brought before him, and he demanded of me what my buſineſs was? I told him, I had no buſineſs with him, but I was a priſoner in the *Fleet*, and was ſent for, but to whom and to what end I do not know, and therefore if he had nothing to ſay to me, I had no buſineſs with him. And then one of the Clerks ſaid, I was to be examined. Then Mr. *Goad* ſaid, Tender him the Book: ſo I looked another way, as though I did not give ear to what he ſaid; and then he bid me pull off my Glove, and lay my hand upon the Book. What to do, Sir? ſaid I. You muſt ſwear, ſaid he. To what? *That you ſhall make true anſwer to all things that are aſked you.* Muſt I ſo, Sir? But before I ſwear, I will know to what I muſt ſwear. As ſoon as you have ſworn, you ſhall, but not before. To that I anſwered, Sir, I am but a young man, and do not well know what belongs to the nature of an Oath, and therefore before I ſwear, I will be better adviſed. Saith he, how old are you? About twenty years old, I told him. You have received the Sacrament, have you not? Yes, that I have. And you have heard the Miniſters deliver God's word, have you not? I have heard Sermons. Well then, you know the holy Evangeliſts? Yes, that I do. But, Sir, though I have received the Sacrament, and have heard Sermons, yet it doth not therefore follow that I am bound to take an Oath, which I doubt of the lawfulneſs of. Look you here, ſaid he (and with that he opened the Book), we deſire you to ſwear by no foreign thing, but to ſwear by the holy Evangeliſts. Sir, I do not doubt or queſtion that; I queſtion how lawful it is for me to ſwear to I do not know what. So ſome of the Clerks began to reaſon with me, and told me every one took that Oath; and would I be wiſer than all other men? I told them, it made no matter to me what other men do; but before I ſwear, I will know better grounds and reaſons than other men's practices, to convince me of the lawfulneſs of ſuch an Oath, to ſwear I do not know to what. So Mr. *Goad* bid them hold their peace, he was not to convince any man's conſcience of the lawfulneſs of it, but only to offer and tender it. Will you take it or no, ſaith he? Sir, I will be better adviſed firſt: Whereupon there was a Meſſenger ſent to Sir *John Banks*, to certify him, that I would not take the *Star-Chamber* Oath; and alſo to know of him what ſhould be done with me. So I looked I ſhould be committed cloſe priſoner, or worſe. And about an hour after came Mr. *Cockſhey*, Sir *John*'s chief Clerk: What (ſaid he) Mr. *Lilburn*, it ſeems you will not take your Oath, to make true anſwer? I told him, I would be better adviſed before I took ſuch an Oath. Well then (ſaith he) you muſt go from whence you came.

Upon *Friday* the 9th of *February*, in the morning, one of the Officers of the *Fleet* came to my Chamber, and bid me get up and make me ready to go to the *Star-Chamber-Bar* forthwith. I having no time to fit myſelf, made me ready in all haſte to go. And being at the bar, Sir *John Banks* laid a verbal accuſation againſt me; which was, that I refuſed to anſwer, and alſo to enter my appearance, and that I refuſed to take the *Star-Chamber* Oath: and then was read the affidavit of one *Edmond Chillington*, Button-ſeller, made againſt Mr. *John Wharton* and myſelf: the ſum of which was, that he and I had printed at *Rotterdam*, in *Holland*, Dr. *Baſtwick*'s Anſwer, and his Litany, and divers other ſcandalous Books. And then after I had obtained leave to ſpeak, I ſaid, My noble Lords, as for that Affidavit, it is a moſt falſe lye and untrue.

Lord-Keeper. Why will you not anſwer? *Lilburn.* My honourable Lord, I have anſwered fully before Sir *John Banks* to all things that belong to me to anſwer unto; and for other things, which concern other men, I have nothing to do with them. But why do you refuſe to take the *Star-Chamber* Oath? Moſt noble Lord, I refuſed upon this ground, becauſe that when I was examined, though I had fully anſwered all things that belonged to me to anſwer unto, and had cleared myſelf of the thing for which I am impriſoned, which was for ſending Books out of *Holland*, yet that would not ſatisfy and give content, but other things were put unto me, concerning other men, to inſnare me, and get further matter againſt me; which I perceiving refuſed, being not bound to anſwer to ſuch things as do not belong unto me. And withal I perceived the Oath to be an Oath of inquiry; and for the lawfulneſs of which Oath, I have no warrant; and upon theſe grounds I did and do ſtill refuſe the Oath. Upon this ſome of the King's Counſel and ſome of the Lords ſpoke: Would I condemn and contradict the laws of the land, and be wiſer than all other men, to refuſe that which is the Oath of the Court, adminiſtred unto all that come there? *Lord Keeper.* Well; tender him the Book. I ſtanding againſt the Prelate of *Canterbury*'s back, he looked over his ſhoulder at me, and bid me pull off my glove, and lay my hand upon the Book. Unto whom I replied, Sir, I will not ſwear; and then directing my ſpeech unto the Lords, I ſaid, Moſt honourable and noble Lords, with all reverence and ſubmiſſion unto your Honours, ſubmitting my body unto your Lordſhips pleaſure, and whatſoever you pleaſe to inflict upon it, yet muſt I refuſe the Oath. My Lords, ſaid the *Arch-Prelate*, (in a deriding manner) do you hear him? He ſaith, with all reverence and ſubmiſſion he refuſeth the Oath. Well, come, come (ſaid my *Lord-Keeper*), ſubmit yourſelf unto the Court.

Lilburn. Moſt noble Lords, with all willingneſs, I ſubmit my body unto your Honours pleaſure; but for any other ſubmiſſion, moſt Honourable Lords, I am conſcious unto myſelf, that I have done nothing that doth deſerve a convention before this illuſtrious Aſſembly; and therefore for me to ſubmit, is to ſubmit I do not know wherefore.

Earl of *Dorſet.* My Lords, this is one of their private ſpirits; do you hear him, how he ſtands in his own juſtification? Well, my Lords, ſaid the great Prelate, this fellow (meaning me) hath been one of the notorioueſt diſperſers of libellous Books that is in the Kingdom; and that is the Father of them all (pointing to old Mr. *Wharton*).

Lilburn. Sir, I know you are not able to prove, and to make that good which you have ſaid. I have teſtimony of it, ſaid he. Then, ſaid I, produce them in the face of the open Court, that we may ſee what they have to accuſe me of; and I am ready here to anſwer for myſelf, and to make my juſt defence. With this he was ſilent, and ſaid not one word more to me; and then they aſked my Fellow Soldier, old Mr. *Wharton*, whether he would take the Oath; which he refuſed, and began to tell them of the Biſhops cruelty towards him; and that they had had him in five ſeveral Priſons within theſe two years, for refuſing the Oath. And then there was ſilence; after which was read how the Court had proceeded againſt ſome that had harboured Jeſuits and Seminary-prieſts (thoſe Traitors) who refuſed to be examined upon Oath; and in regard that we refuſed likewiſe to be examined upon Oath, it was fit, they ſaid, that we ſhould be proceeded againſt, as they were. So they were the precedent by which we were cenſured, though their cauſe and ours be much unlike, in regard theirs were little better than Treaſon; but our crime was ſo far from Treaſon, that it was neither againſt the glory of God, the honour of the King, the laws of the land, nor the good of the Commonwealth: but rather for the maintaining of the honour of them all, as all thoſe that read the Books without partial affections and prejudicate hearts can witneſs and declare; and if the Books had had any Treaſon, or any thing againſt the Law of the Land in them, yet we were but ſuppoſedly guilty; for the things were never fully proved againſt us. Indeed there were two Oaths read in Court, which they ſaid were ſworn againſt us by one man, but he was never brought face to face, and in both his Oaths he hath forſworn himſelf, as in many particulars thereof we are both able to make good. In the concluſion, my *Lord Keeper* ſtood up, and ſaid,

My

My Lords, I hold it fit, that they ſhould be both for their contempt committed cloſe Priſoners till *Tueſday* next; and if they do not conform themſelves betwixt this and then to take the Oath, and yield to be examined before Mr. *Goad*, then that they ſhall be brought hither again, and cenſured, and made an example. Unto which they all agreed; and ſo we were committed cloſe Priſoners, and no Friends admitted to come unto us.

In Camera Stellat' coram Concilio ibidem 9. *die* Febr. Anno 13 Car. *Regis.*

'UPon Information this day to this Honourable Court, by Sir *John Banks* Knight, his Majeſty's Attorney-General, That *John Lilburn* and *John Wharton*, who are now at the Bar of this Court, were the 24th of *January* laſt ordered to be examined upon Interrogatories touching their unlawful printing, publiſhing, and diſperſing of libellous and ſeditious Books, contrary to the decree of this Court, which was verified by affidavit: and being brought up to the Office to appear and be examined accordingly, the ſaid *Lilburn* refuſed to appear, and both of them denied to take an Oath to make anſwer to Interrogatories, as appears by Certificate of Mr. *Goad:* it was humbly prayed that their appearance may be recorded, they being now preſent in Court, and that they may now have their Oaths tendered unto them; which if they ſhall refuſe to take, that then this Court will proceed to a cenſure againſt them for their high contempt therein, as hath been uſed in like caſes, which the Court held fit: And hath therefore ordered, That their appearance ſhall be recorded, as is deſired. And for that the ſaid Delinquents do now again moſt contemptuouſly refuſe to take their Oaths now tendered to them in open Court, their Lordſhips have further ordered, That the ſaid *Lilburn* and *Wharton* ſhall be remanded to the priſon of the *Fleet*, there to remain cloſe Priſoners until they conform themſelves in obedience to take their Oaths, and be examined; and that unleſs they do take their Oaths, and yield to be examined by *Monday*-night next, their Lordſhips will, on the laſt ſitting of this Term, proceed to cenſure againſt them for their contempts therein, as is deſired.'

And upon *Monday* after we were had to *Gray*'s-*Inn*, and I being the firſt there, Mr. *Goad* ſaid to me, according to the Lords order upon *Friday* laſt, I have ſent for you to tender the Oath unto you. Sir, I beſeech you, let me hear the Lords order. So he cauſed it to be read unto me, and then tendered me the Book. Well, Sir, ſaid I, I am of the ſame mind I was; and withal I underſtand, that this Oath is one and the ſame with the *High Commiſſion Oath*, which Oath I know to be both againſt the Law of God, and the Law of the Land; and therefore in brief I dare not take the Oath, though I ſuffer death for the refuſal of it. Well, ſaid he, I did not ſend for you to diſpute with you about the lawfulneſs of it, but only according to my place to tender it unto you. Sir, I dare not take it, though I loſe my life for the refuſal of it. So he ſaid, he had no more to ſay to me; and I took my leave of him, and came away. And after that, came the old man, Mr. *Wharton*, and it was tendered unto him, which he refuſed to take: and (as he hath told me) he declared unto him how the Biſhops had him eight times in priſon for the refuſal of it, and he had ſuffered the Biſhops mercileſs cruelty for many years together, and he would now never take it as long as he lived; and withal told him, that if there were a Cart ready at the door to carry him to *Tyburn*, he would be hanged, before ever he would take it. And this was that day's buſineſs.

Upon the next morning, *Feb.* 13. about ſeven a-clock, we were had to the *Star-Chamber* Bar again, to receive our cenſure; and ſtood at the Bar about two hours before Sir *John Banks* came: but at laſt he began his accuſation againſt us, that we did ſtill continue in our former ſtubbornneſs. And alſo there was another Affidavit of the foreſaid *Edmund Chillington*'s read againſt us; the ſum of which was, that I had confeſſed to him, that I had printed Dr. *Baſtwick*'s *Anſwer* to Sir *John Banks*'s *Information*, and his *Litany*; and another Book, *An Anſwer unto certain Objections*; and another Book of his called, *The Vanity and Impiety of the old Litany*; and that I had divers other Books of Dr. *Baſtwick*'s a-printing. And that Mr. *John Wharton* had been at the charges of Printing a Book called, *A Breviate of the Biſhops late Proceedings*; and another Book, called *Sixteen new Queries*, and divers other factious Books: and that one *James Ouldam*, a Turner in *Weſtminſter-hall*, had diſperſed divers of theſe Books. Then I ſaid after this manner: Moſt noble Lords, I beſeech your Honours, that you would be pleaſed to give me leave to ſpeak for myſelf, and to make my juſt defence; and I ſhall labour ſo to order my ſpeeches, that I ſhall not give your Honours any juſt diſtaſte; and withal ſhall do it with as much brevity as I can. So having obtained my deſire, I began and ſaid, My Lords, it ſeems there were divers Books ſent out of *Holland*, which came to the hands of one *Edmund Chillington*, who made this Affidavit againſt us; and, as I underſtand, he delivered divers of theſe Books unto one *John Chilburne*, ſervant to this old man Mr. *Wharton*; and his maſter being in priſon, he diſperſed divers of them for the foreſaid *Chillington*'s uſe; whereupon the Books were taken in his cuſtody: he being found diſperſing of them, goes to one *Smith*, a Taylor, in *Bridewell*, (as I am informed) and deſires him to get his peace made with the Biſhops. Whereupon he covenants with ſome of the Biſhops creatures to betray me into their hands, being newly come out of *Holland*, which (as he ſaid) did ſend over theſe Books. So, my Lords, he having purchaſed his own liberty, lays the plot for betraying me, and I was taken by a Purſuivant and four others of his aſſiſtants, walking in the ſtreets with the foreſaid *John Chilburne*, who had laid and contrived the plot before (as I am able to make good); and the next morning I was committed by Sir *John Lamb* to the *Gate-houſe*. Now, my Lords, I do proteſt before your Honours on the word of a Chriſtian, that I did not ſend over theſe Books, neither did I know the Ship that brought them, nor any that belongs to the Ship, nor to my knowledge did never ſee with my eyes, either the Ship, or any that belongs unto it.

And being at the *Gate-houſe*, I was removed (by ſix of your Honours) to the *Fleet*, at which time the ſaid *Chillington* was removed from *Bridewell* to *Newgate*; and being kept cloſe there, he, by their threats and perſuaſions, and the procuring of his own liberty, goes and accuſes me for printing ten or twelve thouſand Books in *Holland*. And at my examination before Sir *John Banks*, I cleared myſelf of that; and upon *Friday* laſt he made an Affidavit againſt me, in which he hath moſt falſly forſworn himſelf, and to-day he hath made another, which is alſo a moſt falſe untruth: and withal, my Lords, he is known to be a notorious lying fellow, and hath accuſed me for the purchaſing of his own liberty, which he hath got. And therefore, I beſeech your Honours, to take it into your ſerious conſideration, whether I am to be cenſured upon ſuch a fellow's Affidavit or no. Then ſaid the Lord-Keeper, Thou art a mad fellow, ſeeing things are thus, that thou wilt not take thine Oath, and anſwer truly.

My honourable Lord, I have declared unto you the real truth; but for the Oath, it is an Oath of Inquiry, and of the ſame nature as the High-Commiſſion Oath; which Oath I know to be unlawful; and withal I find no warrant in the word of God for an Oath of Inquiry, and it ought to be the director of me in all things that I do: and therefore, my Lords, at no hand, I dare not take the Oath. (When I named the word of God, the Court began to laugh, as though they had had nothing to do with it.) My Lords (ſaid Mr. *Goad*) he told me yeſterday, he durſt not take the Oath, though he ſuffered death for the refuſal of it. And with that my Lord Privy-Seal ſpoke: Will you (ſaid he) take your Oath, that that which you have ſaid is true? My Lord (ſaid I) I am but a young man, and do not well know what belongs to the nature of an Oath, (but that which I have ſaid, is a real truth) but thus much; by God's appointment, I know an Oath ought to be the end of all controverſy and ſtrife, *Heb.* vi. 16. and if it might be ſo in this my preſent cauſe, I would ſafely take my Oath, that what I have ſaid is true. So they ſpoke to the old man, my fellow-partner, and aſked him whether he would take the Oath? So he deſired them to give him leave to ſpeak; and he began to thunder it out againſt the Biſhops, and told them, they required three Oaths of the King's Subjects; namely, the Oath of Churchwardenſhip, and the Oath of Canonical Obedience, and the Oath *ex Officio*; which (ſaid he) are all againſt the Law of the Land, and by which they deceive and perjure thouſands of the King's Subjects in a year. And withal, my Lords, (ſaid he) there is a maxim in Divinity, that we ſhould prefer the glory of God, and the Good of our King and Country, before our own lives. But the Lords wondering to hear the old man begin to talk after this manner, commanded him to hold his peace, and to anſwer them, whether he would take the Oath or no? To which he replied, and deſired them to let him talk a little, and he would tell them by and bye. At which all the Court burſt out a-laughing; but they would not let him go on, but commanded ſilence (which if they would have let him proceed, he would have ſo pepper'd the Biſhops, as they were never in their lives in an open Court of Judicature). So they aſked us again, whether we would take the Oath? Which we both again refuſed; and withal I told them, that for the reaſons before I durſt not take it. Then they ſaid, they would proceed to cenſure. I bid them do as they pleaſed, for I knew myſelf innocent of the thing for which I was impriſoned and accuſed; but yet, notwithſtanding, did ſubmit my body to their Honours pleaſure. So they cenſured us 500*l.* a-piece; and then ſtood up Judge *Jones*, and ſaid, It was fit, that I being a young man, for example ſake, ſhould have ſome corporal puniſhment inflicted upon me. So my cenſure was to be whipt, but neither time nor place allotted. And for the old man, in regard of his age, being eighty-five years old, they would ſpare his corporal puniſhment, though (ſaid they) he deſerves it as well as the other (meaning me), yet he ſhould ſtand upon the Pillory: but I could not underſtand or perceive by my cenſure, that I was to ſtand upon the Pillory. And when I came from the Bar, I ſpoke in an audible voice, and ſaid, My Lords, I beſeech God to bleſs your Honours, and to diſcover and make known unto you the wickedneſs and cruelty of the Prelates.

In Camera Stellata coram Concilio ibidem 13 *die* Febr. *Anno decimo tertio* Car. *Regis.*

'WHereas, upon Information to this Court the ninth of this inſtant *February*, by Sir *John Banks* Knight, his Majeſty's Attorney-General, that *John Lilburn* and *John Wharton* (then preſent at the Bar) were the 24th of *January* laſt ordered to be examined upon Interrogatories touching their unlawful printing, importing, publiſhing, and diſperſing of libellous and ſeditious Books, contrary to the Decree of this Court, which was verified by Affidavit; and being brought up to the Office to appear and be examined, the ſaid *Lilburn* refuſed to appear, and both of them denied to take an Oath to make ſome anſwer to Interrogatories, as appeared by the certificate of Mr. *Goad*, Deputy Clerk of this Court: the Court did on that day order, that their appearances ſhould be recorded, they being preſent in Court as aforeſaid; and that in reſpect the ſaid Delinquents did then again contemptuouſly refuſe to take their Oaths tendered to them in open Court, they ſhould be remanded to the priſon of the *Fleet*, there to remain cloſe priſoners, until they conformed themſelves in obedience to take their Oaths and be examined; and that unleſs they did take their Oaths, and yield to be examined by *Monday*-night next then next following, and now laſt paſt, their Lordſhips would on this ſitting-day proceed to a cenſure againſt them for their contempts therein. Now this day the ſaid *Lilburn* and *Wharton* being again brought to the Bar, his Majeſty's ſaid Attorney informed this honourable Court, that they ſtill continued in their former obſtinacy, and contemptuouſly refuſed to take their Oaths, to make true anſwer to the Interrogatories, although they had been ſent for, and their Oaths aſſented to be given unto them by Mr. *Goad*, Deputy Clerk of this Court, who now certified the ſame in Court: and therefore his Majeſty's ſaid Attorney humbly pleaded on his Majeſty's behalf, that their Lordſhips would now proceed to cenſure againſt the ſaid Delinquents, for their great contempts and diſobedience therein. Whereupon their Lordſhips endeavoured, by fair perſuaſions, to draw them to conformity and obedience, and withal offered, that if they yet would ſubmit and take their Oaths, their Lordſhips would accept thereof, and not proceed to cenſure againſt them. But ſuch was the inſufferable diſobedience and contempt of the ſaid Delinquents, that they ſtill perſiſted in their former obſtinacy, and wilfully refuſed to take their Oaths. In reſpect whereof the whole Court did with an unanimous conſent, declare and adjudge the ſaid *Lilburn* and *Wharton* guilty of a very high contempt and offence, of dangerous conſequence and evil example, and worthy to undergo very ſharp, ſevere, and exemplary cenſure, which might deter others from the like preſumptuous boldneſs in refuſing

'to take a legal Oath; without which, many great and exorbitant of-
'fences, to the prejudice and danger of his Majeſty, his Kingdoms, and
'loving Subjects, might go away undiſcovered, and unpuniſhed. And
'therefore their Lordſhips have now ordered, adjudged and decreed, That
'the ſaid *Lilburn* and *Wharton* ſhall be remanded to the *Fleet*, there to
'remain until they conform themſelves in obedience to the orders of this
'Court, and that they ſhall pay five hundred pounds a-piece for their
'ſeveral fines to his Majeſty's uſe; and before their enlargements out of
'the *Fleet*, become bound with good ſureties for their good behaviour.
'And to the end that others may be the more deterred from daring to offend
'in the like kind hereafter, the Court hath further ordered and decreed,
'That the ſaid *John Lilburn* ſhall be whipt through the Streets, from the
'priſon of the *Fleet* unto the * Pillory, to be erected in ſuch time, and
'place, as this Court ſhall hold fit and direct; and that both he and the
'ſaid *Wharton* ſhall be both of them ſet in the ſaid Pillory, and from thence
'be returned to the *Fleet*, there to remain according to this Decree.'

After our cenſure, we had the liberty of the priſon for a few days; but the old man, my fellow-partner, went to the Warden of the *Fleet*, and told him the ſum of that which he intended in the *Star-Chamber*, to have ſpoken againſt the Biſhops, if the Lords would have let him. He told the Warden, how the Biſhops were the greateſt Tyrants that ever were ſince *Adam*'s creation; and that they were more cruel than the *Cannibals*, thoſe Men-eaters; for (ſaid he) they preſently devour men, and put an end to their pain, but the Biſhops do it by degrees, and are many years in exerciſing their cruelty and tyranny upon thoſe that ſtand out againſt them; and therefore are worſe than the very *Cannibals*, &c.

This came to the Lords of the Council's ears, whereupon we were the next *Monday* after brought both together, and locked up cloſe priſoners in one Chamber, without any order or warrant at all, but only Warden *Ingram*'s bare command and pleaſure. But the old man, about three weeks after, made a Petition to the Lords of the Council, that he might have ſome liberty; and being very weak, more likely to die than to live, he had his liberty granted till the Term: but I do ſtill remain cloſe priſoner.

Upon *Wedneſday* the 18*th* of *April*, 1638, I was cruelly whipp'd through the Streets to *Weſtminſter* †, and at the laſt came to the Pillory, where I was unlooſed from the Cart, and having put on ſome of my clothes, went to the Tavern, where I ſtaid a pretty while waiting for my Surgeon, who was not yet come to dreſs me; where were many of my friends, who exceedingly rejoiced to ſee my courage, that the Lord had enabled me to undergo my puniſhment ſo willingly.

I having a deſire to retire into a private room from the multitude of people that were about me, which made me like to faint; I had not been there long, but Mr. *Lightbourne*, the Tipſtaff of the *Star-Chamber*, came unto me, ſaying, the Lords ſent him to me, to know if I would acknowledge myſelf to be in a fault, and then he knew what to ſay unto me. To whom I replied, Have their Honours cauſed me to be whipt from the *Fleet* to *Weſtminſter*, and do they now ſend to know if I will acknowledge a fault? They ſhould have done this before I had been whipt; for now, ſeeing I have undergone the greateſt part of my puniſhment, I hope the Lord will aſſiſt me to go through it all: and beſide, if I would have done this at the firſt, I needed not to have come to this: But as I told the Lords when I was before them at the Bar, ſo I deſire you to tell them again, that I am not conſcious to myſelf of doing any thing that deſerves a ſubmiſſion, but yet I do willingly ſubmit to their Lordſhips pleaſures in my cenſure. He told me, if I would confeſs my fault, it would ſave me a ſtanding in the Pillory: otherwiſe, I muſt undergo the burthen of it.

Well (ſaid I) I regard not a little outward diſgrace for the cauſe of my God; I have found already that ſweetneſs in him, in whom I have believed, that through his ſtrength, I am able to undergo any thing that ſhall be inflicted on me: but methinks that I had very hard meaſure, that I ſhould be condemned and thus puniſhed upon two Oaths, in which the party has moſt falſly forſworn himſelf; and becauſe I would not take an Oath to betray mine own innocence. Why, *Paul* found more mercy from the Heathen *Roman Governors*, for they would not put him to an Oath to accuſe himſelf, but ſuffered him to make the beſt defence he could for himſelf: neither would they condemn him, before his accuſers and he were brought face to face, to juſtify, and fully to prove their accuſation: but the Lords have not dealt ſo with me, for my accuſers and I were never brought face to face, to juſtify their accuſation againſt me. It is true, two falſe Oaths were ſworn againſt me, and I was thereupon condemned; and becauſe I would not accuſe myſelf. And ſo he went away, and I prepared myſelf for the Pillory, to which I went with a joyful courage; and when I was upon it, I made obeiſance to the Lords, ſome of them (as I ſuppoſe) looking out at the *Star-Chamber* window towards me. And ſo I put my neck into the hole, which being a great deal too low for me, it was very painful to me, in regard of continuance of the time that I ſtood on the Pillory, which was about two hours; my back being alſo very ſore, and the Sun ſhining ſo exceeding hot, and the *Tipſtaff-man* not ſuffering me to keep on my hat to defend my head from the heat of the Sun, ſo that I ſtood there in great pain: yet through the ſtrength of my God I underwent it with courage, to the very laſt minute; and lifting up my heart and ſpirit unto my God, I began to ſpeak after this manner:

My Chriſtian Brethren,

TO all you that love the Lord *Jeſus Chriſt*, and deſire that he ſhould reign and rule in your hearts and lives, to you eſpecially, and to as many as hear me this day, I direct my Speech.

I ſtand here in the place of ignominy and ſhame; yet to me it is not ſo, but I own and embrace it, as the *Welcome Croſs of Chriſt*, and as a badge of my *Chriſtian Profeſſion:* I have been already whipt from the *Fleet* to this place, by virtue of a cenſure from the honourable Lords of the *Star-Chamber*; the cauſe of my cenſure I ſhall declare unto you as briefly as I can.

The Lord, by his ſpecial hand of Providence, ſo ordered it, that not long ago I was in *Holland*, where I was like to have ſettled myſelf in the courſe of Trading, that might have brought me in a pretty large portion of earthly things, (after which my heart did too much run:) but the Lord having a better portion in ſtore for me, and more durable riches to beſtow upon my Soul, by the ſame hand of Providence, brought me back again, and caſt me into eaſy affliction, that thereby I might be weaned from the World, and ſee the vanity and emptineſs of all things therein. And he hath now pitched my ſoul upon ſuch an object of beauty, amiableneſs, and excellency, as is as permanent and endurable, as eternity itſelf; namely, the perſonal excellency of the Lord *Jeſus Chriſt*, the ſweetneſs of whoſe preſence no affliction can ever be able to wreſt out of my Soul.

Now, while I was in *Holland*, it ſeems there were divers Books of that noble and renowned Doctor *John Baſtwick* ſent into *England*, which came into the hands of one *Edmund Chillington*; for the ſending over of which I was taken and apprehended, the plot being before laid by one *John Chilburne* (whom I ſuppoſed, and took to be my Friend), ſervant to my old fellow-ſoldier, Mr. *John Wharton*, living in *Bow-lane*, after this manner:

I walking in the ſtreet with the ſaid *John Chilburne*, was taken by the Purſuivant and his men; the ſaid *John*, as I verily believe, having given direction to them where to ſtand, and he himſelf was the third man that laid hands on me to hold me.

Now, at my cenſure before the Lords, I there declared upon the word of a Chriſtian, that I ſent not over thoſe Books, neither did I know the Ship that brought them, nor any of the men that belonged to the Ship, nor to my knowledge did I ever ſee either ſhip, or any appertaining to it in all my days.

Beſides this, I was accuſed at my examination before the King's Attorney, at his chamber, by the ſaid *Edmund Chillington*, Button-ſeller, living in *Cannon-ſtreet*, near *Abchurch-lane*, and late priſoner in *Bridewell* and *Newgate*, for printing ten or twelve thouſand Books in *Holland*; and that I would have printed the *Unmaſking the Myſtery of Iniquity*, if I could have gotten a true copy of it; and that I had a Chamber in Mr. *John Foot*'s houſe at *Delft*, where he thinks the books were kept.

Now, here I declare before you all, upon the word of a ſuffering Chriſtian, that he might as well have accuſed me of printing a hundred thouſand books, and the one been as true as the other. And for the printing the *Unmaſking the Myſtery of Iniquity*, upon the word of an honeſt man, I never ſaw, nor to my knowledge heard of the book, till I came back again into *England*. And for my having a Chamber at Mr. *John Foot*'s houſe at *Delft*, where he thinks the books were kept; I was ſo far from having a Chamber there, as I never lay in his houſe but twice or thrice at the moſt: and upon the laſt *Friday* of the laſt Term, I was brought to the *Star-Chamber-Bar*, where before me was read the ſaid *Edmund Chillington*'s *Affidavit*, upon oath againſt Mr. *John Wharton* and myſelf; the ſum of which oath was, That he and I had printed (at *Rotterdam*, in *Holland*) Dr. *Baſtwick*'s *Anſwer*, and his *Litany*, with divers other ſcandalous books.

Now, here again I ſpeak it in the preſence of God, and all you that hear me, that Mr. *Wharton* and I never joined together in printing either theſe, or any other books whatſoever; neither did I receive any money from him toward the printing any.

Withal, in his firſt Oath, he peremptorily ſwore, that we had printed them at *Rotterdam*: unto which I likewiſe ſay, That he hath in this particular forſwore himſelf: for mine own part, I never in all my days either printed, or cauſed to be printed, either for myſelf, or for Mr. *Wharton*, any books at *Rotterdam*; neither did I come into any Printing-houſe there, all the time that I was in the City.

And then upon the *Tueſday* after, he ſwore againſt both of us again. The ſum of which oaths was, that I had confeſſed to him (which is moſt falſe) that I had printed Dr. *Baſtwick*'s Anſwer to Sir *John Banks*'s *Information*, and his *Litany*; and another Book, called, *Certain Anſwers to certain Objections:* and another Book, called, *The Vanity and Impiety of the Old Litany*. And that I had divers other Books of the ſaid Dr. *Baſtwick*'s in printing, and that Mr. *Wharton* had been at the charges of printing a Book, called, *A Breviate of the Biſhops late Proceedings*; and another Book, called, *Sixteen New Queries*; and in this his oath hath ſworn they were printed at *Rotterdam*, or ſomewhere elſe in *Holland*; and that one *James Oldham*, a Turner, keeping Shop at *Weſtminſter-hall* Gate, diſperſed divers of theſe Books. Now, in this oath he hath again forſworn himſelf in a high degree; for whereas he took his oath that I had printed the Book, called, *The Vanity and Impiety of the Old Litany*; I here ſpeak it before you all, that I never in all my days did ſee one of them in print: but I muſt confeſs, I have ſeen and read it in written hand, before the Doctor was cenſured. And as for other Books, for which he ſaith I have divers in printing; to that I anſwer, that for my own particular, I never read nor ſaw any of the Doctor's Books, but the forenamed four in *Engliſh*; and one little thing more of about two ſheets of paper, which is annexed to the *Vanity of the Old Litany*. And as for his *Latin* Books, I never ſaw any but two; namely, his *Flagellum*, for which he was firſt cenſured in the High-Commiſſion-Court, and his *Apologeticus*, which were both in print long before I knew the Doctor. But it is true, there is a ſecond edition of his *Flagellum*, but that was at the preſs above two years ago; namely, *Anno* 1634, and ſome of this impreſſion was in *England* before I came out of *Holland*.

And theſe are the main things for which I was cenſured and condemned, being two oaths in which the ſaid *Chillington* hath palpably forſworn himſelf; and if he had not forſworn himſelf, yet by the Law (as I am given to underſtand) I might have excepted againſt him, being a guilty perſon himſelf, and a priſoner, and did that which he did againſt me for purchaſing his own Liberty, which he hath by ſuch Judaſly means got and obtained; who is alſo known to be a lying fellow, as I told the Lords I was able to prove and make good.

But beſides all this, there was an inquiſition-oath tendered unto me (which I refuſed to take) on four ſeveral days; the Sum of which oath is thus much: 'You ſhall ſwear that you ſhall make true 'anſwer to all things that ſhall be aſked of you: ſo help you God.' Now this oath I refuſed as a ſinful and unlawful oath: it being the High-Commiſſion oath, with which the Prelates ever have, and ſtill do, ſo butcherly torment, afflict and undo, the dear Saints and Servants of God. It is an oath againſt the Law of the Land (as Mr. *Nicholas Fuller* in his Argument doth prove): And alſo it is expreſsly againſt

* The Pillory was placed between *Weſtminſter-Hall Gate* and the *Star-Chamber*.

† And as the Cart drew him along, he repeated ſeveral Texts of Scripture, and talk'd enthuſiaſtically to the People, which for brevity's ſake is here omitted.

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the Petition of Right, an Act of Parliament enacted in the 3 and 4 year of our King. Again, it is abſolutely againſt the Law of God; for that Law requires no man to accuſe himſelf; but if any thing be laid to his charge, there muſt come two or three witneſſes at leaſt to prove it. It is alſo againſt the practice of Chriſt himſelf, who, in all his examinations before the High Prieſt, would not accuſe himſelf, but upon their demands, returned this anſwer, *Why aſk you me? Go to them that heard me.*

Withal, this Oath is againſt the very Law of Nature; for Nature is always a preſerver of itſelf, and not a deſtroyer: But if a man takes this wicked Oath, he deſtroys and undoes himſelf, as daily Experience doth witneſs. Nay, it is worſe than the Law of the Heathen *Romans*, as we may read, *Acts* xxv. 16. *For when* Paul *ſtood before the Pagan Governors, and the Jews required Judgement againſt him, the Governor replyed, It is not the manner of the* Romans *to condemn any man, before he and his accuſers be brought face to face, to juſtify their accuſation.* But for my own part, if I had been proceeded againſt by a Bill, I would have anſwered and juſtified all that they could have proved againſt me; and by the ſtrength of my God, would have ſealed whatſoever I have done with my blood: for I am privy to mine own actions, and my conſcience bears me witneſs, that I have laboured, ever ſince the Lord in mercy made the riches of his grace known to my ſoul, to keep a good conſcience, and to walk inoffenſively both towards God and man. But as for that Oath that was put upon me, I did refuſe to take it as a ſinful and unlawful Oath, and by the ſtrength of my God enabling me, I will never take it, though I be pulled in pieces by wild Horſes, as the antient Chriſtians were by the bloody Tyrants in the *Primitive Church*; neither ſhall I think that man a faithful ſubject of Chriſt's Kingdom, that ſhall at any time hereafter take it, ſeeing the wickedneſs of it hath been ſo apparently laid open by ſo many, for the refuſal whereof many do ſuffer cruel perſecution to this day.

Thus have I, as briefly as I could, declared unto you, the whole cauſe of my ſtanding here this day; I being upon theſe grounds cenſured by the Lords at the *Star-Chamber* on the laſt Court-day of the laſt Term, to pay 500*l.* to the King, and to receive the puniſhment, which with rejoicing I have undergone, unto whoſe cenſure I do with willingneſs and cheerfulneſs ſubmit myſelf.

But ſeeing I now ſtand here at this preſent, I intend, the Lord aſſiſting me with his power, and guiding me by his Spirit, to declare my mind unto you.

I have nothing to ſay to any man's perſon, and therefore will not meddle with that; only the things that I have to ſay, in the firſt place are concerning the Biſhops and their calling: They challenge their callings to be *Jure Divino*; and for the oppugning of which, thoſe three renowned living martyrs of the Lord, Dr. *Baſtwick*, Mr. *Burton*, and Mr. *Prynne*, did ſuffer in this place, and they have ſufficiently proved, that their calling is not from God: which men I love and honour, and do perſuade myſelf that their ſouls are dear and precious in the ſight of God, tho' they were ſo cruelly and butcherly dealt with by the Prelates. And as for Mr. *Burton* and Mr. *Prynne*, they are worthy and learned men, but yet did not in many things write ſo fully as the Doctor did, who hath ſufficiently and plentifully ſet forth the wickedneſs, both of the Prelates themſelves, and of their callings (as you may read in his Books), that they are not *Jure Divino*; which noble and reverend Doctor I love with all my ſoul: and as he is a man that ſtands for the truth and glory of God, my very life and heart-blood I will lay down for his honour, and the maintaining of his cauſe for which he ſuffered, it being God's cauſe. As for the Biſhops, they uſed in former times to challenge their juriſdiction, callings and power from the King; but they have now openly, in the *High Commiſſion-Court*, renounced that, as was heard by many, at the cenſure of that noble Doctor: and as you may fully read in his *Apologeticus*; and in his *Anſwer* to Sir *John Banks*'s *Information*. Now I will here maintain it before them all, that their calling is ſo far from being *Jure Divino* (as they ſay they are), that they are rather *Jure Diabolico*; which if I am not able to prove, let me be hanged up at the Hall-gate. But, my Brethren, for your better ſatisfaction, read the ixth and xiiith Chapters of the *Revelation*, and there you ſhall ſee, that there came *Locuſts* out of the *Bottomleſs Pitt* part of whom they are, and they are there lively deſcribed. Alſo you ſhall there find, that the Beaſt (which is the Pope, or *Roman* State and Government) hath given to him by the *Dragon* (the *Devil*) his power, ſeat, and great authority. So that the Pope's authority comes from the *Devil*; and the Prelates, and their Creatures, in their printed Books, do challenge their authority, juriſdiction and power (that they exerciſe over all ſorts of people) is from *Rome*.

And for proving the Church of *England* to be a true Church, their beſt and ſtrongeſt argument is, that the Biſhops are lineally deſcended from his Holineſs (or Impiouſneſs) of *Rome*, as you may read in *Pocklington*'s Book, called *Sunday no Sabbath*. So that by their own confeſſion they ſtand by that ſame power and authority, that they have received from the Pope. So that their calling is not from God, but from the Devil. For the Pope cannot give a better authority or calling to them than he himſelf hath; but his authority and calling is from the Devil, therefore the Prelate's calling and authority is from the Devil alſo, *Revel.* ix. 3. *And there came out of the ſmoke, Locuſts upon the earth, and unto them was given power, as the Scorpions of the earth have power to hurt and undo men*, as the Prelates daily do: and alſo, *Revel.* xiii. 2. *And the Beaſt which I ſaw* (ſaith St. *John*) *was like unto a Leopard, and his feet were as the feet of a Bear, and his mouth as the mouth of a Lion; and the Dragon* (that is to ſay, the Devil) *gave him his power, his ſeat and great authority:* and *verſe* 15, 16, 17. And whether the Prelates, as well as the Pope, do not daily the ſame things, let every man that hath but common reaſon judge.

For do not their daily practices and cruel burthens impoſed on all ſorts of people, high and low, rich and poor, witneſs that their deſcent is from the Beaſt, part of his ſtate and kingdom: ſo alſo *Revel.* xvi. 13. 14. all which places do declare, that their power and authority being from the Pope (as they themſelves confeſs) therefore it muſt originally come from the Devil. For their power and callings muſt of neceſſity proceed either from God, or elſe from the Devil; but it proceeds not from God, as the Scriptures ſufficiently declare; therefore their calling and power proceeds from the Devil, as both Scripture and their own daily practices do demonſtrate and prove. And as for that laſt place cited, *Rev.* xvi. 13. 14. if you pleaſe to read the ſecond and third parts of Dr. *Baſtwick*'s Litany, you ſhall find, he there proves, that the Prelates practices do every way ſuit with, and make good that portion of Scripture to the utmoſt. For in their Sermons that they preach before his Majeſty, how do they incenſe the King and Nobles againſt the people of God, labouring to make them odious in his ſight, and ſtirring him up to execute vengeance upon them, though they be the moſt harmleſs generation of all others?

And as for all theſe officers that are under them, and made by them, for mine own particular, I cannot ſee but that their callings are as unlawful as the Biſhops themſelves; and in particular, for the callings of the Miniſters, I do not, nor will not ſpeak againſt their perſons, for I know ſome of them to be very able men, and men of excellent gifts and qualifications; and I perſuade myſelf, their ſouls are very dear and precious in the ſight of God.

Yet notwithſtanding, this proves not their callings to be ever the better, as it is in civil government: If the King (whom God hath made a lawful Magiſtrate) make a wicked man an officer, he is as true an officer, and as well to be obeyed, coming in the King's name, as the beſt man in the world coming with the ſame authority; for in ſuch a caſe, he that is a wicked man, hath his calling from as good authority as the godlieſt man hath; and therefore his calling is as good as the other's.

But on the other ſide, if he that hath no authority make officers, tho' the men themſelves be ever ſo good and holy, yet their holineſs makes their calling never a whit the truer; but ſtill is a falſe calling, in regard his authority was not good nor lawful that made them. And even ſo the Miniſters, be they ever ſo holy men, yet they have one and the ſame calling with the wickedeſt that is amongſt them; their holineſs proves not their callings to be ever the truer, ſeeing their authority that made them Miniſters is falſe: and therefore they have more to anſwer for than any of the reſt, by how much the more God hath beſtowed greater gifts upon them than upon others, and yet they detain the truth in unrighteouſneſs from God's people, and do not make known to them, as they ought, the whole will and counſel of God.

And again, the greater is their ſin, if their callings be unlawful (as I verily believe they are), in that they ſtill hold them, and do not willingly lay down and renounce them; or they do but deceive the people, and highly diſhonour God, and ſin againſt their own ſouls, while they preach unto the people by virtue of an *Antichriſtian* and unlawful calling. And the more godly and able the Miniſter is, that ſtill preaches by virtue of this calling, the more hurt he doth; for the people that have ſuch a Miniſter will not be perſuaded of the truth of things, though one ſpeak, and inform them in the name of the Lord; but will be ready to reply, Our Miniſter that preaches ſtill by virtue of this calling, is ſo holy a man, that were not his calling right and good, I do aſſure myſelf he would no longer preach by virtue thereof. And thus the holineſs of the Miniſter is a cloak to cover the unlawfulneſs of his calling, and make the people continue rebels againſt Chriſt, his Sceptre and Kingdom, which is an aggravation of his ſin: for by this means the people are kept off from receiving the whole truth into their ſouls, and reſt in being but almoſt Chriſtians, or but Chriſtians in part. But, O my Brethren, it becomes all you that fear God, and tender the ſalvation of your own ſouls, to look about you, and to ſhake off that long ſecurity and formality in Religion that you have lain in: for God, of all things, cannot endure *Lukewarmneſs*, *Rev.* iii. 16. and ſearch out diligently the truth of things, and try them in the balance of the Sanctuary. I beſeech you take things no more upon truſt, as hitherto you have done, but take pains to ſearch and find out thoſe ſpiritual and hidden truths that God hath enwrapped in his ſacred Book, and find out a bottom for your own ſouls: for if you will have the comforts of them, you muſt beſtow ſome labour for the getting of them, and you muſt ſearch diligently before you find them, *Prov.* ii. Labour alſo to withdraw your necks from under that ſpiritual and *Antichriſtian* bondage (unto which you have for a long time ſubjected your ſouls), leſt the Lord cauſe his plagues, and the fierceneſs of his wrath, to ſeize both upon your bodies and ſouls; ſeeing you are now warned of the danger of theſe things.

For he himſelf hath ſaid, *Rev.* xiv. 9, 10, 11. *That if any man worſhip the Beaſt and his Image, and receive his mark in his forehead, or in his hand; the ſame ſhall drink of the wine of his wrath, which is poured out without mixture, into the cup of his indignation, and he ſhall be tormented with fire and brimſtone, in the preſence of the holy Angels, and in the preſence of the Lamb; and the ſmoke of their torment aſcended up for ever and ever, and they have no reſt, day nor night, who worſhip the Beaſt and his Image, and whoſoever receiveth the mark of his name.* Therefore as you love your own ſouls, and look for that immortal Crown of happineſs in the world to come, look that you withdraw yourſelves from that *Antichriſtian* power and ſlavery that you are now under, even as God himſelf hath commanded and enjoined you, in *Rev.* xviii. 4. *Come out of her, my people, that you be not partakers of her ſins, and that you receive not of her plagues; for her ſins have reached unto Heaven, and God hath remembered her iniquities.* Here is the voice of God himſelf, commanding all his choſen ones, though they have lived under this *Antichriſtian* ſlaviſh power and ſtate a long time, yet at laſt to withdraw their obedience and ſubjection from it. My brethren, we are all at this preſent, in a very dangerous and fearful condition, under the idolatrous and ſpiritual bondage of the Prelates, in regard we have turned traytors unto our God, in ſeeing his almighty great name, and his heavenly truth trodden under foot, and ſo highly diſhonoured by them; and yet we not only let them alone in holding our peace, but moſt ſlaviſhly and wickedly ſubject ourſelves unto them, fearing the face of a piece of dirt, more than the Almighty great God of heaven and earth, who is able to caſt both body and ſoul into everlaſting damnation.

Oh repent, I beſeech you therefore repent, for that great diſhonour you have ſuffered to be done unto God by your fearfulneſs and cowardlineſs; and for the time to come put on courageous reſolutions like valiant ſoldiers of *Jeſus Chriſt*, and fight manfully in this his ſpiritual battle, in which battle ſome of his ſoldiers have already loſt part of their blood; and withal, ſtudy this Book of the *Revelation*, and there you ſhall find the myſtery of iniquity fully unfolded and explained; and alſo you ſhall ſee what great ſpiritual battles have been fought betwixt the Lamb and his ſervants, and the *Dragon* (the *Devil*) and his vaſſals; and ſome are to fight.

Therefore gird on your ſpiritual armour, ſpoken of, *Epheſ.* vi. that you may quit yourſelves like good and faithful ſoldiers, and fear no Colours, the victory and conqueſt is ours already; for we are ſure to have it (I do not ſpeak of any bodily and temporal battle, but only of a ſpiritual one) and be

not discouraged and knock'd off from the study of it, because of the obscurity and darkness of it; for the Lord hath promised his enlightening Spirit unto all his people that are laborious and studious to know him a-right, and also he hath promised a blessing, and pronounced a blessedness unto all that read and labour to keep the things contained in this Book, *Rev.* i. 3. My Christian Brethren, in the bowels of *Jesus Christ*, I beseech you do not contemn the things that are deliver'd to you, in regard of the meanness and weakness of me the instrument, being but one of the meanest and unworthiest of the servants of *Jesus Christ*, for the Lord many times doth great things by weak means, that his power may be more seen; for we are too ready to cast our eye upon the means and instrument, not looking up unto that Almighty power that is in God, who is able to do the greatest things by the weakest means, and therefore out of the mouths of *Babes* and *Sucklings* he hath ordained strength, *Psal.* viii. 2. And he hath chosen the foolish things of the world to confound the wise, and God hath chosen the weak things of the world to confound the things which are mighty, and base things of the world, and things which are despised, hath God chosen; yea, things which are not, to bring to nought the things that are, 1 *Cor.* i. 27, 28. And he gives the reason wherefore he is pleased so to do; *That no flesh should glory in his presence.*

So you see God is not tyed to any instrument and means to effect his own glory, but he by the least instrument is able to bring to pass the greatest things.

It is true, I am a young man, and no Scholar, according to that which the World counts Scholarship, yet I have obtained mercy of the Lord to be faithful, and he, by a Divine Providence, hath brought me hither this day; and I speak to you in the name of the Lord, being assisted with the Spirit and Power of the God of Heaven and Earth: and I speak not the words of rashness or inconsiderateness, but the words of soberness, and mature deliberation; for I did consult with my God, before I came hither, and desired him that he would direct and enable me to speak that, which might be for his glory and the good of his people. And as I am a soldier, fighting under the banner of the great and mighty Captain, the Lord *Jesus Christ*; and as I look for that Crown of immortality, which one day I know shall be set upon my temples, being in the condition that I am in, I dare not hold my peace, but speak unto you with boldness in the might and strength of my God, the things which the Lord in mercy hath made known unto my soul, come life, come death.

[When I was hereabout, there came a fat Lawyer, I do not know his name, and commanded me to hold my peace, and leave my preaching. To whom I replied and said, Sir, I will not hold my peace, but speak my mind freely, though I be hanged at *Tyburn* for my pains. It seems he himself was galled and touched, as the Lawyers were in Christ's time, when he spake against the *Scribes* and *Pharisees*, which made them say, *Master, in saying thus thou revilest us also.* So he went his way, and (I think) complained to the Lords, but I went on with my speech, and said:]

My Brethren, be not discouraged at the ways of God for the affliction and cross that doth accompany them, for it is sweet and comfortable drawing in the yoke of Christ for all that, and I have found it so by experience; for my soul is fill'd so full of spiritual and heavenly joy, that with my tongue I am not able to express it, neither are any capable (I think) to partake of so great a degree of consolation, but only those upon whom the Lord's gracious afflicting hand is.

And for mine own part, I stand this day in the place of an evil doer, but my conscience witnesseth that I am not so. [And hereabout I put my hand into my pocket, and pull'd out three of worthy Dr. *Bastwick*'s Books, and threw them among the people, and said,] There is part of the Books for which I suffer, take them among you, and read them, and see if you find any thing in them against the Law of God, the Law of the Land, the Glory of God, the Honour of the King or State.

I am the son of a Gentleman, and my friends are of rank and quality in the Country where they live, which is two hundred miles from this place, and I am in my present condition deserted of them all; for I know, not one of them dare meddle with me in my present estate, being I am stung by the *Scorpions*, (the *Prelates*) and for any thing that I know, it may be I shall never have a favourable countenance from any of them again: and withal, am a young man, and likely to have lived well, and in plenty, according to the fashion of the world; yet notwithstanding, for the cause of Christ and to do him service, I have and do bid adieu to father, friends, and riches, pleasures, ease, contented life and blood, and lay all down at the foot stool of *Jesus Christ*, being willing to part with all, rather than I will dishonour him, or in the least measure part with the peace of a good conscience, and that sweetness and joy which I have found in him. For in naked Christ is the quintessence of sweetness, and I am so far from thinking my affliction and punishment, which I have this day endured, and still do endure and groan under, a disgrace, that I receive it as the welcome *Cross of Christ*, do think myself this day more honoured by my sufferings, than if a crown of gold had been set upon my head: for I have in some part been made conformable to my Lord and Master, and have in some measure drank of the same Cup, which he himself drank of, while he was in this sinful world. For he shed his most precious blood for the salvation of my poor soul, that so I might be reconciled to his Father; therefore am I willing to undergo any thing for his sake, and that inward joy and consolation within me, that carries me high above all my pains and torments. And you, (*my Brethren*) if you be willing to have Christ, you must own him, and take him upon his own terms, and know that Christ and the Cross is inseparable; for he that will live godly in *Christ Jesus*, must suffer persecution and affliction; it is the lot and portion of all his chosen ones, through many afflictions and trials we must enter into glory; and the *Apostle* saith, *That if ye be without affliction, whereof all are partakers, then are ye bastards, and not sons.* And therefore, if you will have Christ, sit down and reckon before ever you make profession of him, what he will cost you; lest when you come to the trial, you dishonour him; and if you be not willing and contented withal, and let all go for his sake, you are not worthy of him.

If parents, husband, wife or children, lands or livings, riches or honours, pleasure or ease, life or blood, stand in the way, you must be willing to part with all these, and to entertain Christ naked and alone, though you have nothing but the Cross, or else you are not worthy of him; *Math.* x. 37, 38.

Oh, my Brethren, there is such sweetness and contentedness in enjoying the *Lord Jesus* alone, that it is able, where it is felt, to make a man go thro' all difficulties, and endure all hardships that may possibly come upon him. Therefore, if he call you to it, do not deny him, nor his truth in the least manner; for he hath said, *He that denies him before men, him will he deny before his Father, which is in Heaven.* And now is the time that we must shew ourselves good soldiers of *Jesus Christ*, for his truth, his cause and glory lies at stake in a high degree; therefore put on courageous resolutions, and withdraw your necks and souls from all false power and worship, and fight with courage and boldness in this spiritual battle, in which battle, the Lord before your eyes hath raised up some valiant Champions that fought up to the ears in blood: therefore be courageous soldiers, and fight it out bravely, that your God may be glorified by you, and let him only have the service, both of your inward and outward man, and stand to his cause, and love your own souls, and fear not the face of any mortal man; for God hath promised to be with you, and uphold you, that they shall not prevail against you, *Isa.* xli. 10, 11. But alas, how few are there that dare shew any courage for God and his cause, though his glory lies at the stake, but think themselves happy and well, and count themselves wise men, if they can sleep in a whole skin; when Christ hath said, *He that will save his life shall lose it; and he that will lose his life for his sake, shall find it. What shall it profit a man, if he gain the whole world, and lose his own soul?*

Therefore it is better for a man to be willing and contented to let all go for the enjoying of Christ, and doing him service, than to sit down and sleep in a whole skin, though in so doing he gain all the world, and see him dishonoured, his glory and truth trodden under foot, and the blood of his servants shed and spilt.

Yes, without doubt, it is; but many are in these times, so far from suffering valiantly for Christ, that they rather diffuade men from it, and count it a point of singularity and pride, and self-ends, for a man to put himself forward to do God service; asking, what calling and warrant any private man hath thereunto, seeing it belongs to the Ministers to speak of these things? Yes, so it doth; but alas, they are so cowardly and fearful, that they dare not speak.

And therefore it belongs also to thee, or me, or any other man, if thou be'st a soldier of *Jesus Christ*, whatsoever by place or calling thy rank or degree be, be it higher or lower, yet if he call for thy service, thou art bound, though others stand still, to maintain his power and glory to the utmost of thy power and strength, yea, to the shedding the last drop of thy blood; for he hath not loved his life unto the death for thy sake, but shed his precious blood for the redemption of thy soul. Hath he done this for thee; and darest thou see him dishonoured, and his glory lie at the stake, and not speak in his behalf, or do him the best service thou canst?

If out of a base and cowardly spirit thus thou doest, let me tell thee here, and that truly to thy face, thou hast a *Dalilah* in thy heart, which thou lovest more than God, and that thou shalt one day certainly find by woful experience. Alas, if men should hold their peace in such times as these, the Lord would cause the very stones to speak, to convince man of his cowardly baseness.

Having proceeded in a manner thus far by the strength of my God, with boldness and courage in my speech, the *Warden of the Fleet* came with the fat *Lawyer*, and commanded me to hold my peace. To whom I replied, I would speak and declare my cause and mind, though I were to be hanged at the gate for my speaking. And he caused proclamation to be made upon the Pillory, for bringing to him the Books: so then he commanded me to be gagged, and if I spake any more, that then I should be whipt again upon the Pillory.

So I remained about an hour and a half gagged, being intercepted of much matter, which by God's assistance I intended to have spoken; but yet with their cruelty I was nothing at all daunted, for I was full of comfort and courage, being mightily strengthened with the power of the Almighty, which made me with chearfulness triumph over all my sufferings, not shewing one sad countenance or discontented heart.

And when I was to come down, having taken out my head out of the Pillory, I looked about me upon the people, and said, *I am more than a conqueror through him that hath loved me. Vivat Rex*, Let the King live for ever; and so I came down, and was had back again to the Tavern, where I, together with Mr. *Wharton*, staid a while, till one went to the Warden to know what should be done with me, who gave order we should be carried back again to the *Fleet*.

After I came back to the prison, none were suffered to come to me, but the Surgeon to dress me.

[*Here* Lilburn *gives an account of his cruel Whipping, &c. but as it is afterwards mentioned in the depositions before the Lords, is here omitted.*]

The rest that I intended by the strength of my God to have spoken (if I had not been prevented by the Gag), I now forbear to set down, in regard I hear I am to come into the Field again to fight a second Battle, unto which time I reserve it: if the Lord so order it that I may have liberty to speak, I doubt not but by the might and power of my God, in whom I rest and trust, valiantly to display the weapons of a good Soldier of *Jesus Christ*, come life, come death: and in the mean time, to what I have here said and written, I set to my name, by me, *John Lilburn*, being written with part of mine own blood.

John Lilburn.

At the Inner Star-Chamber, *the* 18*th of* April, Anno Dom. 1638.

PRESENT.

Lord Archbishop of *Canterbury*, Lord-Treasurer, Earl-Marshal, Lord *Cottington*, Mr. Secretary *Cooke*,
Lord-Keeper, Lord-Privy-Seal, Earl of *Salisbury*, Lord *Newburgh*, Mr. Secretary *Windebank*.

WHEREAS *John Lilburn*, Prisoner in the *Fleet*, by sentence in the *Star-Chamber*, did this day suffer condign punishment for his several Offences, by whipping at a cart, and standing in the pillory; and as their Lordships were this day informed, during the time that his body was under the said execution, audaciously and wickedly did not only utter sundry scandalous speeches, but likewise scattered

tered divers copies of ſeditious books among the people, that beheld the ſaid execution; for which very thing, among other offences of like nature, he hath been cenſured in the ſaid Court by the aforeſaid Sentence: It is therefore, by their Lordſhips ordered, That the ſaid *John Lilburn* ſhould be laid alone, with irons on his hands and legs in the Wards of the *Fleet*, where the baſeſt and meaneſt ſort of priſoners are uſed to be put; and that the Warden of the Fleet take ſpecial care to hinder the reſort of any Perſons whatſoever unto him. And particularly, that he be not ſupplied with money from any friend, and that he take ſpecial notice of all letters, writings, and books brought unto him, and ſeize and deliver the ſame unto their Lordſhips; and take notice from time to time, who they be that reſort unto the ſaid priſon to viſit the ſaid *Lilburn*, or to ſpeak with him, and inform the Board thereof. And it was laſtly ordered, that all perſons that ſhall be hereafter produced to receive corporal puniſhment according to ſentence of that Court, or by order of the Board, ſhall have their garments ſearched before they be brought forth, and neither writing, nor other thing ſuffered to be about them; and their hands likewiſe to be bound, during the time they are under puniſhment. Whereof, together with the other premiſſes, the ſaid Warden of the Fleet is hereby required to take notice, and to have ſpecial care, that this their Lordſhips order be accordingly obſerved.

Examined per Dudley Carleton.

And on the ſaid 18th of *April*, it was further ordered by the ſaid Court of *Star-Chamber*,

'That his Majeſty's Attorney and Sollicitor-General ſhould be hereby 'prayed and required, to take ſtrict examination of *John Lilburn* Priſoner 'in the Fleet, touching the Demeanour and Speeches of him the ſaid *Lil*'burn*, during the time of his whipping and ſtanding in the Pillory this 'day, according to the Sentence of his Majeſty's Court of *Star-Chamber*; 'particularly, whether the ſaid *Lilburn* did at that time utter any ſpeeches 'tending to Sedition, or to the diſhonour of the ſaid Court of *Star*'Chamber*, or any Member of the ſaid Court? and whether he did throw 'about and diſperſe at the ſame time any ſeditious Pamphlets and Books, 'either of that ſort for which he was formerly cenſured, or any other of 'like nature? What the Speeches were, and who heard them? What 'the ſaid Books were, and whence and of whom the ſaid *Lilburn* had 'them? And what other material Circumſtances they ſhould think fit to 'examine, either the ſaid *Lilburn* upon, or any other Perſon by whom 'they ſhall think good to inform themſelves for the better finding out the 'truth: and thereupon to make certificate to the Board what they find, 'together with their opinions.'

The third of *November*, 1640, being the firſt day the late diſſolved Parliament ſate, I according to Law and Juſtice preferred my Petition and Complaint to them; who upon the reading of my Petition, immediately ordered me my Liberty [being, as I remember, the firſt priſoner in *England* ſet at liberty by them] to follow my Petition, and according to the legal cuſtom of Parliaments make it good by proof, before a ſelect Committee appointed by them to that purpoſe, Mr. *Francis Rouſe* having the Chair; before whom many particular days one after another I appeared with my Counſel and my Witneſſes, and fully proved all my Petition. Upon the report of all which by Mr. *Rouſe* the Chairman, the Houſe of Commons upon the fourth of *May*, 1641, [being the very ſame day that the King himſelf cauſed me to be arraigned for High Treaſon at the Bar of the Houſe of Peers] voted and reſolved upon the queſtion,

That the Sentence of the *Star-Chamber* given againſt *John Lilburn* is illegal, and againſt the Liberty of the Subject; and alſo bloody, cruel, wicked, barbarous, and tyrannical.

Reſolved upon the Queſtion, That reparation ought to be given to Mr. *Lilburn* for his impriſonment, ſufferings, and loſſes ſuſtained by that illegal Sentence.

Ordered, That the Committee ſhall prepare this caſe of Mr. *Lilburn*'s to be tranſmitted to the Lords, with thoſe other of Dr. *Baſtwick*, Dr. *Leighton*, Mr. *Burton*, and Mr. *Prynne*.

H. Elſinge, Cler. Parl. Dom. Com.

After which Votes (being in a full, free, unraviſh'd, or unforc'd, legal, and unqueſtionable Parliament, after a full, open, free*, and fair hearing, and examining of all my aforeſaid ſufferings and complaints) troubles and the wars came on, and being in my own conſcience fully ſatisfied of the juſtneſs of the Parliament's than cauſe, in the height of zeal, accompanied with judgment and conſcience, "upon the principles I have largely laid "down in the 26, 27, 75, 76th pages of my Book of the 8th of *June*, "1649, intitled *England*'s legal, fundamental, *&c.*" I took up arms for them, and fought heartily and faithfully in their quarrel, (for maintaining of which I had like to have been hang'd at *Oxford*, while during my impriſonment there, I loſt 5 or 600 *l.* out of my eſtate at *London*,) till the preſent Earl of *Mancheſter* had like to have hanged me, for being a little too quick in taking in *Tickell Caſtle*, which ſpoiled a ſoldier of me ever ſince. After which, in the year 1645, I followed the Houſe of Commons cloſe, to tranſmit my foreſaid Votes to the Lords, as appears by the following Petition:

To the Honourable the Houſe of Commons now aſſembled in the High-Court of Parliament;

The humble Petition of John Lilburn, *Lieut. Col.*

In all humility ſheweth,

THAT your petitioner having ſuffered abundance of inhuman, barbarous cruelty, by virtue of an illegal decree made againſt him, in the *Star-Chamber*, 1637. as by the copy of his petition hereunto annexed, formerly preſented to this honourable Houſe, and by your own Votes made the 4th of *May*, 1641. (upon the examination of the petition) will appear: Which Votes are as followeth; Firſt, That the ſentence of the *Star-Chamber* given againſt him is illegal, againſt the liberty of the Subject, and alſo Bloody, Wicked, Cruel, Barbarous, and Tyrannical. Secondly, That reparation ought to be given to him for his impriſonment, ſufferings and loſſes, ſuſtained by that illegal ſentence. And then alſo it was ordered, that care ſhould be taken to draw up his caſe, and tranſmit it to the Lords: but by reaſon of multitude of buſineſs in this honourable Houſe, there hath been no further proceedings in it ſince. And theſe diſtractions coming on, your petitioner took command under the Right Honourable *Robert* Lord *Brook*, with whoſe Regiment he adventured his life freely and reſolutely, both at *Kenton* field, and *Brentford*, where he was taken priſoner and carried away to *Oxford*: where, within a ſhort time after his coming, the King ſent to the caſtle to your petitioner, the now Earl of *Kingſton*, the Lord *Dunſmore*, the Lord *Maltrevers*, and the Lord *Andover*, to woo your petitioner with large proffers of the honour and glory of Court-preferment, to forſake the Parliament's party, and to ingage on his party. Upon the ſlighting and contemning of which, your petitioner was within few days after laid in irons, and kept an exceeding cloſe priſoner, and forced ſeveral times to march into *Oxford* in irons, to Judge *Heath*, before whom he was arraigned for High-Treaſon, for drawing his ſword in the cauſe of the Commonwealth, and ſuffered multitude of miſeries, in his almoſt twelvemonths captivity there: in which time he loſt above 600 *l.* in his eſtate that he left behind him at *London*, (as he is clearly able to make appear). And immediately after his coming from thence, he took command in the Earl of *Mancheſter*'s army, his commiſſion as *Major* of foot, bearing date the 7th of *October*, 1643. which laſted till the 16th of *May*, 1644. at which time he was authoriſed by Commiſſion as Lieut. Col. to command a Regiment of Dragoons; in which ſervices having been in many engagements, he hopes it will eaſily appear, that he hath not only behaved himſelf honeſtly and faithfully, but alſo valiantly and ſtoutly, in the midſt of many diſcouragements, God crowning ſome of his endeavours with ſucceſs; eſpecially at the taking of *Tickell-Caſtle*, and Sir *Francis Worthley*'s garriſon, at which place your petitioner was ſhot through his arm. The premiſes conſidered, he humbly beſeecheth this Honourable Aſſembly to perfect that Juſtice, which you ſo happily began for your petitioner, and to give him reparation for his large and tedious impriſonment, and heavy ſufferings by the *Star-Chamber* decree; he having waited four years with patience for that end, though he loſt by his impriſonment all that he had, and was deprived of a profitable calling, being then in the way of a Factor in the *Low Countries*; and alſo to take off the King's fine, and to conſider his ſervice with the Earl of *Mancheſter*, wherein he faithfully adventured his life, ſpent a great deal of his own money, and loſt at *Newark*, when Prince *Rupert* raiſed the ſiege, almoſt 100 *l.* being ſtripp'd from the crown of the head to the ſole of the foot, beſides his former loſſes at *Kenton* and *Brentford*: And that you will be pleaſed, for his preſent ſubſiſtence, to appoint the payment of ſo much of his preſent arrears, as you in your great wiſdoms ſhall think fit, to ſupply his urgent and preſſing neceſſities, there being now due to them 600 *l.* and upwards. And that Col. *King* may be commanded to account with the petitioner, which formerly he hath refuſed to do (though commanded by his General), and to give him debentures for what is due by the State in his ſervice, and to pay him what he hath received for the petitioner, and detained from him.

And he ſhall pray, &c.

JOHN LILBURN.

The annex'd Petition thus followeth.

To the Houſe of Commons now aſſembled in the High-Court of Parliament;

The humble Petition of John Lilburn *priſoner in the* Fleet;

In all humility ſheweth,

THAT in *December* next will be three years, your petitioner, upon ſuppoſal of ſending over certain Books of Dr. *Baſtwick*'s, from *Holland* into *England*, was by Dr. *Lamb*'s warrant without any examination at all ſent to the *Gatehouſe* priſon, and from thence within three days removed to the *Fleet*, where he abiding priſoner, in *Candlemas-Term* following, was proceeded againſt in the Honourable Court of *Star-Chamber*: where your petitioner appearing (and entering of his name, for want of money his name was ſtruck out again), and he refuſing to take an Oath to anſwer to all things that ſhould be demanded of him (for that your petitioner conceived that Oath to be dangerous and illegal) without any interrogatory tendered him, for his refuſing the ſaid Oath, he was proſecuted and cenſured in the ſaid Court moſt heavily, being fined 500 *l.* to the King, and ſent priſoner to the *Fleet*. And in *Eaſter-Term* following, was whipped from the *Fleet* to *Weſtminſter*, with a three-fold knotted cord, receiving at leaſt 200 ſtripes; and then at *Weſtminſter*, he was ſet on the Pillory the ſpace of two hours, and (over and above the cenſure of the Court) at the Warden of the *Fleet*'s command, was gagged about an hour and a half; after which moſt cruel ſufferings, was again returned to the *Fleet* cloſe priſoner. When through his ſaid ſufferings, the next morning he being ſick of an extream fever, could not have admittance for his Surgeon to let him blood, or dreſs his ſores, till the afternoon of the ſaid day; tho' the Surgeon, in pity to the priſoner, went to *Weſtminſter* to the Warden himſelf; and your petitioner hath been cloſe priſoner in the *Fleet* ever ſince, where in a moſt cruel manner he hath been put into iron fetters, both hands and legs, which cauſed a moſt dangerous ſickneſs that continued ſix months; and after ſome ſmall recovery, was again laid in irons, which cauſed at leaſt five months ſickneſs, more dangerous than the former. During which time of ſickneſs, they moſt inhumanly denied his friends to come and ſee him, until they would give them money for their admittance, and they have denied many to come at all; and have beaten and kicked, and otherwiſe moſt ſhamefully abuſed ſuch his friends as came to ſee him in his great diſtreſs, and to bring him food and neceſſaries to ſuſtain his life, and alſo have kept his ſervant from him, and his food. So that if he had not been relieved by ſtealth of his fellow-priſoners, he had been kept from any food at all, for above the ſpace of 10 days together: and the priſoners that out of

* Where, (I very well remember,) Sir *Arthur Haſlerig* was one of my zealous and forward Judges; and when Warden *James Ingram* came to the Bar of the Court of Wards, and brought Mr. *Herne* the Counſellor to plead for the Lords, and in excuſe of himſelf, who ſtiffly inſiſted in a high manner upon the orders and decrees of Star-Chamber, upon which I very well remember Sir *Arthur*, with a great deal of indignation, ſaid unto *Herne*, I value not a Decree of the Lords in Star-Chamber a ruſh, if it be not expreſsly according to the tenor of their Commiſſion, the Law: and I further tell you, it is a ridiculous thing, Sir, to ſummon Parliaments to meet together to make Laws, if the Lords Decrees in Star-Chamber againſt Law ſhould be binding. And therefore, although you have proved for your Client Mr. *Ingram*, that the Lords in open Court (the Court ſitting) commanded him on the Pillory to gag Mr. *Lilburn*, for ſpeaking againſt them, yet I tell you by Law that order ought to have been in writing according to the cuſtom of the Court, which you confeſs it was not, and therefore Mr. *Ingram* muſt ſmart for his executing of orders on Mr. *Lilburn* made illegally.

Pity have relieved him, have been moſt cruelly puniſhed, and the Keepers have not forborn to confeſs themſelves, that they ſhould have ſtarved him long ago, had not the priſoners relieved him. And beſides all this, they have moſt cruelly beaten and wounded him, to the hazard of his limbs, and danger of his life, had he not been reſcued and ſaved by the priſoners of the ſame houſe. In which moſt miſerable condition, your poor petitioner hath continued a priſoner for the ſpace of about two years and a half, and is like ſtill to continue in the ſame, under the mercileſs hands of the Warden of the *Fleet*, who hath denied lawful liberty to his priſoner, for that he hath ſaid, he muſt obſerve the man that hath ſo great a ſway in the Kingdom, intimating the Archbiſhop.

All which his deplored condition, and lamentable miſeries, he moſt humbly preſenteth to this moſt Honourable Aſſembly, beſeeching them to be pleaſed to caſt an eye of compaſſion towards him, and to afford him ſuch relief from his cenſure and hard impriſonment, as may ſeem good to your wiſdoms, who otherwiſe is like to periſh under the hands of mercileſs men,

And your Petitioner ſhall ever pray (as in duty he is bound) to the Lord to bleſs and proſper this Honourable Aſſembly. JOHN LILBURN.

At the debate of which, there was not a little oppoſition by ſome, who (as I conceive) thought I was not capable of enjoying juſtice, although to my knowledge I never did an act in all my life that put me out of the protection of the law, or that tended to the diſfranchiſing me of being a Denizen and Freeman of *England*; and therefore ought to enjoy as great a privilege in the enjoyment of the benefit of the Law of *England*, as any free Denizen of *England* whatſoever, by what name or title ſoever he be called. The iſſue of which debate, ſo much as I have under the Clerk's hand, thus followeth.

Die Lunæ, 10 *Nov.* 1645.

Ordered, &c. That the Vote formerly paſſed in this Houſe, concerning the proceedings againſt Lieut. Col. *Lilburn* in the *Star-Chamber*, be forthwith tranſmitted to the Lords.

Ordered, &c. That it be referred to the Committee of accounts to caſt up and ſtate the accounts of Lieut. Col. *Lilburn*, and to certify what is due to him, to this Houſe. *H. Elſynge, Cler. Parl. D. Com.*

After paſſing theſe Votes, I found quick diſpatch to the Lords; and upon the firſt of *December*, 1645, by ſpecial decree, they took off the fine ſet upon me by the *Star-Chamber*; and afterwards at their open Bar judicially, upon the 13th of *February*, 1645, appointed me a ſolemn hearing *de novo* of the whole matter; and aſſigned Mr. *John Bradſhaw* and Mr. *John Cook* for my Counſel.

Lieut. Col. John Lilburn's *Sufferings, as they were repreſented and proved before the Right Honourable the* Houſe of Peers, *in Parliament aſſembled, the* 13*th day of* February, 1645.

MR. *Bradſhaw* and Mr. *Cook* being aſſigned for Counſel with the ſaid Mr. *Lilburn*; Mr. *Bradſhaw* having ſuccinctly, and ſo truly opened the caſe, as if he had been an eye-witneſs of his Client's ſufferings, acquainted their Lordſhips, that the ſame had received a full and ſolemn hearing before a Committee of the honourable Houſe of Commons: upon whoſe report it was by that honourable Houſe, *May* 4, 1641, reſolved upon the queſtion, *That the ſentence of the* Star-Chamber *given againſt* John Lilburn *is illegal, and againſt the liberty of the ſubject*; and alſo Bloody, Wicked, Cruel, Barbarous, and Tyrannical; and likewiſe further reſolved upon the queſtion, *That reparation ought to be given to Mr.* Lilburn, *for his impriſonment, ſufferings and loſſes, ſuſtained by that illegal ſentence.* And now, my Lords, they have tranſmitted them to your Lordſhips, by whoſe noble favour and juſtice we are now before your Honours, to lay open the illegality of that ſentence, and all the proceedings thereupon, and to crave your Lordſhips juſtice for reparations, proportionable to our Client's ſufferings.

And in the firſt place he preſented an Order, whereby Mr. *Lilburn* was firſt illegally attached, and committed to the priſon of the *Gatehouſe*, which was read in theſe words.

Sexto Decemb. Anno Dom. 1637.

Emanavit Attach. Direct. Wragge, & Flamſteed, pro Corporis Capt. Johannis Lilburn de Civitate London, ad immediate admittend. &c. Signat. per Lambe, Gwynn, & Aylett. } *Ex directione Baker Cler. Cappellani Lond.*

Exam. *Edwardus Latham Reg. Regi Deput.*

The *Engliſh* of which thus followeth:

The 6th of *Decemb.* 1637.

There iſſued an attachment directed to *Wragge* and *Flamſteed*, for the taking of the body of *John Lilburn*, of the City of *London*, and to bring immediately, *&c.* Signed by *Lambe, Gwynn*, and *Aylett.* } By direction of the Court, *Baker*, Clerk Chaplain.

Examined by *Edward Latham*, Deputy of the Regiſter.

Which Order being read, Mr. *Bradſhaw* obſerved, that the original impriſonment itſelf was illegal, becauſe they never convented Mr. *Lilburn* to ſpeak for himſelf, nor examined him upon any crime. But, my Lords, it is no marvel that ſuch kind of injuſtice as this proceeded from thoſe High Commiſſioners, becauſe it was their uſual practice to be attachers, judges, gaolers and executioners themſelves, without regard of any legal way of proceedings. He then deſired their Lordſhips, that the ſentence againſt Mr. *Lilburn* in the *Star-Chamber* might alſo be read, which was accordingly done; *viz.*

In Cam. Stel. coram Canc. ibidem 13 *Die Febr. Anno Decimo tertio Car. Reg.*

Lord *Coventry*, Lord Keeper, *&c.*

WHereas upon information to this Court, the 9th of *February*, by Sir *John Banks* Knt. his Majeſty's Attorney-General, that *John Lilburn* and *John Wharton*, then preſent at the Bar, were the 24th of *Jan.* laſt, ordered to be examined upon interrogatories, touching their unlawful printing, importing, publiſhing and diſperſing of libellous and ſeditious Books, contrary to the decree of this Court, which was verified by Affidavit; and being brought up to the Office to appear and be examined, the ſaid *Lilburn* refuſed to * appear; and both of them denied to take an Oath to make true anſwer to Interrogatories, as appeared by the certificate of Mr. *Goad*, Deputy-Clerk of this Court: The Court did on that day order, that their appearances ſhould then be recorded, they being preſent in Court as aforeſaid; and that in reſpect the ſaid delinquents did then again contemptuouſly refuſe to take their Oaths, tendered unto them in open Court, they ſhould be remanded to the Priſon of the *Fleet*, there to remain cloſe priſoners, until they conform themſelves in obedience to take their Oaths, and be examined; and that unleſs they did take their Oaths, and yield to be examined by *Monday* night then next following, and now laſt paſt, their Lordſhips would on this ſitting day proceed to a cenſure againſt them for their contempts therein.

Now this day the ſaid *Lilburn* and *Wharton* being again brought unto the Bar, his Majeſty's ſaid Attorney informed this Honourable Court, that they ſtill continued in their former obſtinacy, and contemptuouſly refuſed to take their Oaths, to make true anſwer to the † Interrogatories, although they had been ſent for, and their Oaths offered to be given unto them by Mr. *Goad*, Deputy-Clerk of this Court, who now certified the ſame in Court. And therefore his Majeſty's ſaid Attorney humbly prayed on his Majeſty's behalf, that their Lordſhips would now proceed to cenſure againſt the ſaid delinquents for their great contempts and diſobedience therein. Whereupon their Lordſhips endeavoured by fair perſuaſions to draw them to conformity and obedience; and withal offered, that if yet they would ſubmit and take their Oaths, their Lordſhips would accept thereof, and not proceed to cenſure againſt them. But ſuch was the inſufferable diſobedience and contempt of the ſaid delinquents, that they ſtill perſiſted in their former obſtinacy, and wilfully refuſed to take their Oaths. In reſpect whereof the whole Court did, with an unanimous conſent, declare and adjudge the ſaid *Lilburn* and *Wharton* guilty of a very high contempt, and offence of dangerous conſequence and evil example, and worthy to undergo a very ſharp, exemplary and ſevere cenſure, which may deter others from the like preſumptuous boldneſs, in refuſing to take a legal ** Oath; without which, many great and exorbitant offences to the prejudice and danger of his Majeſty, his Kingdoms, and loving Subjects, might go away undiſcovered and unpuniſhed. And therefore their Lordſhips have now ordered, adjudged and decreed, that the ſaid *Lilburn* and *Wharton* ſhall be remanded to the *Fleet*, there to remain until they conform themſelves in obedience to the orders of this Court, and that they ſhall pay 500*l.* a-piece for their ſeveral fines to his Majeſty's uſe; and before their enlargements out of the *Fleet*, become bound with good ſureties for their good behaviour. And to the end that others may be more deterred from daring to offend in the like kind hereafter, the Court hath further ordered and decreed, That the ſaid *John Lilburn* ſhall be whipped through the ſtreet, from the Priſon of the *Fleet* unto the Pillory, to be erected at ſuch time and in ſuch place as this Court ſhall hold fit and direct; and that both he and the ſaid *Wharton* ſhall be both then ſet in the ſaid Pillory, and from thence be returned to the *Fleet*, there to remain according to this Decree.

John Arthur, Dep.

At the concluding of which, Mr. *Bradſhaw* obſerved, that this ſentence was *felo de ſe*, guilty of its own death; the ground whereof being, becauſe Mr. *Lilburn refuſed* to take an Oath, to anſwer to all ſuch queſtions as ſhould be demanded of him, it being contrary to the laws of God, Nature, and the Kingdom, for any man to be his own accuſer: the execution of which cruel and bloody ſentence was proved by ſeveral witneſſes of quality and good repute upon Oath at their Lordſhips bar, the ſubſtance of whoſe teſtimony was:

In the firſt place,

Mr. *Thomas Smith* Merchant, upon his Oath declared to their Lordſhips, that he ſaw Mr. *Lilburn* tied to a Cart at *Fleet-bridge*, being ſtripped from the waiſt upward, and whipped from thence to *Weſtminſter*; and that ſo near as he was able to judge, every two, three or four ſteps he had a laſh, with a whip that he was ſure had two or three cords tied full of knots; and for the number he did not judge them ſo few as 500, and he thought that if he ſhould ſay 500 and 500, he ſhould not ſay amiſs: but 500 he was confident was the leaſt. And that he ſaw him ſet upon the Pillory, *&c.* the Officers being very cruel towards him, or any that ſpoke unto him.

The next witneſs was Mrs. *Mary Dorman*; the ſubſtance of whoſe teſtimony upon Oath was, that ſhe ſaw Mr. *Lilburn* whipped from *Fleet-bridge* to *Weſtminſter*, in ſuch a barbarous and cruel manner, that ſhe was not able to expreſs it, and that ſhe did believe that both his ſhoulders were ſwelled almoſt as big as a penny-loaf, with the bruiſes of the knotted cords; and that ſhe did ſee him ſet upon the Pillory immediately, above the ſpace of two hours bare-headed, the ſun ſhining very hot, and he took occaſion to declare the unjuſtneſs of his ſentence, upon which the Warden of the *Fleet* cauſed him to be gagged above an hour, and did it with ſuch cruelty, that he made his mouth to bleed.

Mr. *Higgs* his Surgeon teſtified upon Oath to this effect; that he did not ſee his patient Mr. *Lilburn* whipped, but being deſired to perform the office of a Surgeon to him, he that day dreſt his back, which was one of the miſerableſt that ever he did ſee; for the wales in his back, made by his cruel whipping, were bigger than Tobacco-pipes, and that he ſaw him ſet in the Pillory, and gagged.

And Mr. *Thomas Hawes* upon Oath teſtified to this effect; that he did ſee Mr. *Lilburn* ſet upon the Pillory, above (as he judged) the ſpace of two hours, the Sun ſhining very hot, and they would not ſuffer him to have any cover upon his head: and he taking occaſion to ſpeak of the Biſhops cruelty towards him, and how unjuſtly they had cauſed him to be dealt with, the Warden of the *Fleet* cauſed him to be gagged in ſuch a cruel manner, as if he would have torn his jaws in pieces, inſomuch that the blood came out of his mouth.

In the next place, *A ſecond ſentence made in the Inner Star-Chamber* was read, which thus followeth.

* *Lilburn* did enter his Name, but refuſing to give them Money they put out his Name again.

† They never ſhewed the Interrogatories to *Lilburn*, though he deſired the ſight of them, that ſo he might know what he did ſwear to.

** The ſum of which was, You ſhall ſwear to make true anſwer to all things that are aſked you, ſo help you God.

At the Inner Star-Chamber, the 18*th of* April, *Anno Dom.* 1638.

Preſent Lord Archbiſhop of Canterbury, *Lord-Keeper, Lord-Treaſurer*, &c.

WHereas *John Lilburn* priſoner in the *Fleet*, by ſentence in the *Star-Chamber*, did this day ſuffer condign puniſhment for his ſeveral offences, by whipping at a Cart, and ſtanding in the Pillory; and as their Lordſhips were this day informed, during the time that his body was under the ſaid execution, audaciouſly and wickedly did not only utter ſundry ſcandalous ſpeeches, but likewiſe ſcattered divers copies of ſeditious Books amongſt the people that beheld the ſaid execution; for which very thing, amongſt other offences of like nature, he hath been cenſured in the ſaid Court, by the aforeſaid ſentence: it is therefore by their Lordſhips ordered, that the ſaid *John Lilburn* ſhould be laid alone with irons on his hands and legs, in the Wards of the *Fleet*, where the baſeſt and meaneſt ſort of priſoners are uſed to be put; and that the Warden of the *Fleet* take ſpecial care to hinder the reſort of any perſons whatſoever unto him; and particularly, that he be not ſupplied with money from any friend: and that he take ſpecial notice of all Letters, Writings, and Books brought unto him, and ſeize and deliver the ſame unto their Lordſhips: and take notice from time to time who they be that reſort unto the ſaid priſon, to viſit the ſaid *Lilburn*, or to ſpeak with him, and inform the Board thereof. And it was laſtly ordered, that all perſons that ſhall be hereafter produced to receive corporal puniſhment, according to ſentence of that Court, or by order of the Board, ſhall have their garments ſearched before they be brought forth, and neither writing nor other thing ſuffered to be about them; and their hands likewiſe to be bound, during the time they are under puniſhment. Whereof, together with the other premiſes, the ſaid Warden of the *Fleet* is hereby required to take notice, and to have eſpecial care, that this their Lordſhips order be accordingly obſerved.

Examined per Dudley Carleton.

And the execution of this latter ſentence in a moſt barbarous and inhuman manner, was punctually proved by ſufficient witneſſes, as followeth; *viz.* Mr. *Higgs* his Surgeon again teſtified, that that night Mr. *Lilburn* ſuffered; he was had back to the *Fleet*, and he repairing to Dr. *Grant*, to crave his advice, he adviſed him to let his patient blood, to prevent a fever; and he accordingly came the next morning to the *Fleet* to let his patient blood, and dreſs his ſores, but he found him locked up cloſe in a room, and was by the Officers of the *Fleet* denied acceſs unto him. Whereupon he immediately went to the Warden, being then at *Weſtminſter*, who denied him acceſs to the ſaid Mr. *Lilburn*, till the afternoon that he came home; which was a great act of cruelty, and much to the danger of Mr. *Lilburn*'s health, and welfare: and the next day they removed him down to the Common Gaol, where they laid him in irons, and ſeveral times wounded him, to the extreme hazard of his life, and ſeveral times denied me acceſs to him in his extremity.

Dr. *Hubbard*, Juſtice of the Peace, made Oath to this effect; that when Mr. *Lilburn* was priſoner in the *Fleet*, he was deſired as a Phyſician to viſit him: and going ſo to do, he was again and again denied acceſs to him: but upon much importunity to the Warden, he was admitted to him, whom he found in an extream violent fever, lying in irons upon both hands and legs, to the extreme hazard of his life.

Mrs. *Mary Dorman* further declared, that after Mr. *Lilburn* had ſuffered, ſhe went often to viſit him, who was laid in irons, and his friends denied acceſs to him; and that the Officers of the *Fleet* ſtrongly endeavoured to ſtarve him: ſo that many times his friends were forced to bring his meat to the poor men's bag, and give them money to convey it to him through a hole in a wall betwixt them and him. Mr. *Thomas Hawes* further declared, that after Mr. *Lilburn* ſuffered, he often went to viſit him, and was beat by the Gaolers, and was in danger to have loſt his life for ſo doing; and that they ſo ſtrongly laboured to ſtarve Mr. *Lilburn*, that they were forced to convey his diet to him by the poor men that begged at the grate: but the Gaolers finding out that Mr. *Lilburn* got his diet that way, they dealt ſo cruelly with the poor men, that Mr. *Lilburn* was deprived of that way of relief, and then his friends got the ſon of one *Archer* that was priſoner in the next room to him, for accuſing the Deputy of *Ireland* for murdering one *Eſmond*, to convey his victuals to him: which was done by ſtealth, through a hole where a board was pulled up in his floor, when the reſt of the priſoners were at the Chapel at ſervice; and, my Lords, divers times the conveying of his meat to him, coſt him and his friends, upon the priſoners, *&c.* more than the meat itſelf.

Robert Ellis, ſome time a fellow-priſoner with Mr. *Lilburn* in the *Fleet*, upon Oath declared before their Lordſhips, that the Officers of the *Fleet* after they brought Mr. *Lilburn* into the common Wards, uſed him very barbarouſly and cruelly, laying him for a long time in irons, keeping his friends from him, and his victuals; and ſeveral times had like to have ſlain and murdered him, and he verily believes had effected it, if he had not help'd him; for which they took his bed from him, and put him off the charity, and kept him five weeks in a dungeon, and had like to have murdered him, and afterwards removed him to the King's-Bench, that ſo they might the more eaſily have their wills of Mr. *Lilburn*, &c.

Their Lordſhips being ſatisfied of the Injuſtice and Illegality of the proceedings, Mr. *Bradſhaw* ſaid, that he conceived no man's ſufferings in the Kingdom had been ſo great as his Client's were: for a Gentleman to be ſo cruelly tortured and whipped, pillory'd, gagged, cloſe impriſoned, ironed, beat and wounded, and that contrary to Law, is a cruelty unheard of, and therefore hoped that for ſuch unparalleled ſufferings, and oppreſſions, the fair hand of their Lordſhips honourable Juſtice would give and reach him forth unparalleled damages; and though many of his Judges that did him injuſtice be dead, yet he hoped the hand of Juſtice of their Honours, joined with the honourable Houſe of Commons, will be ſo long, as to reach their living and ſurviving eſtates, and out of them, *&c.* make him ſpeedy, large and unparalleled reparations.

Mr. *Cook* then ſpoke in the behalf of Mr. *Lilburn* (and afterwards printed his argument), and ſaid the puniſhment inflicted upon him may be reduced to four heads:

(1.) Impriſonment, whereby a man is buried alive, loſes the comfort and benefit of his five ſenſes, and is made *Corpus immobile legis*, the unmoveable ſubject of the law, or as a dead carcaſe. 'Tis true, that in itſelf it is the eaſieſt of all corporal puniſhments: but the continuance of it, makes it ſuch a lingering conſumption, that it is better to be upon the rack an hour, than to be impriſoned a year: as it is better to be once wet to the ſkin, than to be ſubject to a perpetual dropping: eſpecially for an active ſpirit, there is no ſuch torment as to deprive him of liberty; for active *Theſeus* was condemned only to ſit ſtill: there is no end of ſuch a miſery, as the *Heathen* perſecuting Tyrant ſaid, *Nondum tibi redii in gratiam*; to put a man out of his pain, was always counted a favour. But Mr. *Lilburn*'s impriſonment was aggravated by three ſteps or gradations.

1. A cloſe impriſonment, not the deareſt friend to come to him; we do not find that any of the primitive *Chriſtians* were uſed ſo by the Tyrants, for then that heavy charge might be anſwered in the Scripture, *I was in priſon, and ye viſited me not*; extraordinary matters of ſtate and high concernments always excepted: but the Surgeon was not permitted ſome time to come to Mr. *Lilburn* to dreſs him, nor the Phyſician when he was in a fever; a cruelty unheard of amongſt the *Turks:* for they are careful of their ſlaves in their ſickneſs, and fatten them, that they may endure their blows; but it is too probable that thoſe which were Mr. *Lilburn*'s malicious enemies, did too much thirſt after his blood.

2. The Keepers were ordered to take care that no money be conveyed to him, which argues that they had a deſire to ſtarve him: the Prophet ſaith, *It is better to die by the ſword, than famine*, which is the greateſt of all torments; for all puniſhments may be undergone by patience, but only hunger: which the more any man thinks by patience to overcome, the more violent it is. Undoubtedly, had it not been for the pity of ſome poor reſolute fellow-priſoners, Mr. *Lilburn* had been ſtarved to death: far worſe than any of the four *Roman* puniſhments, which were *lapidatio*, *combuſtio*, *decollatio*, *ſtrangulatio*, ſtoning, burning, beheading, and ſtrangling. How ſeverely, yet moſt juſtly, did the ſame Judges ſeveral times puniſh the intent to poiſon or deſtroy another man? The going about to murder, nay the giving of the lye, becauſe it is preparatory to murder, by provoking quarrels, was cenſurable in that Court; *à multo fortiori*, much more from the ſtronger, then in this caſe uſed, where there was ſo much cruelty inflicted, that death might probably have enſued, had not God by his extraordinary mercy ſupported him in thoſe ſad afflictions, thoſe unjuſt Judges for tranſgreſſing not only the bounds of humanity, but all the rules of their own ordinary Juſtice, ought to make Mr. *Lilburn* anſwerable ſatisfaction.

3. This impriſonment was for about three years, until he petitioned the Parliament. Many times the firſt motions of anger are not in a man's own power; becauſe he would not accuſe himſelf as they deſired, they might have in a paſſion committed him, and the Sun might have gone down upon their wrath; nay, the Moon might have made her peragration, or the ſummer ſeaſon might have melted their frozen conſciences, or the winter cold have allayed the heat of their malice, or the Sun might have made his revolution, but their malice continued three years; and had not he been delivered by the Juſtice of the Parliament, in probability might have continued for ever.

(2.) Whipping, a moſt painful and ſhameful puniſhment; Flagellations and Scourgings being for ſlaves and incorrigible rogues, and hedge-robbers. *In undecimo Elizab.* one *Cartwright* brought a ſlave from *Ruſſia*, and would ſcourge him cruelly, for which he was queſtioned; and it was reſolved, that *England* was too pure an air for ſlaves to breathe in; and it was often reſolved in the *Star-Chamber*, that no Gentleman was to be whipp'd for any offence whatſoever: it being well known that *John Lilburn*'s anceſtors have been ancient Gentlemen, and that which theſe Judges could not be ignorant of, eſpecially the Earl-Marſhal, who is preſumed to know all the ancient Gentry in the Kingdom. But the like whipping was never read of amongſt the *Aſſyrians*, *Perſians*, *Grecians*, or *Romans*. For,

1. It was from the *Fleet* to *Weſtminſter* (above a mile diſtance) a great concourſe and confluence of people looking upon him, as if he had been ſome miſerable ſlave.

2. He received every two or three ſteps a blow, 500 ſtrokes at the leaſt; for one Mr. *Smith*, a Merchant, that went along with him, teſtified that ſo far as he was able to judge, he received 500 or 1000, but of the firſt he was moſt certain; and this was with a treble-corded whip, with at leaſt twenty knots upon it.

Amongſt the *Romans* no malefactor had ever above forty ſtripes, and every ſtroke ſtood for three ſtripes, for the whip was of three thongs; and but one knot at the end of every thong. St. *Paul* received thirty-nine ſtripes, which was but thirteen blows. Not long ſince in *Orleans*, a Prieſt was ſentenced to be whipp'd for fornication, having abuſed a poor maid, telling her that their popiſh St. *Francis* would come and lie with her ſuch a night, at which time he perſonated and feigned himſelf to be St. *Francis*, and was taken in bed with her; and it was earneſtly preſſed by the King's Advocates, that he might receive fourteen blows with a three-corded whip, which is conſtantly uſed for ſuch caſtigations, becauſe it was an abominable wickedneſs: but the Judges would not ſuffer him to have above thirteen blows, becauſe *ampliandi ſunt favores*, favours are to be inlarged. And in doubtful matters it muſt always be preſumed for clemency and gentleneſs; according to which account, Mr. *Lilburn* received 10,000 ſtripes: for in every blow there was twenty ſtripes, by reaſon of the twenty knots, which being multiplied is 10,000, and in every ſtripe there was ſhame and pain, compreſſion of the fleſh, bruiſings and effuſion of blood.

(3.) The Pillory, a puniſhment ſomething painful, but exceeding ſhameful, and moſt terrible to a generous nature, to ſtand two hours in open view of all men, as if he had been unworthy to tread upon the earth, the Sun ſhining very hot upon him, and not ſuffered to keep on his hat; and this immediately after his cruel whipping, that ſo they might put him to all the torture and pain that they could, argues abundance of wrath and malice.

This puniſhment of ſtanding upon the Pillory, was firſt invented for Mountebanks and Cheats, that having gotten upon banks and forms, to wrong and abuſe the people, were exalted in the ſame kind, to ſtand conſpicuous to the view and open ſhame of the people; but for a Gentleman to be ſo ſerved, was never heard of, unleſs by that cruel Court.

(4.) Gagging, an unmanly and barbarous cruelty, to be exerciſed upon beaſts, not men, for man differs from brutes, both *ratione & oratione*, in reaſon and ſpeech; a puniſhment never heard of in any age: cutting out of tongues, and perforation in caſes of blaſphemy have been heard of, but never

never in a matter of such a nature; and this to continue for above an hour, till the blood gush'd out of his mouth, as if they would have pluck'd his jaws in pieces, and all this for nothing; O insufferable torments!

So that by his imprisonment he was made a stock, a dead trunk, or picture of a man, that hath eyes and sees not, hands and handles not, *&c.* By whipping they endeavoured to make him a rogue, or a slave; by the third punishment of the pillory, to make him a cheater, guilty of forgery and perjury; and by gagging, to make him a beast, and so upon the whole matter to deprive him of his reasonable soul, such cruelties that were never invented but by *Tygers* and *Wolves* in human shapes, *ferocitas Luporum, in humana figura.* But then the persons that were so cruel and tyrannical aggravates the offence.

1. This cruelty was commanded to be executed by an eminent Court of Justice, professing Christianity, *pessima est injustitia quæ fit sub colore justitiæ:* 'tis the greatest injustice to oppress and do injury, under a pretence of Justice. How often was it resolved in that Court, that for a Justice of Peace or Constable to commit a riot, was ten times more severely punishable than in a common person, because it is to use, or rather abuse that sword of authority, to commit or countenance an unlawful action, which was ordained and put into their hands to suppress it.

2. The Eminency of the persons augments the offence, *qualitas personæ auget peccatum*; for a Gentleman to act against the rule of the Law and Gentility, is more reprehensible than in vulgar persons. It was called the *Court of Star-Chamber*, from the eminency of the persons, which were Judges: Stars of the greater magnitudes, as being the highest Court of ordinary Justice; but Mr. *Lilburn*'s Judges, instead of putting on the garment of Justice, were cloathed from head to feet, and their conscience oiled and moistened, with cruelty and injustice mixed with the most poisoned malice that ever entered into the hearts of any Judges.

And though some of them be dead, yet Justice lives though the party be dead; whatsoever becomes of them, their estates ought to make satisfaction according to their own rules, *qui non luet in corpore, solvit in bursa*; he that suffers not in his body, must suffer in his purse.

A principal actor in this bloody tragedy, was the Lord-Keeper *Coventry*, not less eminent in cruelty than in place, Judge of the highest seat of mercy, the *Chancery*, which abated the edge of the Law, when it is too keen; for the chief Judge of mercy to degenerate into a savage cruelty, not heard of amongst the *Barbarians*, how heinous is it? Not to speak any thing of the decapitated Archbishop, that monster of cruelty, and subtlety, whose estate we fear is dead with him, and therefore little can be expected from it.

The Bishop of *London*, then Lord-Treasurer, was a principal sentencer of Mr. *Lilburn*; by their own Canons, no Bishop ought to have a hand in blood, because they pretend to be mild shepherds, but cruelty was their genius.

The Earl of *Arundel* was of an imbittered spirit against Mr. *Lilburn*, nothing but corporal punishment would allay the heat of his malice; who being Earl-Marshal, could not be ignorant that *John Lilburn* was a Gentleman: for him that by his place was to protect all Gentlemen from injuries, and should scorn to be active in the inflicting such corporal, ignominious, cruel punishments upon a Gentleman, is a transcendent transgression against the laws of state and honour. It hath been censurable in that Court, to speak contemptuous words of a Gentleman; and how often had he ordered satisfaction, for saying such a one is no Gentlemen? And yet the same court and persons not only to say a Gentleman is a rogue, but so to use him, as Mr. *Lilburn* was, is the greatest scandal to the public Justice of the Kingdom, that hath been heard of.

The Judges assistants, that are called the *Fathers of the Law*, and are said to carry Law in their breasts, for them to begin and promote such an unjust and illegal sentence, for them that are set as Centinels to watch over and preserve the people's liberties, to betray a poor Gentleman into the hands of mercileſs men, was an offence of an exceeding high nature: for had they declared the illegality of those proceedings, and protested against it, as by virtue of their places (in duty) they ought to have done, it might have prevented the sentence. If the proceeding had been regular by informations, and examinations, or *ore tenus*, as it was not, unless there had been some direct proof or speaking circumstance or very probable presumption, that Mr. *Lilburn* had been guilty of some high crime; it had been a grievous thing in them to have assisted in so cruel punishments. But when the pretence was no other, but concerning some of Dr. *Bastwick*'s, Mr. *Burton*'s, or Mr. *Prynne*'s Books, which they knew could not be any breach of the peace, and that in the *Star-Chamber*, where there was no information, as in Mr. *Lilburn*'s case, to administer an Oath, was all one with the High-Commission, and directly contrary to the petition of right, in 3 *Car.* and Justice *Jones* had no reason for inflicting the corporal punishment.

But because Mr. *Lilburn* was a young man, therefore it was fit he should be punished: Is not this to turn Justice into Wormood? Such Judges have ever been the most dangerous pests to a State and Kingdom, and in former times, for less offence, most severely punished in their persons and estates. The Lord *Cottington* thirsted exceedingly after the blood of this poor Gentleman, and the High-Commissioners had their hands as deep as any of the rest, in regard that by their warrant he was first committed: the most unjust and tyrannical that ever was heard of, to command a poor Gentleman to be sent to prison, without conventing him before them, or asking him whether he was guilty of any misdemeanor; a mere usurpation of authority, taking the sword of Justice into their own hands, not caring to destroy a poor Gentleman, so as they might curry favour with the Prelates their grand patrons; those High-Commissioners making themselves Judges, Gaolers, and Executioners, and what not, to destroy the innocent.

It is considerable what punishment the Gaolers and Executioners of this cruel sentence have deserved: for however if a writ be directed to a Sheriff, commanding him to take the body of one who is a Peer of the Realm, or a privileged person, the Officer is excused by his warrant; yet when punishments are clearly against the Law of God, Nature, and Nations, which prohibit all such cruelties and inhumanities; to make them bleed for the blood of Mr. *Lilburn*, would be an honourable piece of Justice, and a precedent of much safety to the subjects in after-times, and Officers would not dare to be so unmercifully cruel; as the Sheriffs smarted for the Ship-money, though they had process from the *Exchequer*.

Mr. *Lilburn*'s sufferings are beyond expression, and no honest heart but is feelingly sensible of every blow that was given him; in his imprisonment, Whipping, Pillory, Gagging, Beatings, Hunger-bitings, and the Irons laid upon him, every true-hearted *Englishman*, that stands for the laws and liberties of the subject, was so used, and abused; for it might have been any such man's case, as well as his. His estate quite exhausted by their cruelties, his trade lost, whereby he gained his livelihood, being before that time in a hopeful way of a Merchant, and well known to be very industrious in his calling; a man active for the Public, and by his merits hath procured the title of Lieutenant-Colonel in the present wars: What damages the Parliament will be pleased to adjudge and order him, he humbly submits to their great Wisdoms and honourable Justice: certainly not any of them would have suffered so much for ten thousand pounds.

It is the Lord's great mercy that he is yet alive, having conflicted with, and gone through such a sea of punishments and miseries. True it is, that in point of reparations, there is no proportion between money and such corporal punishments, to a generous spirit: yet as there was never more indignity and a greater dishonour to the Justice of the Kingdom, than by this wicked sentence, and the cruel execution thereof; thereby proclaiming it to all the world that an *English* Gentleman must be made a slave, to satisfy the malicious and virulent humours of a tyrannical Court of Justice:

So it will be a very great honour and reparation to the public Justice of this Land, to give and adjudge Mr. *Lilburn* exemplary and proportionable damages, to be levied out of the estates of his unjust and malicious Judges, through whose injustice he not only suffered such cruelties for three years, that not one of them would have suffered the like, nor received one of his stripes for many thousands; but lost his trade and livelihood.

The judicial law was blood for blood, an eye for an eye, tooth for tooth, *&c.* *Daniel*'s accusers were cast into the den of Lions, with their wives and children, though *Daniel* had no hurt by a miracle of mercy; by the equity and morality whereof, Mr. *Lilburn* ought to have good and proportionable reparation out of the estates of his unjust Judges and Tormentors, who sought for his blood: but that God preserved him by his extraordinary love and favour.

That all drooping spirits may chear up and be incouraged, that Justice will run down like a mighty stream, when it shall be executed upon the greatest offenders: as now there is good hopes that Mr. *Lilburn* shall by ordinance of Parliament have speedily good damages, answerable to his great sufferings, ordered and adjudged him, to be raised out of the estates of his unjust Judges, that may be paid unto him without further expence, who hath been at such extraordinary charges about the same, that so his reparation may be not only just, but seasonable, by which he shall be obliged to venture his life, and all that is dear to him as formerly he hath done, for his honourable Judges in Parliament assembled.

Whereupon the Lords made the following Order.

Die Veneris, 13 *Feb.* 1645.

" Whereas the cause of *John Lilburn*, Gent. came this day to a hearing " at the Bar by his Counsel, being transmitted from the House of Com- " mons, concerning a sentence pronounced against him in the *Star-Cham- " ber*, 13 *Feb. Anno* 13. *Car. Reg.* and after an examination of the whole " proceedings, and a due consideration of the said sentence; it is this day " adjudged, ordered, and determined by the Lords in Parliament assem- " bled, That the said sentence, and all proceedings thereupon, shall forth- " with be for ever totally vacated, obliterated, and taken off the file in all " Courts where they are yet remaining, as illegal, and most unjust, against " the liberty of the subject, and law of the land and *Magna Charta*, and " unfit to continue upon record: And that the said *Lilburn* shall be for " ever absolutely freed, and totally discharged from the said sentence, and " all proceedings thereupon, as fully and amply, as though never any " such thing had been. And that all estreat and process in the Court of " *Exchequer*, for levying of any fine, (if any such be) shall be wholly can- " celled and made void; any thing to the contrary in any wise notwith- " standing."

Joh. Browne, Cleric. Parliamentor.

But not assigning me any reparations in that Decree (the doing of which the House of Commons left unto them, and the Lords according to former custom looked upon to be their right in law to do), I prayed their assigning me particular reparations according to Law and Justice, out of the estates of my unjust Judges, that had done me so much wrong; upon which new address to them, they did upon the 5th of *March*, 1645, order and decree, and assigned to be paid unto the said *John Lilburn*, the sum of 2000*l.* for his reparations, which for many reasons (as their being aiding in the wars to the King, *&c.*), they fixed upon the Estates real and personal of *Francis* Lord *Cottington*, Sir *Francis Windebank*, and *James Ingram*, late Deputy-Warden of the *Fleet*; and afterwards by another decree for the present levying thereof, out of their lands, at eight years purchase (as they were before the wars,) with the allowance of Interest at 8*l. per centum, per annum*, in case of obstruction; for all or any part of it: and to this purpose caused an ordinance to be drawn up, which fully passed their House the 15, 20, and 27*th* of *April*, 1646. and afterwards transmitted it to the House of Commons, where by reason of my bloody adversary old Sir *Henry Vane*'s Interests, and of my imprisonment by *Manchester*'s means in the *Tower* of *London*, it lay asleep till the 1st of *August* 1648. at which time 7 or 8000 of my true friends in *London*, signed and caused to be delivered a Petition to the House of Commons for my liberty, and the passing of the said Ordinance. Whereupon the House made this Order.

Die Martis, 1 *Augusti* 1648.

Sir *John Maynard*, Sir *Peter Wentworth*, Lord *Carre*, Col. *Boswel*, Col. *Ludlow*, Mr. *Holland*, Mr. *Copley*.

" It is referred to this Committee, or any five of them, to consider how " Colonel *John Lilburn* may have such satisfaction and allowance for his " sufferings and losses, as was formerly intended him by this House."

Henry Elsynge, Cler. Parl. Dom. Com.

Upon

Upon which Order I got the Committee to meet, and preferred a Petition to them. Upon which Petition, the Parliament having diſpoſed of all that Part of the Lord *Cottington*'s Eſtate that I ſhould have had, unto the Lord *Say*, and alſo compounded with Sir *Francis Windebank*'s Heir; the ſaid Committee were pleaſed to fix it entirely upon the Lord-Keeper's Eſtate, as the principal guilty Man; of which, when the young Lord *Coventry*, his Son and Heir, heard thereof in *France*, he came poſting to *England* as in Amaze, fearing what ſuch a Precedent might bring upon him, if his Father's Eſtate [then dead] ſhould be compelled to make me Satisfaction; he being ſo capital in Injuſtice, that if that Courſe ſhould be taken, his Eſtate left him by his Father [if it were trebled] would not ſatisfy for his Father's palpable Injuſtice committed in his Life-time. And *Mancheſter* being in the ſaid Bryers with his Father, being as unjuſt as the other, and having a Brother *(viz. George Montague)* and other conſiderable Intereſts in the Houſe of Commons, ſo plied their Friends there, that they put a Stop to the ſecond reading of the aforeſaid Ordinance. Which I firſt fully underſtood by the Speaker's Means, then my great pretended Friend, who one Day began to reaſon with a Member of the Houſe [and my ſpecial Friend] about the unreaſonableneſs to fix my Reparations upon the Eſtate of the deceaſed Lord *Coventry*; nay, or to give me any Reparations at all out of the Eſtates of thoſe Perſons that did me wrong, for fear the Precedent in time might reach to themſelves: "For, "Sir, ſaid the Speaker, [as the Member told me] if my Son and Heir "ſhould be liable in Law, to make Satisfaction to all thoſe Men [out of "that Eſtate I ſhould leave him] that I have in the Eye of the Law wrong'd "[by ſigning Warrants, Orders, and Decrees, by the Command of my "Superiors] he would ſoon be a Beggar, although I ſhould leave him 5 or "6000 *l. per annum*; and therefore deſired the ſaid Member's Concur"rence with him. And for the clamorous Importunity [as they called "it] of me and my Friends, to give me Reparations; but yet to do it in "ſuch a Way, that the Precedent might not in future make themſelves "ſmart for their Injuſtice to particular Men." Of which, when the ſaid Member told me, he ſaid, they were reſolved to make the Commonwealth my Pay-maſter out of the publick Treaſury, and colour over the Juſtneſs of it with this Pretence, "That *Cottington*'s Eſtate, *&c.* formerly aſſigned "me, they had ſince diſpoſed of for the Commonwealth's uſe, to the "Lord *Say*; and therefore now it would be no Injuſtice to the Common"wealth [although in the *Star-Chamber* it never wronged me] to pay me "my Reparation." And ſo finding I was like to be baffled, I delivered the under-written to every individual Member of the Honourable Houſe of Commons.

The Humble Remembrance of Lieutenant Colonel John Lilburn, Sept. 4, 1648.

Honoured Sir,

VOuchſafe to take Notice, and ſeriouſly to conſider, That the firſt Week this preſent Parliament ſat, which is now almoſt full eight Years ago, I preſented an humble Petition to the Houſe of Commons, for Juſtice and Right againſt the cruel Judges of the *High-Commiſſion-Court*, and the *Star-Chamber*; and I had the Honour [the ſame Day it was preſented] to be one of the firſt Priſoners in *England* that was ſet at Liberty by this Parliament, and alſo received a ſpeedy, full, fair, and candid Proceeding, in the hearing and examining my tyrannical Sufferings: But by reaſon of Multiplicity of publick Buſineſs, and other great Obſtructions, I have not as yet been able to attain to the full End of my legal and juſt Expectation and Right, *viz.* Reparations for my long, ſad, and tormenting Sufferings, by the foreſaid unjuſt and unrighteous Judges.

Be pleaſed alſo favourably to take Notice, That upon the firſt of *Auguſt* laſt, there was an humble Petition preſented to the Honourable Houſe of Commons, ſubſcribed by many Thouſands of honeſt Citizens, *&c.* humbly to deſire you to put me in full Poſſeſſion of all your by-paſt juſt Votes about my foreſaid Sufferings: Upon reading and debating of which Petition, as in Anſwer to that particular of it, your Houſe were pleaſed to make this enſuing Order:

Die Martis, 1 *Auguſti*, 1648.

Lord *Carre*, Sir *John Maynard*, Sir *Peter Wentworth*, Col. *Beſwel*, Col. *Ludlow*, Mr. *Copley*, Mr. *Holland*.

"It is referred to this Committee, or any five of them, to conſider "how Colonel *John Lilburn* may have Satisfaction and Allowance for his "Sufferings and Loſſes, as was formerly intended him by this Houſe."

Henry Elſynge, Cler. Dom. Com.

Unto which ſaid Committee at their firſt Sitting, I preſented a Petition; the Copy of which thus followeth:

To the Honourable the Committee of the Houſe of Commons, appointed to conſider of Lieut. Col. Lilburn's *Buſineſs, in reference to the* Star-Chamber;

The Humble Petition of Lieut. Col. John Lilburn

Sheweth,

THAT beſides your Petitioner's Sufferings by reaſon of his Baniſhment into the *Low-Countries*, he was firſt committed by Dr. *Lamb*, *Gwyn*, *Aylet*, 1637, and afterwards had three Years Impriſonment, in the Common Gaol of the *Fleet*, being whipped from *Fleet-Bridge* to *Weſtminſter*, and enduring the cruel Torment of above five hundred Stripes with knotted Cords. Afterwards being ſet in the Pillory for the Space of two Hours, and by *James Ingram*, Deputy-Warden of the *Fleet*, gagged, tearing his Jaws almoſt in Pieces, without Order; which Sentence was given by Lord-Keeper *Coventry*, Earl of *Mancheſter*, Lord Privy-Seal, Lord *Newburgh*, Sir *Henry Vane*, ſen. Lord Chief-Juſtice *Brampſton*, and Judge *Jones*. And after the barbarous Execution of this Sentence, being *April* 18, 1638, the ſaid Lord *Coventry*, Archbiſhop of *Canterbury*, Biſhop of *London*, Earl of *Mancheſter*, Earl of *Arundel*, Earl of *Salisbury*, Lord *Cottington*, Lord *Newburgh*, Secretary *Cook*, and *Windebank*, paſſed another Sentence, in effect for the ſtarving of your Petitioner, and for the tormenting of him with Irons upon Hands and Legs both Night and Day; and by keeping him cloſe in the common Gaol of the *Fleet*, from the Speech of any of his Friends: All which was executed with the greateſt Cruelty that could be, for the Space of almoſt three Years together, to the apparent Hazard of his Life, both by ſtarving him [which was with all Art and Induſtry ſeveral ways attempted]; and alſo by ſeveral Aſſaults made upon him by the ſaid Warden's Man [inſtigated thereunto by the ſaid Deputy-Warden, to the maiming and wounding him, whereby to this Day he is totally deprived of the Uſe of two of his Fingers]: All which, with much more, too tedious to be here inſerted, was fully proved by ſufficient Witneſſes, before a Committee of your Houſe, whereof Mr. *Francis Rouſe* had the Chair; upon whoſe Report made, *May* 4, 1641, your Houſe voted, "That the Sentence in the *Star-Chamber* given againſt the ſaid "*John Lilburn*, and all the Proceedings thereupon, was illegal, and "againſt the Liberty of the Subject, and alſo bloody, wicked, cruel, bar"barous, and tyrannical; and that he ought to have good Reparations "therefore." Which Votes (by reaſon of Multiplicity of Buſineſs in your Houſe) coſt your Petitioner ſome Years of importunate and chargeable Attendance to get them tranſmitted to the Lords; which was obtained in *February*, 1645, the 13th Day of which Month, your Petitioner's whole Cauſe was effectually opened at the Lords Bar, by his learned Counſel, Mr. *John Bradſhaw* and Mr. *John Cook*; and there every particular again proved upon Oath, by Teſtimony of People of very good Quality. Whereupon they concurred in all things with the Houſe of Commons, ſaving in the Matter of Reparation; but upon the Delivery of a true Narrative, (which your Petitioner with his own Hands in the ſame Month delivered unto every individual Lord) they made a further Decree, that your Petitioner ſhould have 2000*l.* Reparations out of the Eſtates of the ſaid Lord *Cottington*, Sir *Francis Windebank*, and *James Ingram*, for the Reaſons alledged in an Ordinance which they paſſed in *April*, 1646, and tranſmitted to your Houſe; where it hath lain dormant ever ſince, and is now referred to the Conſideration of this honourable Committee.

Now, foraſmuch as by the Judicial Laws of God (which are the pure Laws of right Reaſon), he that wilfully hurteth his Neighbour is bound to the Performance of theſe five things: *Firſt*, "If it be a Blemiſh or "Wound, like for like, or to redeem it with Money, thereby to ſatisfy "him for his Wound. *Secondly*, For his Pain and Torment. *Thirdly*, "For the healing. *Fourthly*, For his Loſs of Time in his Calling. *Fifth*"*ly*, For the Shame and Diſgrace:" All which are to be conſidered according to the Quality of the Perſon damnified: Which Reparations are to be paid out of the beſt of the Goods of him that damnified him, and that without Delay.

And as the Law of God, ſo the Laws of this Nation do abhor, and have ſeverely puniſhed (above all Perſons) Judges, many times with the Loſs of their Lives and Eſtates, who under Colour of Law have violated their Oaths, and deſtroyed the Lives, Liberties and Properties of the People, whom by Law they ſhould have preſerved: as may be inſtanced by the forty-four Judges and Juſtices hanged in one Year by King *Alfred*; divers of them for leſs Crimes than hath been done in the Caſe of your Petitioner; as may be read in the Law-Book called, *The Mirrour of Juſtice*, Page 239, 240, 241, *&c.* tranſlated and reprinted this very Parliament: And by Juſtice *Thorp*, in *Edw.* III.'s Time, who was condemned to Death for the Violation of his Oath, for taking ſmall Sums of Money in Cauſes depending before him; as appears in the third Part of *Coke's Inſtitutes*, *fol.* 155, 156.

And by the Lord Chief-Juſtice *Treſilian*, &c. who in full Parliament in *Rich.* II.'s Time, was attached as a Traitor in the Forenoon, and had his Throat cut at *Tyburn* in the Afternoon, *becauſe he had given it under his Hand, that the King might create unto himſelf, at his Pleaſure, another rule to walk by, than the Law of the Land preſcribes him*; as appears by the Parliament Records in the *Tower*, by many of your own Declarations, and alſo by the Chronicles of *England*.

Now, for as much as your Petitioner's Sufferings have been unparalleled, and his Prejudice ſuſtained thereby altogether unrepairable, having loſt his Limbs, *&c.* And foraſmuch as by the Law of God, Nature, and Nations, Reparations for Hurts and Damages received, ought to be ſatisfied as far as may be in all Perſons, though done by Accident, and not intentionally, and though through Ignorance: much more when the Perſons offending did it knowingly, and on Purpoſe, in the Face, nay, in ſpite of the fundamental Laws of the Land, which they were ſworn to preſerve: And for that the Reparations in the ſaid Ordinance aſſigned do ſcarce amount to what your Petitioner ſpent in his three Years ſad Captivity, and his now almoſt eight Years chargeable Attendance, in ſuing for it, beſides the Loſs of a rich and profitable Trade for eleven Years together, and his Wounds, Torments, Smart and Diſgrace, ſuſtained by his ſaid tyrannical Sentences:

He therefore humbly prayeth the Favour and Juſtice of this honourable Committee for ſome conſiderable Augmentation of his ſaid Reparations; and the rather, becauſe his Fellow-ſufferer, Dr. *Baſtwick*, had 4000*l.* Reparations allotted him, whoſe Sufferings (he ſubmiſſively conceiveth) was nothing nigh ſo great, in Torment, Pain, and Shame, as your Petitioner's. And foraſmuch as the now Lord *Coventry*, Son and Heir to the aforeſaid Lord *Coventry*, hath walked in his Father's Steps, in Enmity to the Laws, Liberties, and Freedom of the Nation: By being in Arms at the Beginning of the Wars againſt the Parliament, and made his Peace with the Earl of *Eſſex* for a ſmall Matter, and hath ſince deſerted the Kingdom, living in *France* privately, receiving the Profits of a vaſt Eſtate which his Father left him: And foraſmuch as his ſaid Father (the late Lord *Coventry*) was the activeſt Man in infringing the Laws and Liberties of the Nation; although a Lawyer and Judge, ſitting on the ſupreme Seat of Juſtice; and a Perſon (as is groundedly conceived) who got a great Eſtate by Corruption, and particularly a Man that principally paſſed, as Chief Judge of the Court, both the aforeſaid Sentences againſt your Petitioner: And in regard the Eſtates of the ſaid Lord *Cottington*, and Sir *Francis Windebank*, by ſubſequent Orders of both Houſes upon urgent Occaſions, are much intangled and altered from the Condition they were in in 1646, when the Lords ordered your Petitioner 2000 Marks out of them; and for that the Eſtate of *James Ingram* cannot be found, nor at preſent come by: Your Petitioner, therefore, moſt humbly prayeth, that the greateſt Part, if not all your Petitioner's Reparations may be fixed upon the ſaid now Lord *Coventry*'s Eſtate, to be immediately paid your Petitioner; or elſe that his Rents, and the Profits of his Woods and Goods may

be ſeized in the reſpective Counties where they lie, for the ſatisfying thereof; that your Petitioner may no longer run the hazard of ruin to him and his, by tedious delays, having already contracted the debts of many hundred pounds, occaſioned by the chargeable proſecution hereof. And that if you ſhall think fit to conjoin any other with him, that it may be principally the Judges of the Law; who ought to have been pilots and guides unto the reſt of the Judges of that Court, who were Lords, and perſons not knowing the Law.

And your Petitioner ſhall ever pray, &c.

JOHN LILBURN.

After the reading of which, they entered into a ſerious debate of the whole buſineſs, and thereupon paſſed ſeveral Votes to be heads of an Ordinance, to be drawn up and reported to the Houſe, by the Right Honourable the Lord *Carr* Chairman to the ſaid Committee; who accordingly reported the Proceedings and Votes of the ſaid Committee to your Houſe, who approved of the ſaid Votes, and ordered an Ordinance to be preſented to the Houſe conſonant thereunto, which was accordingly done by the Lord *Carr*; which ordinance hath been once read in your Houſe: The Copy of which thus follows:

An Ordinance of the Lords and Commons aſſembled in Parliament, for the raiſing of three thouſand pounds out of the real Eſtate of the late Thomas *Lord* Coventry, *late Lord Keeper of the Great Seal of* England, *for and towards the reparation and damages of* John Lilburn, *Gent. which he ſuſtained by virtue and colour of two Sentences given and made againſt him, in the late Court of* Star-Chamber, *the one the* 13*th of* Febr. 1637. *the other the* 18*th of* April, 1638.

WHereas the cauſe of *John Lilburn* Gent. concerning two ſentences pronounced againſt him in the late Court of *Star-Chamber*, 13th of *February*, 13 *Car. Regis*, and 18th of *April*, 14 *Car. Regis*, were voted the 4th of *May* 1641, by the Houſe of Commons to be illegal, and againſt the liberty of the ſubject, and alſo bloody, wicked, cruel, barbarous, and tyrannical, which were tranſmitted from the ſaid Houſe of Commons unto the Houſe of Lords; who thereupon, by an order or decree, by them made 13th of *February* 1645, adjudged and declared the ſaid proceedings of the ſaid *Star-Chamber*, againſt the ſaid *John Lilburn*, to be illegal and moſt unjuſt, and againſt the liberty of the ſubject, and *Magna Charta*, and unfit to continue upon record, *&c.* And by another order or decree, made by them the ſaid Lords the 5th of *March* 1645, they aſſigned to be paid unto the ſaid *John Lilburn* the ſum of two thouſand pounds for his reparations; and the ſaid Houſe of Peers then fixed that ſum upon the eſtates real and perſonal of *Francis* Lord *Cottington*, Sir *Francis Windebank*, and *James Ingram* *, late Deputy-Warden of the *Fleet*: and afterwards for the preſent levying thereof, with allowance of Intereſt, in caſe of obſtructions, while the ſame ſhould be in levying, and of ſuch parts as ſhould not be forthwith levied; the ſaid Houſe of Peers did cauſe an ordinance to be drawn up, and paſſed the ſame in their Houſe, the 27th of *April* 1646, and afterwards tranſmitted the ſame to the Houſe of Commons for their concurrence; with whom it yet dependeth. And foraſmuch as ſince that tranſmiſſion, all, or the greateſt, of the eſtates of the ſaid Lord *Cottington*, and Sir *Francis Windebank*, is ſince by both Houſes diſpoſed of to other uſes; and the eſtate of the ſaid *James Ingram* is ſo ſmall and weak, and ſo entangled with former incumbrances, that it can afford little or no part unto the ſaid *John Lilburn* of the ſaid reparations: And for that the ſaid late Lord *Coventry* was the principal Judge, and chief Actor, in giving of both the ſaid illegal ſentences in the ſaid Court of *Star-Chamber*; and for the barbarous inflicting of puniſhments thereupon.

Therefore, and for ſatisfaction of the ſaid 2000*l.* and for the increaſe of reparation unto the ſaid *John Lilburn* for his extraordinary wrongs, ſufferings and loſſes thereby ſuſtained, and the long time hitherto elapſed without any ſatisfaction; the Lords and Commons aſſembled in Parliament do ordain, and be it hereby ordained by the ſaid Lords and Commons, and by authority of the ſame; That the ſaid *John Lilburn* ſhall receive the ſum of 3000*l.* out of all, or any the Manors, Meſſuages, Lands, Tenements and Hereditaments, whereof he, the ſaid late *Thomas* Lord *Coventry*, or any other perſon or perſons to or for his uſe, or in truſt for him, was or were ſeized in fee-ſimple, or fee-tail, or otherwiſe, at the time of the ſaid ſentences or decrees, or of either of them, in the ſaid late Court of *Star-Chamber*, or ſince within the Kingdom of *England*, or Dominion of *Wales*, any order or ordinance heretofore made by either or both Houſes of Parliament for the employment of the eſtate of the ſaid late *Thomas* Lord *Coventry* to the contrary hereof, in any wiſe notwithſtanding. And for the more ſpeedy levying of the ſaid ſum of three thouſand pounds, it is further ordered and ordained, that the ſeveral and reſpective Sheriffs, of the ſeveral and reſpective Counties within *England* and *Wales*, wherein any of the ſaid Lands, Tenements, or Hereditaments do lie, ſhall forthwith upon ſight, and by virtue of this ordinance, cauſe an inquiſition to be made and taken, by the Oaths of twelve or more lawful men, where the ſame lands do lie, and what the ſame are and do contain, and of the clear yearly value thereof, over and above all charges and repriſes: and after ſuch inquiſition ſo made and taken, the ſeveral and reſpective Sheriffs ſhall deliver unto the ſaid *John Lilburn* true copies in Parchment of the ſame inquiſitions by them taken, and ſhall then alſo deliver unto the ſaid *John Lilburn* the ſaid Lands, Tenements and Hereditaments, which ſhall be ſo compriſed or mentioned in the ſaid inquiſitions, to have and to hold, to him the ſaid *John Lilburn*, and his aſſigns, without impeachment of waſte; and until he ſhall have received out of the iſſues and profits thereof (to be eſtimated according to the yearly values contained in the ſaid inquiſitions) the ſaid ſum of three thouſand pounds; together with all reaſonable charges and expences to be ſuſtained from henceforth for obtaining the ſaid ſum of three thouſand pounds. And all and every the ſaid ſeveral and reſpective Sheriffs, and all other perſon and perſons whatſoever, that ſhall any ways act or aſſiſt in obedience to this ordinance, according to the true intent and meaning thereof, ſhall be therefore defended and kept harmleſs, by the authority of both Houſes of Parliament.

Be pleaſed to take further notice, that after the foreſaid ordinance was once read, it came to a debate in your Houſe for to be read the ſecond time, which was carried in the negative by a majority of voices; and I cannot but apprehend that there were divers in the Houſe unſatisfied in the ordinance itſelf, in regard the Houſe was divided upon the Debate and Vote, which I cannot but apprehend muſt flow from one of theſe two conſiderations:

Firſt, Either becauſe that the whole reparations is fixed upon the Lord *Coventry*'s eſtate ſingly, who had many co-partners in the ſentences, and who alſo it may be ſuppoſed hath expiated his crime by his death. Or elſe, ſecondly, Becauſe in ſome men's thoughts, ſome of my late actions are, or have been ſo evil in themſelves, that they may ſeem to them to overbalance the merits of all my ancient ſufferings.

However, on my preſenting my reaſons to the Houſe for reading it, my ordinance was called for to be read the ſecond time, which *Elſynge* the Clerk pretended he had laid ready upon the table before him; but what betwixt his knavery, old *Henry Vane*'s, the Speaker's, and young *Montague*'s, my ordinance was ſtol'n, and could never after be found: ſo that I was ſent to out of the Houſe to get another fair copy writ over preſently; which being long in doing, my friends went away, not expecting it would any more be meddled with that day, ſo that when moſt of them were gone, my adverſaries took the advantage to call for it, and in a thin Houſe read it the ſecond time, and upon debate threw it out of doors; and at preſent to ſtop my mouth, voted me 300*l.* ready-money (as they pretended) out of Sir *Charles Kemiſſes*'s compoſition, to enable me for preſent ſubſiſtance, and to follow my buſineſs; and alſo made this further order:

Die Martis, Septemb, 5, 1648.

ORdered by the Commons aſſembled in Parliament, that the ſum of three thouſand pounds be allowed and paid unto Lieutenant Colonel *John Lilburn*, for reparation of his damages ſuſtained by colour of the ſentences given againſt him in the late Court of *Star-Chamber*, where Lord *Carr* had the Chair, with the addition of Sir *John Danvers*, and Colonel *Rigby*, to conſider of, and preſent to this Houſe an Ordinance for ſettling of lands to him and his heirs, to the value of 3000*l.* at twelve years purchaſe, out of the eſtates of new Delinquents in the Inſurrections, not yet ſequeſtered.

H. Elſynge, Cler. Parl. Com. Dom.

Of which when I fully underſtood, I was troubled, but knew not how to help myſelf; and having already met with ſo many difficulties, and received ſo many baffles as I had done, I thought it was better (being almoſt wearied out with ſtruggling) to take half a loaf, than to go away without any bread at all. So after many Petitions and Letters to the Sequeſtrators, *&c.* the Committee cauſed an ordinance to be drawn up.

But when my ordinance came to the Lords, they diſabled me to cut down any more timber-trees than what were already fell'd, which I judged fitter for me to content myſelf with, than to ſtruggle any longer to get it paſs, as the Houſe of Commons had ſent it up. So the Lords in two or three days diſpatched it, and ſent it down to the Houſe of Commons for their concurrence, according to thoſe abridgements they had made in it; and taking my opportunity to ſpeak to thoſe in the Houſe of Commons I had intereſt in, I intreated them to diſpute it no more, but paſs it as the Lords had gelded it; and accordingly they did; the Copy of which thus followeth:

Die Jovis, 21 *Decemb.* 1648.

An Ordinance of the Lords and Commons aſſembled in Parliament, for raiſing of three thouſand pounds, out of the ſequeſtered eſtates and compoſitions of Sir Henry Gibb, *Knight*; *and Sir* Henry Bellingham, *Knight and Baronet*; *and* Thomas Bowes, *Eſquire*; *lying and being within the County of* Durham; *to be paid unto Lieut. Col.* John Liburn, *by the Committee of Sequeſtrations of the ſaid County, for and towards the reparation and damages of the ſaid* John Lilburn, *which he ſuſtained by virtue and colour of two unjuſt Sentences, or Decrees; given and made againſt him in the late Court of* Star-Chamber, *the one the* 13*th of* February, 1637; *the other the* 18*th of* April, 1638.

WHereas the cauſe of Lieut. Col. *John Lilburn*, concerning two ſentences pronounced againſt him in the late Court of *Star-Chamber*, the 13th of *February*, *decimo tertio Caroli Regis*, and the 18th of *April*, *decimo quarto Caroli Regis*, (which were voted the 4th of *May*, 1641, by the Houſe of Commons to be illegal, and againſt the liberty of the ſubject, and alſo bloody, wicked, cruel, barbarous and tyrannical) were tranſmitted from the ſaid Houſe of Commons unto the Houſe of Lords; in which the Houſe of Peers concurred in judgment; and the 13th of *February* 1645, declared the ſaid proceedings of the ſaid *Star-Chamber*, againſt the ſaid *John Lilburn*, to be illegal, moſt unjuſt, and againſt the liberty of the ſubject, and law of the land, and *Magna Charta*, and unfit to continue upon record, *&c.* The ſaid Lords and Commons taking into their ſerious conſideration, the extraordinary ſufferings and barbarous tyranny, that by colour of the ſaid unjuſt decrees were inflicted upon the ſaid Lieut. Col. *John Lilburn*; and the long time hitherto elapſed without any ſatisfaction, do conceive it moſt juſt, equitable and reaſonable, to repair him in ſome conſiderable manner: and therefore, in purſuance of two orders of the Houſe of Commons, one of the 22d of *Auguſt* 1648, and the other of the 5th of *September* 1648, have ordained; and be it hereby ordained by the Lords and Commons aſſembled in Parliament, and by the authority of the ſame; That the ſaid *John Lilburn* ſhall have and receive the ſum of 3000*l.* to be paid unto him or his aſſigns, by the Committee of Sequeſtrations for the County of *Durham*, out of the firſt profits of the ſequeſtered eſtates, both lands and goods of Sir *Henry Gibb*, Knight; Sir *Henry Bellingham*, Knight and Baronet; and *Thomas Bowes*, Eſquire; lying and being in the County of *Durham*, having all been active in the late *Northern* Inſurrections, and aiding and aſſiſting to the moſt wicked invaſion of Duke *Hamilton*. And the ſaid Committee are hereby authoriſed to fell all ſuch woods (except timber-trees now ſtanding) as may conveniently be ſpared, and now ſtanding upon the ſaid lands (or already felled), or any of them. And

* 'But the Lord *Roberts*, the Lord *Wharton*, &c. told me ſeveral times, if their eſtates had not been under ſequeſtration by Ordinance of Parliament, they would never 'have gone about to fix my reparations by Ordinance, (which they muſt needs then do, to take off the Sequeſtration) but have iſſued out a decree and extent under the 'Great Seal, immediately to have put me in preſent poſſeſſion of my 2000*l.* which they ſaid was their right by Law to do.'

And if the ſaid Sir *Henry Gibb*, Sir *Henry Bellingham*, and *Thomas Bowes*, or any of them ſhall compound for their eſtate, ſo much of the ſaid three thouſand pounds as then ſhall remain unſatisfied ſhall be paid unto the ſaid *John Lilburn*, or his aſſignees, out of their, or the firſt of their compoſitions. And this Ordinance or Copy thereof, atteſted under the hand or hands of the Clerk, or Clerks, of one or both Houſes of Parliament, ſhall be a ſufficient Warrant to the ſaid Committee of Sequeſtrations in the ſaid County of *Durham*, to pay the ſaid 3000 *l.* as is before expreſſed, unto the ſaid *John Lilburn* or his aſſigns; and likewiſe to indemnify and ſave harmleſs, all and every perſon or perſons, that ſhall any way act in the performance of the true intent and meaning of this Ordinance.

Joh. Brown, Cler. Parliamentor.
H. Elyſinge, Cler. Parl. Dom. Com.

However, Lieut. Col. *Lilburn*, after great trouble, and much expence, got but little of the money ordered him.

XXI. Proceedings in Parliament againſt Sir *John Finch*, Baron of *Fordwich*, Lord Keeper, for High-Treaſon, 1640. 16 *Car.* I *.

THE Houſe of Commons having ſecur'd that great Stateſman the Earl of *Strafford*, and that zealous Churchman Archbiſhop *Laud*; began to prepare an Impeachment againſt the great Officer of the Law, the Lord-Keeper *Finch*, of High-Treaſon.

December 14th, a Committee was appointed to prepare a Charge againſt him; of which he having notice, ſent to the Houſe of Commons a Letter, deſiring to be admitted to ſpeak for himſelf, before any Vote paſt againſt him. Upon this Letter there aroſe a great debate in the Houſe, and after ſome time ſpent therein, it was granted him; and *Monday*, *December* the 21ſt, was appointed for the hearing of him.

On *Monday* he was admitted in this manner; there was a Chair ſet for him to make uſe of if he pleaſed, and a Stool to lay the Purſe upon, a little on the ſide of the Bar on the left hand as you come in; he himſelf brought in the Purſe, and laid it in the Chair, but would not ſit down himſelf, nor put on his Hat, though he was mov'd to it by Mr. Speaker, but ſpake all the while bare-headed and ſtanding; the Serjeant at Arms attending on the Houſe, ſtanding by him with the Mace on his ſhoulder: And ſpake as follows:

Mr. Speaker,

I DO firſt preſent my moſt humble thanks to this Honourable Aſſembly for this favour vouchſafed me, in granting me admittance to their preſence, and do humbly beſeech them to believe it is no deſire to preſerve myſelf or my fortune, but to deſerve the good opinions of thoſe that have drawn me hither.

I do profeſs, in the preſence of him that knoweth all hearts, that I had rather go from door to door, and crave *Da obolum Belizario*, *&c.* with the good opinion of this Aſſembly, than live and enjoy all the honours and fortunes I am capable of.

I do not come hither with an intention to juſtify my words, my actions, or my opinions; but to make a plain and clear narration for myſelf, and then humbly to ſubmit to the wiſdom and juſtice of this Houſe myſelf, and all that concerns me.

I do well underſtand *(Mr. Speaker)* with what diſadvantage any man can ſpeak in his own cauſe, and if I could have told how to have tranſmitted my thoughts and actions, by a clearer repreſentation of another (I do ſo much defy my own judgment in working, and my ways in expreſſing), that I ſhould have been a moſt humble ſuitor another might have done it. But this Houſe will not take words, but with clear and ingenuous dealing; and therefore I ſhall beſeech them to think, I come not hither with a ſet or ſtudied ſpeech, I come to ſpeak my heart, and to ſpeak it clearly and plainly, and then leave it to your clemency and juſtice: and I hope if any thing ſhall ſlip from me, to work contrary to my meaning, or intention, diſorderly or ill-placed, you will be pleaſed to make a favourable conſtruction, and leave me the liberty of explanation, if there ſhall be any; but I hope there ſhall be no cauſe for it.

I hope, for my affection in Religion no man doubteth me; what my education, what, and under whom for many years, is well known; I lived near thirty years in the Society of *Gray's-Inn*: and if one that was a reverend Preacher in my time (Dr. *Sibbs*) were now alive, he were able to give teſtimony to this Houſe, that when a party ill-affected in Religion ſought to weary him, and tire him out, he had his chiefeſt encouragement from me.

I have now (*Mr. Speaker*) been fifteen years of the King's Council; from the firſt hour to this minute, no man is able to ſay that ever I was author, adviſer, or conſenter to any project.

It pleaſed the King (my gracious Maſter), after I had ſerved him divers years, to prefer me to two places; to be Chief-Juſtice of the *Common Pleas*, and then Keeper of his Great-Seal: I ſay it in the preſence of God, I was ſo far from the thought of the one, and from the ambition of the other, that if my Maſter's grace and goodneſs had not been, I had never enjoyed thoſe honours.

I cannot tell (*Mr. Speaker*), nor I do not know what particulars there are, that may draw me into your diſfavour or ill opinion, and therefore I ſhall come very weakly arm'd; yet to thoſe that either in my own knowledge, or by ſuch a knowledge as is given me, and not from any in this Houſe, I ſhall ſpeak ſomewhat, that I hope being truth, and accompanied with clearneſs and ingenuity, will at laſt procure ſome allay of that ill opinion which may perhaps be conceived of me.

Mr. Speaker, I had once the honour to ſit in the place that you do: from the firſt time I came thither, to this unfortunate time, I do appeal to all that were here then, if I ſerved you not with candor. Ill office I never did to any of the Houſe, good offices I have witneſſes enough I did many; I was ſo happy, that upon an occaſion which once happened, I received an expreſſion and teſtimony of the good affection of this Houſe towards me.

For the laſt unhappy day, I had great ſhare in the unhappineſs and ſorrow of it. I hope there are enough do remember, no man within the walls of this Houſe did expreſs more ſymptoms of ſorrow, grief, and diſtraction than I did.

After an adjournment for two or three days, it pleaſed his Majeſty to ſend for me, to let me know that he could not ſo reſolve of things as he deſired, and therefore was deſirous that there might be an adjournment for ſome few days more. I proteſt I did not then diſcern in his Majeſty, and I believe it was not in his thoughts, to think of the diſſolving of this Aſſembly; but was pleaſed, in the firſt place, to give me a command to deliver his pleaſure to the Houſe for an adjournment for ſome few days, till the *Monday* following, as I remember, and commanded me withal to deliver his pleaſure, that there ſhould be no further ſpeeches, but forthwith upon the delivery of the meſſage come and wait upon him: he likewiſe commanded me, if queſtions were offered to be put, upon my Allegiance I ſhould not dare to do it. How much I did then in all humbleneſs reaſon with his Majeſty, is not for me here to ſpeak; only thus much let me ſay, I was no Author of any counſel in it. I was only a perſon in receiving Commiſſion; I ſpeak not this, as any thing I now produce or do invent, or take up for my own excuſe, but that which is known to divers, and ſome honourable perſons in this Houſe, to be moſt true. All that I will ſay for that, is humbly to beſeech you all to conſider, that if it had been any man's caſe, as it was mine, between the diſpleaſure of a gracious King, and the ill opinion of an honourable Aſſembly; I beſeech you lay all together, lay my firſt actions and behaviour with the laſt, I ſhall ſubmit to your honourable and favourable conſtructions.

For the Shipping buſineſs, my opinion of that cauſe hath lain heavy upon me; I ſhall clearly and truly preſent unto you what every thing is, with this proteſtation, that if in reckoning up my own opinion what I was of, or what I delivered, any thing of it be diſpleaſing, or contrary to the opinion of this Houſe, that I am far from juſtifying of it, but ſubmit that and all other my actions to your wiſdom and goodneſs.

Mr. Speaker, the firſt Writs that were ſent out about the Shipping-buſineſs, I had no more knowledge of, and was as ignorant as any one Member of this Houſe, or any man in the Kingdom. I was never the Author nor Adviſer of it, and will boldly ſay, from the firſt to this hour, I did never adviſe nor counſel the ſetting forth of any Ship-Writs in my life.

Mr. Speaker, it is true that I was made Chief-Juſtice of the *Common-Pleas* ſome four days before the Ship-Writs went out to the Ports and Maritime Places; as I do remember, the 20th of *October* 1634, they do bear *teſte*, and I was ſworn Juſtice the 16th of *October*: ſo as they went out in that time, but without my knowledge or privity, the God of Heaven knows this to be true.

Mr. Speaker, afterwards his Majeſty was pleaſed to command my Lord Chief-Juſtice of the *King's-Bench*, that then was, Sir *Thomas Richardſon*, and Chief-Baron of the *Exchequer* that now is, and myſelf, then Chief-Juſtice of the *Common-Pleas*, to take into conſideration the Precedents then brought unto us; which we did, and after returned to his Majeſty, what we had found out of thoſe precedents.

It is true, that afterwards his Majeſty did take into conſideration, that if the whole Kingdom were concerned, that it was not reaſon to lay the whole burthen upon the Cinque Ports and Maritime Towns.

Thereupon, upon what ground his Majeſty took that into his conſideration, I do confeſs I do know nothing of it.

His Majeſty did command my Lord Chief-Juſtice that now is, my Lord Chief-Baron, and myſelf, to return our opinions; Whether, when the whole Kingdom is in danger, and the Kingdom in general is concerned, it be not according to Law and Reaſon, that the whole Kingdom, and his Majeſty, and all intereſted therein, ſhould join in defending and preſerving thereof?

This was, in time, about 1634.

In *Michaelmas*-Term following, his Majeſty commanded me to go to all the Judges, and require their opinions in particular.

He commanded me to do it to every one, and to charge them upon their duty and allegiance to keep it ſecret.

Mr. Speaker, it was never intended by his Majeſty (ſo profeſſed by him) at that time, and ſo declared to all the Judges, that it was not required by him, to be ſuch a binding opinion to the Subject, as to hinder him from calling it in queſtion, nor be binding to themſelves, but that upon better reaſon and advice they may alter it; but deſired their opinions, for his own private reaſon.

I know very well, that extrajudicial opinions of Judges ought not to be binding.

But I did think, and ſpeak my Heart and Conſcience freely; myſelf, and the reſt of the Judges being ſworn, and by our Oaths tied to counſel the King, when he ſhould require advice of us, that we were bound by our Oaths and Duties to return our opinions.

I did obey his Majeſty's command, and do here before the God of Heaven avow it.

* This Proceeding explains the manner of obtaining the Judges opinions in Mr. *Hampden*'s Caſe about *Ship-Money*, Vol. I. *pag.* 483. as alſo the Lord Keeper's Reaſons for what he did as Speaker in the Parliament 1629, for which ſee, *ante Page* 217. Elſe this had not been inſerted, his Lordſhip not putting in any Anſwer to the Articles exhibited againſt him.

I did

I did never uſe the leaſt promiſe of preferment or reward to any, nor did uſe the leaſt menace; I did leave it freely to their own Conſciences and Liberty; for I was left to the liberty of my own by his Majeſty, and had reaſon to leave them the liberty of their own Conſciences.

And I beſeech you be pleaſed to have ſome belief, that I would not ſay this, but that I know the God of Heaven will make it appear; and I beſeech you that extravagant ſpeeches may not move againſt that which is a poſitive and clear truth.

Mr. Speaker, in the diſcourſe of this (as is between Judges) ſome ſmall diſcourſes ſometimes aroſe, yet never was any cauſe wherein any Judges conferred, that were ſo little conference as between me and them.

Mr. Speaker, againſt a Negative, I can ſay nothing; but I ſhall affirm nothing unto you, but by the grace of God, as I affirm it to be true, ſo I make no doubt of making it appear to be ſo.

This opinion was ſubſcribed without ſolicitation; there was not any man of us, did make any doubt of ſubſcribing our opinion, but two, Mr. Juſtice *Hutton*, and Mr. Juſtice *Croke*.

Mr. Juſtice *Croke* made not a ſcruple of the thing, but of the introduction; for it was thus:

That whereas the Ports and the Maritime Towns were concerned, there according to the precedents in former times, the charge lay on them.

So when the Kingdom was in danger, of which his Majeſty was the ſole Judge; whether it was not agreeable to Law and Reaſon, the whole Kingdom to bear the charge?

I left this caſe with Judge *Croke*.

The next Term I ſpake with him, he could give me no reſolution, becauſe he had not ſeen the Writs in former times: but did give his opinion, that when the whole Kingdom was in danger, the charge of the defence ought to be borne by all.

So of that opinion of his, there was no need of a ſolicitation.

I ſpeak no more here, than I did openly in my argument in the *Exchequer-Chamber*.

This is the naked truth: for Mr. Juſtice *Hutton*, he did never ſubſcribe at all.

I will only ſay this, that I was ſo far from preſſing him to give his opinion, becauſe he did aſk time to conſider of it, that I will boldly ſay, and make it good, that when his Majeſty would have had him ſometimes ſent for, to give his opinion, I beſeeched his Majeſty to leave him to himſelf and his conſcience: and that was the ill office I did.

The Judges did ſubſcribe in *November* or *December*, 1635.

I had no conference, nor (truly I think) by accident any diſcourſe with any of the Judges touching their opinions: for till *February*, 1636, there was no ſpeech of it, for when they had delivered their opinions, I did return according to my duty to my Maſter the King, and delivered them to him; in whoſe cuſtody they be.

In *February*, 1636, upon a command that came from his Majeſty, by one of the then Secretaries of State, the Judges all aſſembled in *Gray's-Inn*; we did then fall into a debate of the caſe then ſent unto us, and we did then return our opinion unto his Majeſty; there was then much diſcourſe and great debate about it.

Mine opinion and conſcience at that time was agreeable to that opinion I then delivered.

I did uſe the beſt arguments I could, for the maintenance of my opinion; and that was all I did.

It is true, that then at that time, Mr. Juſtice *Hutton*, and Mr. Juſtice *Croke*, did not differ in the main point, which was this:

When the Kingdom was in danger, the charge ought to be borne by the whole Kingdom.

But in this point, whether the King was the ſole Judge of the danger, they differed.

So as there was between the firſt ſubſcription, and this debate and conſultation, ſome fifteen months difference.

It is true, that all of them did then ſubſcribe, both Juſtice *Hutton*, and Juſtice *Croke*, which was returned to his Majeſty, and after publiſhed by my Lord-Keeper (my predeceſſor) in the *Star-Chamber*.

For the manner of publiſhing it I will ſay nothing, but leave it to thoſe, whoſe memories will call to mind what was then done.

The Reaſon of the ſubſcription of Juſtice *Hutton*, and Juſtice *Croke*, (though they differed in opinion) grew from this, that was told them, from the reſt of the Judges;

That where the greater number did agree in their vote, the reſt were involved and included.

And now I have faithfully delivered what I did in that buſineſs, till I came (which was afterwards) to my argument in the *Exchequer-Chamber*: for the queſtion was, *A ſcire facias* iſſued out of the *Exchequer* in that caſe of Mr. *Hampden*'s; of which I can ſay nothing, for it was there begun, and afterwards rejourned, to have advice of all the Judges.

Mr. Speaker, amongſt the reſt (according to my duty) I argued the caſe.

I ſhall not trouble you, to tell you what my argument was, I preſume there are copies enough of it; only I will tell you there are four things, very briefly, that I then declared.

Firſt, concerning the matter of danger, and neceſſity of the whole Kingdom.

I profeſs that there was never a Judge in the Kingdom did deliver an opinion, but that it muſt be in a caſe of apparent danger.

When we came to an argument of the caſe, it was not upon a matter of iſſue, but it was upon a demurrer;

Whether the danger was ſufficiently admitted in pleading, and therefore was not the thing that was in diſpute, that was the firſt degree and ſtep that led unto it.

I did deliver myſelf as free and as clear as any man did, that the King ought to govern by the poſitive Laws of the Kingdom; that he could not alter nor change, nor innovate in matters of Law, but by common conſent in Parliament.

I did further deliver, that if this were uſed to make a further revenue or benefit to the King, or in any other way but in caſe of neceſſity, and for the preſervation of the Kingdom, the judgment did warrant no ſuch thing:

My opinion in this buſineſs, I did in my concluſion of my argument ſubmit to the judgment of this Houſe.

I never delivered my opinion, that money ought to be raiſed, but Ships provided for the defence of this Kingdom, and in that the writ was performed.

And that the charge ought not to be in any caſe, but where the whole Kingdom was in danger.

And Mr. Juſtice *Hutton*, and Mr. Juſtice *Croke*, were of the ſame opinion with me.

I do humbly ſubmit, having related unto you my whole carriage in this buſineſs; humbly ſubmitting myſelf to your grave and favourable cenſures, beſeeching you not to think that I delivered theſe things with the leaſt intention to ſubvert or ſubject the Common Law of the Kingdom, or to bring in, or to introduce any new way of Government; it hath been far from my thoughts, as any thing under the Heavens.

Mr. Speaker, I have heard too that there hath been ſome ill opinion conceived of me about Foreſt buſineſs, which was a thing far out of the way of my ſtudy, as any thing I know toward the Law.

But it pleaſed his Majeſty, in the ſickneſs of Mr. *Noy*, to give ſome ſhort warning to prepare myſelf for that employment.

When I came there, I did both the King and Commonwealth acceptable ſervice; for I did and dare be bold to ſay, with extreme danger to myſelf and fortune, (ſome do underſtand my meaning herein) run thro' that buſineſs, and left the Foreſt as much as was there.

A thing in my judgment, conſiderable for the advantage of the Commonwealth, as could be undertaken.

When I went down about that employment, I ſatisfied myſelf about the matter of perambulation.

There were great difficulties of opinions, what perambulation was.

I did arm myſelf as well as I could, before I did any thing in it.

I did acquaint thoſe that were then Judges, in the preſence of the noble Lords, with ſuch objections as I thought it my duty to offer unto them.

If they thought they were not objections of ſuch weight as were fit to ſtir them, I would not do the King that diſſervice.

They thought the objections had ſuch anſwers as might well induce the like upon a conference with the whole Country; admitting me to come and confer with them, the Country did unanimouſly ſubſcribe.

It fell out afterwards, that the King commanded me, and all this before I was Chief-Juſtice, to go into *Eſſex*, and did then tell me he had been informed, that the bounds of the Foreſt were narrower than in truth they ought to be; and I did according to his command.

I will here profeſs that which is known to many, I had no thought or intention of enlarging the bounds of the Foreſt, further than *H.* and that part about it, for which there was a perambulation about 26 *Edw.* IV.

I deſired the Country to confer with me about it, if they were pleaſed to do it; and then according to my duty, I did produce thoſe Records which I thought fit for his Majeſty's ſervice, leaving them to diſcharge themſelves as by Law and Juſtice they might do.

I did never, in the leaſt kind, go about to overthrow the Charter of the Foreſt.

And did publiſh and maintain *Charta de Foreſta*, as a ſacred thing, and no man to violate it, and ought to be preſerved for the King and Commonwealth.

I do in this humbly ſubmit, and what I have done, to the Goodneſs and Juſtice of this Houſe.

[Mr. *Ruſhworth* ſays, many were exceedingly taken with his Eloquence and Carriage, and it was a ſad ſight to ſee a Perſon of his greatneſs, parts and favour, to appear in ſuch a poſture, before ſuch an Aſſembly, to plead for his Life and Fortunes.]

After his Lordſhip was retired, it was moved that this admiſſion of the Lord-Keeper, might not be drawn into precedent; and in anſwer to what his Lordſhip ſaid, Mr. *Rigby* made this following ſpeech.

Mr. Speaker,

THough my judgment prompts me to ſit ſtill and be ſilent, yet the duty I owe to my King, my Country and my Conſcience, move me to ſtand up and ſpeak.

Mr. *Speaker*, had not this Syren ſo ſweet a tongue, ſurely he could never have effected ſo much miſchief to this Kingdom: you know, Sir, *optimorum putrefactio peſſima*, the beſt things putrefied become the worſt: and as it is in the natural, ſo in the body politick; and what's to be done then, Mr. *Speaker?* We all know *enſe recidendum eſt*, the ſword, Juſtice muſt ſtrike, *ne pars ſincera trahatur*.

Mr. *Speaker*, it is not the voice, *non vox ſed votum*, not the tongue, but the heart and actions that are to be ſuſpected: for doth not our Saviour ſay it, *Shew me thy faith by thy works, O man?* (St. *James*, not our Saviour ſaith it.) Now, Mr. *Speaker*, hath not this Kingdom ſeen, (ſeen, ſay I?) nay felt and ſmarted under the cruelty of this man's Juſtice? ſo malicious as to record it in every Court of *Weſtminſter*; as if he had not been contented with inſlaving of us all, unleſs he entailed it to all poſterity. Why ſhall I believe words now, *cum factum videam?* Shall we be ſo weak men, as when we have been injured and abuſed, will be gained again with fair words and compliments? Or, like little children, when we have been whipt and beaten, be pleaſed again with ſweetmeats? Oh no, there be ſome birds in the ſummer of Parliament will ſing ſweetly, who in the winter of perſecution, will for their prey ravenouſly fly at all, upon our goods, nay ſeize upon our perſons; and hath it not been with this man ſo, with ſome in this Aſſembly?

Mr. *Speaker*, it hath been objected unto us, that in judgment you ſhould think of mercy, and *be ye merciful as your heavenly Father is merciful*; now God Almighty grant that we may be ſo, and that our hearts and judgments may be truly rectified to know truly what is mercy: I ſay to know what is mercy; for there is the point, Mr. *Speaker*: I have heard of fooliſh pity, fooliſh pity; do we not all know the effects of it? And I have met with this epithet to mercy, *crudelis miſericordia*; and in ſome kind I think there may be a cruel mercy: I am ſure that the Spirit of God ſaid, Be not pitiful in judgment; nay it ſaith, be not pitiful of the poor in judgment; if not of the poor, then, *à latiori*, not of the rich; there's the emphaſis. We ſee by the ſet and ſolemn appointment of our Courts of Juſtice, what proviſion the wiſdom of our anceſtors hath made for the preſervation, honour, and eſteem of Juſtice; witneſs our frequent Terms, Seſſions, and Aſſizes, and in what pomp and ſtate the Judges, in their Circuits, by the Sheriffs, Knights and Juſtices, and all the Country, are attended oft-times for the hanging of a poor Thief for the ſtealing of a Hog or a Sheep, nay in ſome caſes for the ſtealing of a penny, and Juſtice too, *in terrorem:* and now ſhall not ſome of them be hanged that have robbed us of all our propriety, and ſheered at once all our Sheep

and all we have away, and would have made us indeed poor *Belizarios* to have begged for half-pennies, when they would not have left us one penny that we could have called our own?

Let us therefore now, Mr. *Speaker*, not be ſo pitiful as that we become remiſs; not ſo pitiful in judgment, as to have no judgment; but ſet the deplorable eſtate of *Great Britain* now before our eyes, and conſider how our moſt gracious Sovereign hath been abuſed, and both his Majeſty and all his Subjects injured by theſe wicked inſtruments; for which my humble motion is, that with theſe particulars we become not ſo merciful as to the generality (the whole Kingdom) to grow mercileſs.

Fiat Juſtitia.

Whereupon he was the ſame day voted a Traitor, upon the following particulars:

1. For refuſing to read the remonſtrance againſt the Lord-Treaſurer *Weſton*, 4 *Car.* when the Parliament deſired it.

2. For ſolliciting, perſuading, and threatening the Judges to deliver their opinion for the levying of Ship-money *.

3. For ſeveral illegal actions in Foreſt-matters.

4. For ill offices done, in making the King diſſolve the laſt Parliament, and cauſing his declaration thereupon to be put forth.

Whereupon it was reſolved upon the queſtion,

That *John* Lord *Finch*, Baron of *Fordwich*, Lord-Keeper of the Great Seal of *England*, ſhall be accuſed in this Houſe, in the name of all the Commons of *England*, of High-Treaſon, and other great Miſdemeanors.

Reſolved,

That a meſſage be ſent by the Lord *Falkland*, to accuſe *John* Lord *Finch*, Baron of *Fordwich*, Lord-Keeper of the Great Seal of *England*, in the name of this Houſe, and all the Commons of *England*, of High-Treaſon, and other great Crimes and Miſdemeanors; and to deſire that he may be forthwith ſequeſtred from Parliament, and be committed; and that in ſome convenient time this Houſe will reſort to their Lordſhips, with particular Accuſations and Articles againſt him.

The next morning, the 22d, the Lord-Keeper (conſidering with what impetuoſity and violence every thing was managed) got up early, and eſcaped in diſguiſe into *Holland*, from whence he wrote a Letter to the Lord-Chamberlain, dated from the *Hague*, *January* 3, 1640.

My moſt well beloved Lord,

THE Intereſt your Lordſhip hath ever had in the beſt of my fortunes and affections, gives me the privilege of troubling your Lordſhip with theſe few lines, from one that hath nothing left to ſerve you withal but his prayers; theſe your Lordſhip ſhall never fail of, with an heart as full of true affection to your Lordſhip as ever any was. My Lord, it was not the loſs of my place, and with that of my fortunes, nor being exiled from my dear Country and Friends, though many of them were cauſe of ſorrow, that afflicts me; but that which I moſt ſuffer under is, that diſpleaſure of the Houſe of Commons conceived againſt me. I know a true heart I have ever born towards them, and your Lordſhip can witneſs in part, what ways I have gone in: but ſilence and patience beſt becomes me, with which I muſt leave myſelf and my actions to the favourable conſtructions of my noble Friends, in which number your Lordſhip hath a prime place. I am now at the *Hague*, where I arrived on *Thurſday* the laſt of the laſt month, where I purpoſe to live in a faſhion agreeable to the poorneſs of my fortunes; for my humbling in this World, I have utterly caſt off the thoughts of it, and my aim ſhall be to learn to number my days, that I may apply my heart to wiſdom, that wiſdom that ſhall wipe away all tears from my eyes and heart, and lead me by the hand to true happineſs, which can never be taken from me. I pray God of Heaven to bleſs this Parliament, both with a happy progreſs and concluſion; if my ruin may conduce but the leaſt to it, I ſhall not repine at it. I truly pray for your Lordſhip and your noble Family, that God would give an increaſe of all worldly bleſſings, and in the fulneſs of days to receive you to his Glory; if I were capable of ſerving any body, I would tell your Lordſhip, that no man ſhould be readier to make known his devotion and true gratitude to your Lordſhip, than

Your Lordſhip's moſt humble,
and moſt affectionate,
poor Kinſman and Servant,
J. FINCH.

Jan. 14. The Committee having prepared Articles of Impeachment againſt the Lord-Keeper, they were preſented to the Houſe, and are as follow:

The Accuſation and Impeachment of John † *Lord* Finch, *Baron of* Fordwich, *Lord-Keeper of the Great Seal of* England, *by the Houſe of Commons.*

Imprimis, THAT the ſaid *John* Lord *Finch*, Baron of *Fordwich*, Lord-Keeper, *&c.* hath traitorouſly and wickedly endeavoured to ſubvert the fundamental Laws and eſtabliſhed Government of the Realm of *England*, and inſtead thereof to introduce an arbitrary, tyrannical Government againſt Law; which he hath declared by traitorous and wicked words, counſels, opinions, judgments, practices and actions.

II. That in purſuance of thoſe his traitorous and wicked purpoſes, he did in the third and fourth year of his Majeſty's reign, or one of them, being then Speaker of the Commons Houſe of Parliament, contrary to the commands of the Houſe then aſſembled and ſitting, deny and hinder the reading of ſome things which the ſaid Houſe of Commons required to be read, for the ſafety of the King and Kingdom, and preſervation of the Religion of this Realm; and did forbid all the Members of the Houſe to ſpeak, and ſaid that if any did offer to ſpeak, he would riſe and go away, and ſaid nothing ſhould be done in the Houſe; and did offer to riſe and go away, and did thereby and otherwiſe, as much as in him lay, endeavour to ſubvert the ancient and undoubted rights and courſe of Parliament.

III. That he being of his Majeſty's Council at the Juſtice Seat, held for the County of *Eſſex*, in the month of *October*, in the 10th year of his now Majeſty's reign, at *Stratford-Langton* in the ſame County, being then of his Majeſty's Council, in that ſervice did practiſe by unlawful means to enlarge the Foreſt of that County many Miles beyond the known bounds thereof, as they had been enjoyed near 300 years, contrary to the Law and to the Charter of the liberties of the Foreſt, and other Charters and divers Acts of Parliament: and for effecting the ſame did unlawfully cauſe and procure undue return to be made of Jurors, and great numbers of other perſons who were unſworn, to be joined to them of the Jury, and threatened and awed the ſaid Jurors to give a verdict for the King, and by unlawful means did ſurprize the County, that they might not make defence, and did uſe ſeveral menacing wicked ſpeeches and actions to the Jury and others, for obtaining his unjuſt purpoſe aforeſaid. And after verdict obtained for the King in the month of *April* following (at which time the ſaid Juſtice-ſeat was called by adjournment), the ſaid *John Finch*, then Lord Chief-Juſtice of his Majeſty's Court of *Common-Pleas*, and one of the Judges aſſiſtants for them; he continued by farther unlawful and unjuſt practices, to maintain and confirm the ſaid verdict, and did then and there, being aſſiſtant to the Juſtice in *Eyre*, adviſe the refuſal of the traverſe offered by the County, and all their evidences, but only what they ſhould verbally deliver; which was refuſed accordingly.

IV. That he about the month of *November*, 1635, being then Lord Chief-Juſtice of the *Common-Pleas*, and having taken an Oath for due adminiſtration of Juſtice to his Majeſty's liege people, according to the Laws and Statutes of the Realm, contrived an opinion *in hæc verba*, (when the good and ſafety, *&c. Vide State-Trials*, Vol. I.) and did ſubſcribe his name to that opinion, and by perſuaſions, threats, and falſe ſuggeſtions, did ſolicit and procure Sir *John Bramſtone*, Knight, then and now Lord Chief-Juſtice of *England*; Sir *Humphrey Davenport*, Knight, Lord Chief-Baron of his Majeſty's Court of *Exchequer*; Sir *Richard Hutton*, Knight, late one of the Juſtices of his Majeſty's Court of *Common-Pleas*; Sir *John Denham*, Knight, late one of the Barons of his Majeſty's Court of *Exchequer*; Sir *William Jones*, Knight, late one of the Juſtices of the ſaid Court of *King's-Bench*; Sir *George Croke*, Knight, then and now one of the Judges of the ſaid Court of *King's-Bench*; Sir *Thomas Trevor*, Knight, then and now one of the Barons of the *Exchequer*; Sir *George Vernon*, Knight, late one of the Juſtices of the ſaid Court of *Common-Pleas*, Sir *Robert Berkley*, Knight, then and now one of the Juſtices of the ſaid Court of *King's-Bench*; Sir *Francis Crawley*, Knight, then and now one of the Juſtices of the ſaid Court of *Common-Pleas*; Sir *Richard Weſton*, Knight, then and now one of the Barons of the ſaid Court of *Exchequer*; ſome or one of them to ſubſcribe, with their names, the ſaid opinion preſently, and enjoined them ſeverally ſome or one of them ſecrecy, upon their Allegiance.

V. That he the fifth day of *June*, then being Lord Chief-Juſtice of the ſaid Court of *Common-Pleas*, ſubſcribed an extrajudicial opinion in anſwer to queſtions in a Letter from his Majeſty, *in hæc verba*, *&c.* Vol. I. *page* 487.

And that he contrived the ſaid queſtions; and procured the ſaid Letter from his Majeſty: And whereas the ſaid Juſtice *Hutton* and Juſtice *Croke* declared to him their opinions to the contrary; yet he required and preſſed them to ſubſcribe, upon his promiſe that he would let his Majeſty know the truth of their opinions, notwithſtanding ſuch ſubſcriptions; which nevertheleſs he did not make known to his Majeſty, but delivered the ſame to his Majeſty as the opinion of all the Judges.

VI. That he being Lord Chief-Juſtice or the ſaid Court of *Common-Pleas*, delivered his opinion in the *Exchequer-Chamber* againſt Mr. *Hampden* in the caſe of Ship-money; that he the ſaid Mr. *Hampden* upon the matter and ſubſtance of the caſe was chargeable with the money then in queſtion; a Copy of which proceedings the Commons will deliver to your Lordſhips: and did ſolicit and threaten the ſaid Judges, ſome or one of them, to deliver their opinions in like manner againſt Mr. *Hampden*. And after the ſaid Baron *Denham* had delivered his opinion for Mr. *Hampden*; the ſaid Lord *Finch* repaired purpoſely to the ſaid Baron *Denham*'s chamber in *Serjeants-Inn* in *Fleet-ſtreet*; and after the ſaid Mr. Baron *Denham* had declared and expreſſed his opinion, urged him to retract the ſaid opinion; which he refuſing, was threatened by the ſaid Lord *Finch*, becauſe he refuſed.

VII. That he being then Lord Chief-Juſtice of the Court of *Common-Pleas* declared and publiſhed in the *Exchequer-Chamber* and *Weſtern* Circuit where he went Judge; that the King's right to Ship-money, as aforeſaid, was ſo inherent a right to the Crown, as an Act of Parliament could not take it away; and with divers malicious ſpeeches inveighed againſt, and threatned all ſuch as refuſed to pay Ship-money: all which opinions contained in the fourth, fifth and ſixth Articles, are againſt the Law of the Realm, the Subjects right of property, and contrary to former reſolutions in Parliament, and to the Petition of Right: which ſaid reſolutions and Petition of Right were well known to him reſolved and enacted in Parliament, when he was Speaker of the Commons Houſe of Parliament.

VIII. That he being Lord Chief-Juſtice of the Court of *Common-Pleas* did take the general practice of that Court to his private chamber; and that he ſent warrants into all or many Shires of *England* to ſeveral men, as to *Francis Giles* of the County of *Devon*, *Robert Benſon* of the County of *York*, Attornies of that Court, and to divers others, to releaſe all perſons arreſted on any outlawry for about forty ſhillings fees; whereas none by Law ſo arreſted can be bailed or releaſed without ſuperſedeas under ſeal, or reverſal.

* Lord *Clarendon* in his Hiſtory, Vol. I. *pag.* 71. (8vo Edition) ſays, Undoubtedly my Lord *Finch*'s Speech in the *Exchequer Chamber* made Ship-money much more abhorred and formidable than all the Commitments by the Council-Table, and all the Diſtreſſes taken by the Sheriffs in *England*. And *pag.* 74. ſays, he took up Ship-money where Mr. *Noy* left it, and being a Judge carried it up to that Pinnacle, from whence he almoſt broke his own Neck, having in his Journey thither had too much influence on his Brethren to induce them to concur in a Judgment they had all cauſe to repent. To which his Declaration, after he was Keeper of the Great Seal of *England*, muſt be added, upon Demurrer put in to a Bill before him, which had no other Equity in it, than an order of the Lords of the Council: "That whilſt he was Keeper, no man ſhould be "ſo ſaucy as to diſpute thoſe Orders, but that the wiſdom of that Board ſhould be always ground enough for him to make a Decree in *Chancery*."

† Sir *John Finch* was a man exceedingly obnoxious to the People, upon the buſineſs of Ship-money; and not of reputation and Authority enough to countenance and advance the King's Service. Lord *Clarendon*'s Hiſtory, Vol. I. *pag.* 131. in 8vo.

IX. That he being Lord Chief-Juſtice of the Court of *Common-Pleas*, upon a pretended ſuit begun in *Michaelmas*-Term, in the 11th year of his Majeſty's reign, although there was no plaint or declaration againſt him, did notoriouſly, and contrary to all Law and Juſtice, by threats, menaces, and impriſonment, compel *Thomas Laurence*, an Executor, to pay nineteen pound twelve ſhillings; and likewiſe cauſed *Richard Bernard*, being only Overſeer of the laſt Will of that Teſtator, to be arreſted for the payment of the ſaid money, contrary to the advice of the reſt of the Judges of that Court, and againſt the known and ordinary courſe of Juſtice, and his ſaid Oath and Knowledge: and denied his Majeſty's ſubjects, the common and ordinary Juſtice of this Realm, as to Mr. *Limerick*, and others; and for his private benefit endamaged and ruined the eſtates of very many of his Majeſty's ſubjects, contrary to his Oath and Knowledge.

X. That he being Lord-Keeper of the Great Seal of *England*, and ſworn one of his Majeſty's Privy-Council, did by falſe and malicious ſlanders labour to incenſe his Majeſty againſt Parliaments, and did frame and adviſe the publiſhing the Declaration after the diſſolution of the laſt Parliament.

All which Treaſons and Miſdemeanors above-mentioned, were done and committed by the ſaid *John* Lord *Finch*, Baron of *Fordwich*, Lord-Keeper of the Great Seal of *England*; and thereby he the aforeſaid *Finch* hath traitorouſly, and contrary to his Allegiance laboured to lay imputations and ſcandals upon his Majeſty's Government, and to alienate the hearts of his Majeſty's liege People from his Majeſty, and to ſet a diviſion between them, and to ruin and deſtroy his Majeſty's Realm of *England*; for which they do impeach him the ſaid Lord *Finch*, Baron of *Fordwich*, Lord-Keeper of the Great Seal of *England*, of High-Treaſon againſt our ſovereign Lord the King, his Crown and Dignity, of the Miſdemeanors above-mentioned. *And the ſaid Commons by proteſtation, ſaving to themſelves the liberty of exhibiting, at any time hereafter, any other accuſation or impeachment againſt the ſaid Lord* Finch, *and alſo of replying to the anſwer, that the ſaid* John *Lord* Finch *ſhall make unto the ſaid Articles, or to any of them; and of offering proof of the premiſſes, or any of their impeachments or accuſations that ſhall be exhibited by them, as the caſe ſhall, according to the courſe of Parliaments, require; do pray, that the ſaid* John *Lord* Finch, *Baron of* Fordwich, *Lord-Keeper of the Great Seal of* England, *may be put to anſwer to all and every of the premiſſes, and ſuch Proceedings, Examinations, Trials, and Judgments, as may be upon every of them, had and uſed, as is agreeable to Law and Juſtice.*

After reading theſe Articles, reſolv'd upon the Queſtion,

That theſe Articles thus read and ingroſs'd ſhall be ſent to the Lords, in maintenance of the Commons charge againſt *John* Lord *Finch* of *Fordwich*, late Lord-Keeper of the Great Seal of *England*.

Mr. *Arthur Goodwin* is appointed to go up with a meſſage to the Lords to a conference with their Lordſhips, by a Committee of both Houſes, concerning Articles to be deliver'd in maintenance of the Commons accuſation of *John* Lord *Finch* of *Fordwich*, late Lord-Keeper of the Great Seal of *England*; and concerning the liberty and property of the ſubject.

At the requeſt of the Lord *Falkland*, Mr. *Hyde* is appointed to be aſſiſtant unto him, for the reading of the Articles to be deliver'd againſt the late Lord-Keeper.

Mr. *Goodwin* brought anſwer, that according to the order of this Houſe, he had deliver'd the meſſage to their Lordſhips, and their Lordſhips will give a meeting to-morrow morning, at nine of the Clock, by a Committee of the whole Houſe, as is deſired.

Accordingly the Articles againſt the Lord-Keeper were preſented to the Lords; and after reading the ſame, the Lord *Falkland* ſpoke as follows:

My Lords,

THESE Articles againſt my Lord *Finch* being read, I may be bold to apply that of the Poet, *Nil refert tales verſus qua voce legantur*; and I doubt not but your Lordſhips muſt be of the ſame opinion, of which the Houſe of Commons appears to have been, by the choice they have made of me, that the charge I have brought is ſuch, as needs no aſſiſtance from the bringer, leaving not ſo much as the colour of a colour for any defence, including all poſſible evidence, and all poſſible aggravation (that addition alone excepted) which he alone could make, and hath made; I mean, his confeſſion, included in his flight.

Here are many and mighty Crimes, *Crimes of Supererogation*, (ſo that High-Treaſon is but a part of his charge) purſuing him fervently in every ſeveral condition, (being a ſilent Speaker, an unjuſt Judge, and an unconſcionable Keeper). That his life appears a perpetual warfare (by mines, and by battery, by battle, and by ſtratagem,) againſt our fundamental Laws, which (by his own confeſſion) ſeveral Conqueſts had left untouch'd, againſt the excellent conſtitution of this Kingdom, which hath made it appear unto ſtrangers rather an Idea, than a real Commonwealth, and produced the honour and happineſs of this to be a wonder of every other Nation; and this with ſuch unfortunate ſucceſs, that as he always intended to make our ruins a ground of his advancement, ſo his advancement the means of our further ruin.

After that, contrary to the further end of his place, and the ending of that meeting in which he held his place, he had, as it were, gagg'd the Commonwealth, taking away (to his power) all power of ſpeech from that Body, of which he ought to have been the mouth, and which alone can perfectly repreſent the condition of the People, whom they only repreſent: which if he had not done, in all probability, what ſo grave and judicious an Aſſembly might have offered to the conſideration of ſo gracious and juſt a Prince, had occaſioned the redreſs of the grievances they then ſuffered, and prevented thoſe which they have ſince endured, according to the ancient maxim, *Odiſſe quos læſeris*. He purſued this offence towards the Parliament, by inveighing againſt the Members, by ſcandalizing their proceedings, by trampling upon their Acts and Declarations, by uſurping and devolving the right, by diminiſhing and abrogating the power, both of that and other Parliaments, and making them (as much as in him lay) both uſeleſs and odious to his Majeſty; and purſued his hatred to this fountain of Juſtice by corrupting the ſtreams of it, the Laws; and perverting the conduit-pipes, the Judges.

He practiſed the annihilating of ancient and notorious perambulations of particular Foreſts, the better to prepare himſelf to annihilate the ancient and notorious perambulation of the whole Kingdom, the metes and boundaries between the liberties of the ſubject and ſovereign power; he endeavoured to have all tenures *durante beneplacito*, to bring all Law from his Majeſty's Courts into his Majeſty's breaſt; he gave our goods to the King, our lands to the Deer, our liberties to his Sheriffs; ſo that there was no way by which we had not been oppreſt, and deſtroyed, if the power of this perſon had been equal with his will, or that the will of his Majeſty had been equal to his power.

He not only by this means made us liable to all the effect of an Invaſion from without, but (by deſtruction of our liberties, which included the deſtruction of our propriety, which included the deſtruction of our induſtry) made us liable to the terribleſt of all Invaſions, that of want and poverty. So that if what he plotted had taken root, and he made it, as ſure as his Declaration could make it, (what himſelf was not, Parliament-proof) in this wealthy and happy Kingdom, there could have been left no abundance but of grievances and diſcontentment, no ſatisfaction but amongſt the guilty. It is generally obſerved of the Plague, that the infection of others is an earneſt, and conſtant deſire of all that are ſeized by it: and as this deſign reſembles that diſeaſe, in the ruin, deſtruction, and deſolation it would have wrought, ſo it ſeems no leſs like it in this effect: he having ſo laboured to make others ſhare in that guilt, that his ſolicitation was not only his action, but his works, making uſe both of his authority, his intereſt, and importunity, to perſuade; and in his Majeſty's name (whoſe Piety is known to give that excellent prerogative to his Perſon, that the Law gives to his place, not to be able to do wrong) to threaten the reſt of the Judges, to ſign opinions contrary to Law, to aſſign anſwers contrary to their opinions, to give Judgment which they ought not to have given, and to recant Judgment when they had given it as they ought: ſo that whoſoever conſiders his care of, and concernment, both in the growth and in the immorality of this project, cannot but by the ſame way, by which the wiſeſt judgment found the true mother of the Child, diſcover him not only to have been the foſterer, but the father of this moſt pernicious and envious deſign.

I ſhall not need to obſerve, that this was plotted and purſued by an *Engliſhman* againſt *England*, (which increaſeth the Crime in no leſs degree than Parricide is beyond Murder) that this was done in the greateſt matter joined to the greateſt bond, being againſt the general Liberty, and public propriety, by a ſworn Judge (and if that ſalt itſelf, becauſe unſavoury, the Goſpel hath deſign'd whither it muſt be caſt) that he poiſoned our very antidotes, and turned our guard into a deſtruction, making Law the ground of illegality; that he uſed this Law not only againſt us, but againſt itſelf, making it, as I may ſay, *Felo de ſe*, making the pretence (for I can ſcarce ſay the appearance of it) ſo to contribute to the utter ruin of itſelf.

I ſhall not need to ſay, that either this is (or can be) of the higheſt kind, and in the higheſt degree of Parliamentary Treaſon, a Treaſon which needs not a computation of many ſeveral actions, which alone were not Treaſon, to prove a Treaſon all together, and by that demonſtration of the intention, to make that formally Treaſon which were materially but a miſdemeanor: this is a Treaſon as well againſt the King, as againſt the Kingdom; for whatſoever is againſt the whole, is undoubtedly againſt the Head, which takes from his Majeſty the ground of his rule, the Laws, (for if foundations be deſtroyed, the pinnacles are moſt endangered) which takes from his Majeſty the principal honour of his rule; the ruling over Freemen, a power as much nobler than that over Villeins, as that is than that over Beaſts; which endeavoured to take from his Majeſty the principal ſupport of his rule, their hearts and affections over whom he rules; (a better and ſurer ſtrength and wall to the King, than the ſea is to the Kingdom;) and by begetting a mutual diſtruſt, and by that a mutual diſaffection between them, to hazard the danger even of the deſtruction of both.

My Lords,

I ſhall the leſs need to preſs this, becauſe as it were unreaſonable in any caſe to ſuſpect your Juſtice, ſo here eſpecially, where your intereſt ſo nearly unites you; your great ſhare in poſſeſſions, giving you an equal concernment in propriety, the care and pains uſed by your noble Anceſtors in the founding and aſſerting of our common liberties rendering the juſt defence of them your moſt proper and peculiar inheritance, and both exciting to oppoſe and extirpate all ſuch deſigns as did introduce, and would have ſettled an arbitrary, that is, an intolerable form of Government, and have made even your Lordſhips and your poſterity but Right Honourable Slaves.

My Lords,

I will ſpend no more words, *luctando cum larva*, in accuſing the Ghoſt of a departed perſon, whom his Crimes accuſe more than I can do, and his abſence accuſeth no leſs than his Crime. Neither will I excuſe the length of what I have ſaid, becauſe I cannot add to an excuſe, without adding to the fault, or my own imperfections, either in the matter or manner of it; which I know muſt appear the greater, by being compared with that learned Gentleman's great ability, who hath preceded me at this time: I will only deſire, by the command, and in the behalf of the Houſe of Commons, that theſe proceedings againſt the Lord *Finch* may be put in ſo ſpeedy a way of diſpatch, as in ſuch caſes the courſe of Parliament will allow.

The ſame day, the Commons order'd thanks to be returned from the Houſe to Mr. *St. John*, Mr. *Whitlock*, the Lord *Falkland*, and Mr. *Hyde*, for the great ſervice they have perform'd to the honour of the Houſe, and good of the Commonwealth, in the transferring the Articles againſt the late Lord-Keeper.

Jan. 30. It was ordered by the Lords, that ſuch Judges as the Houſe of Commons ſhall deſire, are to be examined in the caſe of the Lord *Finch*, by the ſame deputed Lords as were appointed in the Earl of *Strafford*'s caſe: but the Judges are not to be examin'd upon any thing to accuſe themſelves.

Feb. 15. The Houſe of Lords thought fit, that a Proclamation do iſſue out to ſummon the Lord *Finch*, late Lord-Keeper, perſonally to appear

before the Lords in Parliament; to anſwer an Accuſation of High-Treaſon brought againſt him by the Commons.

But his Lordſhip never thought fit to ſurrender himſelf, and the Civil War ſoon after breaking out, there was no further Proceedings againſt him, and he endured eight Years Baniſhment, and Compoſitions amounting to about 7000 *l.* But lived to ſee the horrid Murder of King *Charles* I. and the happy Reſtoration of King *Charles* II.

XXII. Two Judgments of the Lords aſſembled in Parliament, in 1647, againſt *John Morris*, alias *Poyntz*, *Mary* his Wife, *Iſabel Smith*, *Leonard Darby*, and *John Harris*, for forging, framing, and publiſhing a Copy of a pretended Act of Parliament.

Die Martis, 21 *Septemb.* 1647.

WHEREAS *John Brown*, Eſq. Clerk of the Parliaments, did the 25th Day of *June*, 1647, exhibit a Charge before the Lords in Parliament, againſt *John Morris*, alias *Poyntz*, *Mary* his Wife, *Iſabel Smith*, *Leonard Darby*, and *John Harris*, for forging, framing, and publiſhing a Copy of a pretended Act of Parliament, alledged to have been made in the 43d of *Elizabeth*, and entitled, *An Act to enable and make good a Conveyance and Aſſurance made of the Manors of* Chipping-Onger, Northokenden, Southokenden, *and other Lands in the County of* Eſſex, *and* Beaves-Marks, *alias* Buries-Marks, *in* London, *by* James Morris, *Eſq.* *and* Gabriel Poyntz, *Eſq.* *to* John Morris, *alias* Poyntz, *and his Heirs*; *and to eſtabliſh the ſaid Manors upon the ſaid* John Morris, *alias* Poyntz, *and his Heirs*, *according to the ſaid Conveyance:* Whereas in Truth there neither is, nor ever was any ſuch Act of Parliament. And for forging and counterfeiting his Hand-writing, and ſubſcribing to the ſaid Copy, *John Brown*, *Cleric. Parliamentorum.* And the better to colour their leud Practices, have charged the ſaid *John Brown* with the Loſs of the ſaid Record, and denying of his own Hand. And whereas Sir *Adam Littleton*, Bart. who had good Title to Part of the ſaid Manors and Lands, as in right of Dame *Audery*, his Wife, whoſe Inheritance thereunto was ſought to be impeached by the ſaid Copy of the ſaid pretended Act of Parliament, complained likewiſe againſt the ſaid Perſons before their Lordſhips, for the ſaid Forgery and Publication; in that the ſaid *John Morris*, *Leonard Darby*, *John Harris*, and *Iſabel Smith*, did produce the ſaid Copy at *Chelmsford*, at *Lent*-Aſſizes, in 1646, for the County of *Eſſex*; at a Trial in an *Ejectione Firmæ*, brought by *Thomas Smith*, Huſband of the ſaid *Iſabel*, and Leſſee of the ſaid *John Morris*, againſt *Joſias Clarke*, Tenant to the ſaid Sir *Adam Littleton*, of Part of the ſaid Lands contained in the ſaid pretended Act, and did plead and affirm the ſame to be a true Copy of an Act of Parliament: And the ſaid *Darby* and *Harris* did falſely and perjuriouſly ſwear in open Court at the ſaid Trial, that they had examined the ſaid Copy, by them produced, with the Record of the ſaid pretended Act, in the Office of the Clerk of the Parliament; and did there alſo falſly and perjuriouſly ſwear, that they did ſhew that Writing to the Clerk of the Parliament, and that he did acknowledge the ſaid Writing to be his own Hand; whereas in Truth the ſaid Subſcription to the ſaid pretended Act of Parliament is counterfeit, and none of the ſaid Clerk of the Parliament's Hand. And the ſaid Sir *Adam* further complained of an Exemplification under the Great Seal of *England*, for countenancing the ſaid forged Copy of the ſaid pretended Act, by ſome undue Means by the ſaid Parties thereunto affixed, of the Parties ſhewing, whereof Proof was made before their Lordſhips.

All which being Crimes of a very high and tranſcendant Nature, and do concern the publick Juſtice of the Kingdom, and of this honourable Houſe, the ſupremeſt Judicatory of this Kingdom; that Acts of Parliament, the higheſt Records in this Kingdom, ſhould be framed, invented, forged, and given in Evidence, and publiſhed as true Acts of Parliament; and the Hand of the Clerk of the Parliament, a ſworn Officer, forged, counterfeited, and ſubſcribed to the ſame; as that if ſuch a bold and audacious Act ſhould not be ſeverely puniſhed, no Man can be ſafe in his Life, Perſon or Eſtate: The ſaid *John Brown*, and Sir *Adam Littleton*, deſired that the Perſons aforeſaid might forthwith anſwer the ſaid Charges; and that their Lordſhips would inflict ſuch exemplary Puniſhment upon the Offenders, as may deter the like Attempts and leud Practices in others, and give ſuch fitting Reparations as their Lordſhips in their Wiſdom ſhould think meet.

Whereupon the Perſons aforeſaid put in their Anſwers to the Premiſes, and pleaded Not Guilty; and after the Caſe had been divers Days fully heard by Counſel on both Sides, and Witneſſes produced at this Bar, and the whole Matter after thoroughly weighed, debated, and fully conſidered of by the Houſe; the Lords in Parliament aſſembled, being fully ſatisfied of the Guilt of the ſaid Perſons, for the aforeſaid high Crimes charged againſt them, do award and adjudge,

1. That the ſaid *John Morris*, alias *Poyntz*, ſhall pay as a Fine to our Sovereign Lord the King the Sum of 1000 *l.* *Iſabel Smith* 200 *l.* *Leonard Darby* 400 *l.* and *John Harris* 400 *l.*

2. That the ſaid Parties ſhall pay to *John Brown*, Eſq. Clerk of the Parliament, for his Damages, 500 *l.*

3. That all the ſaid Parties ſhall, before their Enlargement out of Priſon, be bound to their good Behaviour during their Lives, before ſome one of his Majeſty's Juſtices of his Bench at *Weſtminſter*, with good Sureties.

4. That the ſaid Copy of the pretended Act of Parliament, falſly affirmed upon Oath, to have been ſubſcribed with the Name of the ſaid Clerk of the Parliament, entitled, *An Act to enable and make good a Conveyance and Aſſurance, made of the Manors of* Chipping-Onger, Northokenden, Southokenden, *and other Lands in the County of* Eſſex; *and* Beaves Marks, *alias* Buries-Marks, *in* London; *by* James Morris, *Eſq.* Gabriel Poyntz, *Eſq.* *to* John Morris, *alias* Poyntz, *and his Heirs, and to eſtabliſh the ſaid Manors upon the ſaid* John Morris, *alias* Poyntz, *and his Heirs, according to the ſaid Conveyance*; is hereby declared to be forged and counterfeit; and is by their Lordſhips adjudged and decreed to be for ever damned and cancelled, and never to be pleaded in any Court or Cauſe whatſoever; nor to be admitted to be given in Evidence; there being no Record of ſuch pretended Act of Parliament to warrant the ſame.

5. That all the ſaid ſeveral Perſons hereby adjudged guilty of the ſaid Crimes, ſhall ever hereafter be made uncapable to be Witneſſes in any Cauſe whatſoever.

6. That *John Brown*, Eſq. Clerk of the Parliament, is, in the Judgment of this Houſe, free and clear of and from all and every the Aſperſions, Falſities, and Charges of the ſaid *John Morris*, alias *Poyntz*, *Iſabel Smith*, *Leonard Darby*, and *John Harris*, charged, uttered, divulged, and given out by them againſt him, concerning the Matters herein mentioned. And that this Judgment ſhall be openly read and publiſhed in the Face of the County of *Eſſex*, at the next Aſſizes to be held for that County.

7. That the ſaid Parties ſhall bring, or cauſe to be brought into this Houſe by the firſt Day of *October* next, one Exemplification under the Great Seal of *England*, concerning the Manor of *Little Munden*, in the County of *Hertford*; and the aforeſaid Exemplification of the ſaid counterfeit Act of Parliament, to which the Great Seal of *England* is charged to have been unduly and fraudulently affixed, that ſo the foreſaid forged Exemplification may be cancelled and vacated.

8. That they ſhall be impriſoned during the Pleaſure of this Houſe.

Joh. Brown, Cler. Parliamentorum.

Die Martis, 2*d Die Novemb.* 1647.

WHEREAS the Lords in Parliament aſſembled, upon the 21ſt of *September* laſt, gave Judgment concerning a Copy of a pretended Act of Parliament, entitled, *An Act to enable and make good a Conveyance and Aſſurance, made of the Manors of* Chipping-Onger, Northokenden, Southokenden, *and other Lands in the County of* Eſſex; *and* Beaves-Marks, *alias* Buries-Marks, *in* London, *by* James Morris, *Eſq.* Gabriel Poyntz, *Eſq.* *to* John Morris, *alias* Poyntz, *and his Heirs, and to eſtabliſh the ſaid Manors upon the ſaid* John Morris, *alias* Poyntz, *and his Heirs, according to the ſaid Conveyance*; and declared the ſame to be forged and counterfeit, and there to be for ever damned and cancelled, as by the ſaid Judgment more at large appeareth.

And whereas Dame *Audery Littleton*, late Wife of Sir *Adam Littleton*, deceaſed, Sir *Folke Grevil*, Knt. and *Maurice Barrow*, Eſq. by their Petition exhibited before the Lords in Parliament, complained, that notwithſtanding the ſaid Judgment, one *Iſabel Smith* (a Perſon ſentenced by their Lordſhips, and committed to *Newgate* for the ſaid Forgery) having procured the ſaid forged Act of Parliament, and other forged Writings, *viz.* three Fines of the Lands contained in the ſaid forged Act, and a forged Pleading, ſetting forth the Uſes of the ſaid forged Fines, to be written in Parchment; and having by ſome ſlight made them to ſeem as if they had been written long ſince, did foiſt and ſhuffle in the ſame amongſt other Evidences, and Writings remaining in the Treaſury of the late Court of Wards; and pretending the ſame to be found there, obtained Copies thereof under the Hand of Mr. *Audely*, Clerk of the ſaid Court, hoping thereby to gain ſome Credit and Authority to the ſaid Forgeries, and further to impeach the Titles of the Petitioners.

To which Petition the ſaid *Iſabel Smith* put in her Anſwer, and a Day was appointed for hearing the ſame. At which Day the ſaid *Iſabel Smith*, being preſent at the Bar, and not making good any of the Particulars in her ſaid Anſwer, nor giving any Satisfaction to ſuch Queſtions as were by their Lordſhips demanded of her concerning the ſame: And the ſaid ſeveral Writings, after full Examination by hearing of Counſel, and Witneſſes produced; and alſo upon View of the ſaid Writings (being by their Lordſhips Order brought into the Houſe) manifeſtly appearing to their Lordſhips to be groſs Forgeries: The Lords in Parliament aſſembled to declare, and adjudge;

That the ſaid Parchment Writings, one whereof purporteth a Fine pretended to be levied at *St. Albans, a die ſancti Martini in quindecim dies, Anno* 37 *Eliz.* between *James Morris*, Eſq. and *John Morris*, alias *Poyntz*, his Son, Plaintiffs, and *Gabriel Poyntz*, Eſq. and *William Cutts*, Defendants; of the Manor of *Chipping-Onger*, and other Lands and Tenements, with the Appurtenances, in *Chipping-Onger*, in the County of *Eſſex:* One other whereof purporteth a Fine pretended to be levied at *St. Albans, a die ſancti Martini in quindecim dies, Anno* 37 *Eliz.* between *James Morris*, Eſq. and *John Morris*, alias *Poyntz*, his Son, Plaintiffs; and *Gabriel Poyntz*, Eſq. and *William Cutts*, Defendants; of the Manors of *Northokenden*, *Poyntz*, and *Groves*, with the Appurtenances, and of divers Meſſuages, Cottages, Mills, Lands, Meadows, Paſtures, and other Hereditaments in *Northwokenden*, alias *Northokenden*, *Southwokenden*, alias *Southokenden*, *Avely*, *Upminſter*, alias *Upmiſter*, *Southweal*, *Brentwood*, alias *Burntwood*, *Warley*, alias *Warley Magna*, *Childerditch*, *Bulfan*, *Bownton*, alias *Bunton*, *Eaſt Thornedon*, *Weſt Thornedon*, *Weſt Thurrock*, *Grays Thurrock*, *Chawdwell*, *Styfford*, alias *Stiford*, *Horne-church*, *Baſſeldon*, and *Cranham*, and of the Rectory of *Northwokenden*, alias *Northokenden*, with the Appurtenances, in the ſaid County of *Eſſex*.

One

One other whereof purporteth a fine pretended to be levied at *St. Albans a die Sancti Martini in quindecim dies*, *Anno* 37 *Eliz.* between *James Morris*, Eſq. *John Morris* alias *Poyntz*, his Son, Plaintiffs; and *Gabriel Poyntz*, Eſq. and *William Cutts*, Eſq. Defendants; of four Meſſuages, ſix Gardens, and two Acres of Land with the appurtenances, in the Pariſh of St. *Katherine Cree-Church*, *London*.

One other of the ſaid Parchment writings purporteth a pleading, ſetting forth the uſes of the ſaid fines, and beginning in theſe words, (viz.) Eſſex. ſſ. *In memorandum de Banco*, *Anno triceſimo octavo* Elizabeth, viz. *inter Record. Termini ſancti Trinitatis Rollo* xxi. *ex parte Recordationum in Ter. manen. inter alia continetur ut ſequitur*, viz. *Memorandum quod nuper invenitur in quodam Rollo extract. de finibus & iſſuis Banci in Termino Sancti Michaelis annis Regni Dominæ noſtræ* Elizabethæ, *triceſimo ſexto & ſeptimo*, *quod* Gabriel Poyntz, *Eſq. &c.*

And one other whereof purporteth a Copy of a pretended Act of Parliament, intitled, *An Act to enable and make good a conveyance and aſſurance*, *made of the Manors of* Chipping-Onger, Northokenden, Southokenden, *and other Lands in the County of* Eſſex; *and* Beaves-Marks *alias* Buries-Marks *in* London; *by* James Morris, *Eſq*; *and* Gabriel Poyntz, *Eſq*; *to* John Morris *alias* Poyntz, *and his Heirs*, *and to eſtabliſh the ſaid Manors upon the ſaid* John Morris *alias* Poyntz, *and his Heirs*, *according to the ſaid conveyance:* Are hereby declared to be forged and counterfeit, and are by their Lordſhips adjudged and decreed to be for ever damned and cancelled, and never to be pleaded, or admitted to be given in evidence in any Court, or Cauſe whatſoever: there being no Record of any ſuch Fines, Pleading, or Act of Parliament to warrant the ſame; nor any Term then held at *St. Albans*, when the ſaid fines were pretended to be levied there.

And it is further ordered by the Lords in Parliament aſſembled, that the ſaid *Iſabel Smith* ſhall by the 27th of *November* next bring, or cauſe to be brought into this Houſe, the Copies of the ſaid Parchment writings, (pretended to be found in the Treaſury of the Court of Wards) ſubſcribed by the ſaid Mr. *Awdely*, that ſo the ſame may be cancelled and vacated.

John Brown, *Cler. Parliamentorum.*

Eſſex ſſ. *In memorandum de Banco*, *Anno triceſimo octavo* Elizabeth, viz. *inter Record. Termini Sancti Trinitatis Rollo* xxi. *ex parte Recordationum in Theſaurum manen. inter alia continetur ut ſequitur*, viz.

"MEmorandum quod nuper invenitur in quodam Rollo extract. de finibus & iſſuis Banci & Termini Sancti Michaelis annis Regni Dominæ noſtræ *Elizabethæ* triceſimo ſexto & ſeptimo, quod *Gabriel Poyntz*, Eſq; fecit cum prædicta Domina Regina finem pro concordia cum *Jacobi Morris*, Eſq; & aliis de Pl'ito condic. de Manor *Chipping-Onger*, alias *Anger* ad Caſtrum, cum appurtenanc. *&c.*"

5 *Novemb.* 1647.

I have ſearched the Records of the *Common-Pleas*, *de Termino Sancti Trinitat. Anno triceſimo octavo Reg. Eliz. Rollo viceſimo primo*, and do find that there is no inrollment of any ſuch Record there, as is above-mentioned.

Per Johannem Cocks, *Cleric.*
Theſaur. de Com. Banco.

I have ſearched in the Treaſurer's Remembrancer's Office in the *Exchequer*, amongſt the Records of *Trinity*-Term, *Anno* xxxviii. *Reginæ Elizabeth. Roll.* xxi. but do not find that there is any ſuch Record or Inrollment, as is above-mentioned.

T. Oſborne.

6 *May*, 1647.

MEmorandum, that I *Francis Blake*, Keeper of the Books for the ſearchers of fines, and of the Records thereof in the Chirographer's Office, have made diligent ſearch in the ſaid Books, and amongſt the ſaid Records of *Michaelmas*-Term, 35 and 36 *Eliz.* and all the Terms after, till *Hillary* 38 *Eliz.* and I can find no fine at all from *Gabriel Poyntz* and *William Cutts*, or either of them, to any perſon whatſoever, of any Lands in the Counties of *Eſſex* or *London*. And moreover, I find by the ſaid Records, that *Michaelmas*-Term, 36 and 37 *Eliz.* was held at the City of *Weſtminſter*, and not at the Town of *St. Albans*. All which I do hereby (at the requeſt of Sir *Adam Poyntz*, alias *Littleton*, Bart.) certify to all whom it may concern.

F. Blake.

Here ends the Proceedings of the Lords againſt them.

Soon after a ſhort Breviate of Mr. *John Morris*'s caſe was drawn up, and delivered to his Excellency Sir *Thomas Fairfax*, by divers of the Parliament's Agents.

May it pleaſe your Excellency,

BEING deeply oppreſſed in our ſpirits, and overburdened in ourſelves, at the manifold and doleful outcries and complaints of the people, in all parts of our quarters where we come, uttered againſt the daily preſſures and inroads that are made by prerogative and arbitrary violence upon their common rights; and in particular, the cry and miſerable moan of certain oppreſſed Commoners, to wit, of *John Poyntz*, alias *Morris*, Eſq; *Iſabel Smith*, *John Harris*, and *Leonard Darby*, coming unto our ears, that we could not, but (as in duty we are bound) deeply repreſent their miſerable condition, as fellow-feelers of their oppreſſions, and perſons liable (when we come into their ſingle capacity of Commons) to the ſaid miſchief; and therefore conceiving it our duty to contribute our utmoſt endeavours for the remedy of the ſame, we could not but unburden in ſome meaſure our ſpirits unto your Excellency in their behalfs, who in ſuch a horrid and barbarous manner have been abuſed and ſupplanted of their common rights, by acts of violence and force, committed by *John Brown*, Clerk unto the Houſe of Lords, and his accomplices, under the colour of ſeveral orders ſurreptitiouſly by miſinformations gained from the ſaid Houſe, to the high uſurpation and abuſe of the name and authority of Parliament, in permitting the image thereof upon his own prerogative, outrage and violence, to the total ruin and ſupplantation of the juſt freedoms, and birthright inheritance of the ſaid perſons, as the ſeveral papers thereunto ſubjoined, for the full information of your Excellency, do demonſtrate. And for more certain confirmation of our premiſes, repreſented by the ſame, be pleaſed to conſider, that whereas the aboveſaid perſons are accuſed, condemned, and ſentenced by the Lords (ſurprized by *Brown*'s miſrepreſentations and deluſions) to pay 2500 *l.* fine, and ſuffer impriſonment, contrary to the regular courſe of the Laws, during the pleaſure of the ſaid Houſe, for forging and framing a copy of an Act of Parliament, touching the eſtate of the ſaid *John Poyntz* alias *Morris*, pretended to be taken out of the Office of the ſaid *John Brown*, with his hand thereunto; no ſuch original Record as *Brown* pretendeth is to be found in his Office: that ſince the ſaid accuſation, another original Record of the ſaid Act of Parliament, with other writings and evidences for the ſaid eſtate, is found in the Court of Wards, and they have gained copies thereof, examined and ſubſcribed by the Maſter of the ſaid Court and his Clerks, the which, with their hands thereunto, are herewith preſented; and concerning the truth thereof, three of us can alſo give it upon Oath, that the wife of one *Godfrey Cade*, now priſoner in the *Fleet*, did declare unto us, that the ſaid *John Brown* went to the *Fleet* unto her huſband, and gave him twenty-five ſhillings in hand, and promiſed him five pounds more, and his inlargement, to ſwear at the Lords Bar, that he forged the copy of the ſaid Act of Parliament, and counterfeited the Clerk's hand unto it; and the ſaid *Cade* did alſo confeſs the ſame.

Wherefore we humbly implore that your Excellency would be pleaſed to grant the ſaid diſtreſſed perſons your letter of requeſt unto the Parliament, according to their Petition, herewith directed to your Excellency, that the ſaid perſons, and their adverſaries, may be left to the free courſe and trial at Common Law; and that in the mean time, till the controverſy concerning the eſtate be decided at Law, the ſaid perſons may enjoy their enlargement upon bail, without any further trouble or durance, and the execution of their ſevere ſentence be ſuſpended, and the ſaid *Poyntz*, alias *Morris*, enjoy peaceable poſſeſſion of the ſaid eſtate, like as all his anceſtors, from the days of Queen *Elizabeth*, have done before him. Which requeſt is ſo reaſonable and juſt, and their condition ſo miſerable, deſperate, and dangerous, and of ſuch concernment to the whole Commonwealth, that no man, if ſuch exorbitances be not ſtopp'd and curb'd, can have any ſecurity in his eſtate or liberty, that we cannot but promiſe to ourſelves your Excellency's commiſeration of their condition, and readily aſſent unto their juſt ſuit. Thus we humbly take our leave, beſeeching your favourable conſtruction upon our boldneſs, and remain

Your Excellency's moſt humble
Servants and Soldiers,

Lieut. Gen. *R.*	*Robert Everard.* *George Sadler.*
Com. Gen. *R.*	*George Garret.* *Thomas Beverly.*
Col. *Whaley*'s.	*Matthew Wealy.* *William Ruſſel.* *William Sampſon.* *Richard Daley.*
Col. *Rich*'s.	*William Hudſon.* *John Dober.*
Col. *Fleetwood*'s.	*William Priar.* *William Bryan.*

But I don't find any thing farther done in this buſineſs.

XXIII. The Trial of Col. John Morris Governor of *Pontefract* Caſtle; at the Aſſizes at the Caſtle of *York*, before Mr. *John Puleſton*, and Mr. Baron *Thorpe*, Juſtices of Aſſize, the 16th of *Auguſt*, *Anno Dom.* 1649, for High-Treaſon.

COLONEL *Morris* being demanded to hold up his hand, refuſed, and the Indictment was read againſt him for Treaſon, for levying War againſt the late King and the Parliament, upon *Stat.* 25 *Ed.* III. The Court deſired him to plead *Guilty*, or not *Not Guilty*.

Col. *Morris*. My Lords, under correction, I conceive this Court hath not power to try me in this caſe; I being a martial man, I ought to be tried by a Council of War.

Court. Sir, What do you ſay, *are you guilty or not Guilty?* This is the ſecond time you have been aſked: Sir, if you will not anſwer the third time, we ſhall know what to do. *Are you guilty or not guilty?*

Col. *Morris.* My Lords, I ſtill conceive I ought not to be tried here; if I have done any thing worthy of death, I appeal to a martial Court, to my Lord *Fairfax*, Major-General, or a general Council of War: you have not any precedent for it, either for you to try me in this way, or me to ſuffer by it.

Court. Are you guilty or not guilty? This is the third time.

Col. *Morris.* My Lords, if your Honours will force me to plead, I conceive I am not guilty.

Court. How will you be tryed?

Col. *Morris.* My Lords, I was never at any Bar before, I am ignorant herein.

Court. Tell him what to ſay. [*Upon that, ſome near him, told him,* by God and his Country.]

Col. *Morris.* By God and my Country. (After that, challenge is made for Col. *Morris* to except againſt any of the Jury.) [*Mr.* Brooke, *a great man for the cauſe, comes firſt returned, to be ſworn as Foreman of the Jury.*]

Col. *Morris.* My Lords, I except againſt this *Brooke.*

Court. Sir, he is ſworn, and you ſpeak too late.

Col. *Morris.* My Lord, I appeal to himſelf, whether he be ſworn or no.

Mr. *Brooke.* Sir, I am not to anſwer you, but the Court. My Lord, I did not kiſs the Book.

Court. Sir, that is no matter, it's but a ceremony.

Col. *Morris.* My Lords, I beſeech your Honours that I may except againſt him; I know him, as well as I know my right hand, to be my enemy.

Clerk of Aſſize. Sir, he is recorded ſworn, there is no diſputing againſt the Record.

Col. *Morris.* My Lords, I muſt ſubmit to your Honours. (After that Col. *Morris* challenged 16 men, and my Lord *Puleſton*, thinking Col. *Morris* tedious in excepting againſt ſo many, anſwer'd, Sir, Keep within your compaſs, or I will give you ſuch a blow as will ſtrike off your head.)

Col. *Morris.* My Lords, I deſire nothing but Juſtice; for by the Statute of 14 *Hen.* VII. *fol.* 19. I may lawfully challenge thirty-five men, without ſhewing any cauſe to the contrary.

Court. It is granted. After a full Jury, the Indictment read, and Evidence for the State very full, that Col. *Morris* was Governor of *Pontefract*; which, *Morris* being very modeſt and civil, did not contradict any thing, until his time of anſwer.

Col. *Morris.* My Lords, I humbly deſire a Copy of my Indictment, that I may know what to anſwer; I conceive I may plead ſpecial as well as general.

Court. Sir, you cannot by Law.

Col. *Morris.* My Lords, I conceive there is a point of Law in it, and I humbly deſire to have Counſel; for I conceive by the Law, being attainted for High-Treaſon, I ought to have Counſel by the Statute 1 *Hen.* VII. *fol.* 23.

Court. Sir, I tell you, you cannot have it.

Col. *Morris.* Then, my Lords, I conceive I am not any way guilty of the Indictment for Treaſon: my Lords, it is ſaid to be againſt the King, his Crown, and againſt his Peace; whereas, my Lords, I can make it appear, I have acted only for the King, and nothing againſt him, which may appear here by my Commiſſion. The Court looks upon it, and anſwers,

Court. Sir, you are deceived, this is falſe, it is from the Prince.

Col. *Morris.* My Lords, it is very well known, my Lord *Fairfax* hath his Commmiſſion derived from the Parliament, and upon that he grants Commiſſion to his Officers, which is all one and the ſame. The Prince hath his from his Father, and I have mine from the Prince, which is full power, he being Captain-General of his Majeſty's Forces.

Court. Sir, have you nothing elſe to ſay?

Col. *Morris.* My Lords, under correction, I conceive it is ſufficient; for by the ſame power, all Judges, Juſtices of Peace, your Lordſhips, your Predeceſſors, and all other Officers, did act by the ſame power, and all proceſs and writs of Law were acted, and executed in his name, and by his authority.

Court. His power was not in him, but the Kingdom, for he was in truſt for the Kingdom; the King's Highway, and the King's Coin being ſo called, is not his own, but his Subjects; and his natural power, and legal power, are different.

Col. *Morris.* My Lords, under correction, I conceive his legal and perſonal power are undiviſible, all one, and cannot be ſeparated.

Court. Sir, all is one; if the King bid me kill a man, is this a ſufficient warrant for me to plead? No Sir, it is unlawful. Sir, have you no more?

Col. *Morris.* I beſeech your Honours give me leave, I am upon my life.

Court. Speak what you will, Sir, you ſhall be heard.

Col. *Morris.* Your ſervant, my Lord; then, my Lords, I conceive I have acted nothing againſt the Parliament, for that which I acted, it was for the King: and ſince the aboliſhing of regal power, I have not meddled with any thing againſt the Parliament, for that Act was but enacted the 14th of *July* laſt, and before that Time and Act of aboliſhing Kingly-Government, that princely Palace which I kept by his Commiſſion was demoliſhed. My Lords, I beſeech your Honours, that my Commiſſion may be read, to give ſatisfaction to the Court.

Lord *Puleſton.* Sir, it will do you no good, you may as well ſhew a Commiſſion from the Pope, all is one.

Col. *Morris.* My Lords, I deſire your Lordſhips to do me that Juſtice.

Lord *Thorpe.* For my part I am willing, if my Brother be not againſt it.

Lord *Puleſton.* Sir, we hold it for Law to be void, it is to no purpoſe.

Col. *Morris.* Then if your Lordſhips be not pleaſed to do me that Juſtice that it may be read, I deſire it may be reſtored me again. [*Upon that, Col.* Morris *received his Commiſſion unread.*] My Lords, it ſeemeth ſtrange, that your Honours ſhould do that which was never done the like before, never any of your Predeceſſors ever did the like; I wiſh it may not be to your own and your friends wrong, that you make yourſelves precedents of your acting, and myſelf of ſuffering. But, my Lords, I do not ſpeak for ſaving my own life, for (I thank my God) I am prepared, and very willing to part with this lump of clay: I have had a large time of repentance, it being twenty-two weeks ſince my impriſonment; and I am ſorry for thoſe which are like to undergo the ſame ſufferings, if your Lordſhips take away my life. And though I do not ſpeak any way in glory, indeed at this preſent there is a cloud hanging over our heads, I deſire there may be a fair Sunſhine to diſpel it. And though there were a world of plots in the Kingdom when I took the Caſtle, there is not wanting the ſame now, only the time is not yet come; and as I was to be the firebrand to *Scarborough*, ſo he (meaning *Bointon*) to *Tinmouth*, and that to others; and though you take away my life, there will be others which will take up the Lintſtock to give fire, though I be gone.

Court. Sir, you have little hopes to talk of any fire to be given here, having received ſuch a total rout in *Ireland.*

Col. *Morris.* My Lords, I ſhould have been unwilling to have contradicted your late news concerning *Ireland*; but ſince you have given me a hint of it, you muſt give me leave to let your Honours know, that I received Letters from the Marquis of *Ormond* dated the 3d of *Auguſt*, and yours is but the 2d; wherein he pleaſes to let me underſtand of the great care he hath of me, and that whatſoever ſhall befall me here, the like ſhall be to thoſe which he hath priſoners there, which (as he ſaith) are good ſtore. Therefore if your Lordſhips did not at all value my perſon, yet methinks you ſhould have ſome care of it for your own friends good.

Court. Sir, have you no more to ſay?

Col. *Morris.* My Lords, ſtill I appeal to my Commiſſion, which I conceive is ſufficient to defend me withal, in what I have done, notwithſtanding your power to the contrary.

Court. It is nothing at all, we have power to try you here.

Col. *Morris.* Then my Lords, (under correction) Laymen may as well be tried at a Martial Court: which if granted, thoſe excellent Acts of *Magna Charta*, and the Petition of Right, would be deſtroyed.

Court. But you are not looked on here as a Soldier; we ſhall do what in Juſtice belongs to us.

Col. *Morris.* My Lords, ſtill (under correction) I have taken the Oath of Allegiance, and I conceive in that I was bound to do as much as I did or have done, though I had not had any Commiſſion at all. And I beſeech your Lordſhips that you will do me Juſtice, and not incline to the right-hand of affection, or the left to hatred; but to have an ear for the accuſed as well as for the accuſer: neither have I acted any thing contrary to my Allegiance, which Allegiance I was willing to pay to the Son, as well as to the Father. Now for the Allegiance, I owe to any perſon or authority but to theſe, I know none.

Lord *Thorpe.* Sir, if you have any thing elſe to ſay, ſpeak for yourſelf, for this is not much to the purpoſe.

Col. *Morris.* My Lord, 'tis true, ſince you have rejected that authority which I acted by, I might as well have held my tongue at the firſt, and ſpake nothing, were it not for the ſatisfaction of the hearers; but if it muſt be ſo, that you will make me a precedent, you muſt do with me as you did with my dear and honoured Lord [*meaning my Lord of* Strafford] making an Act for the future, that this my ſuffering ſhall not be a precedent to any Soldiers hereafter. Beſides, my Lord, this ſame Statute which you alledge againſt me is, if that any ſhall act againſt the King, 'tis Treaſon; which I have not done; but contrary, for him, and by his authority. And there is an Act of 11 *H.* VII. *cap.* 1. *That whoſoever they are that ſhall aid or aſſiſt the King at home or abroad, ſhall not be queſtioned at all.*

Lord *Thorpe.* 'Tis true, Sir, but *Hen.* VII. then ſtood in a fickle condition, and being an Uſurper, made that Act for his own ſafety; ſometimes the Duke of *York* ruling, ſometimes the Duke of *Lancaſter*, and others contending, therefore it was enacted.

Col. *Morris.* My Lord, but this ſame Act of *H.* VII. was later than that of *Ed.* III. which you have laid againſt me; and as yet was never repealed, until this laſt Act of 14 of *July*, before which time I had delivered up the place.

Lord *Thorpe.* Well, Sir, it ſeems you have not any more to ſay. After he had anſwered, the Court commanded Irons to be laid on them. (Cornet *Blackſton* being condemned at the ſame time.)

Col. *Morris.* My Lord, I humbly deſire that we may not be manacled; if you make any doubt of us, that we may have a greater guard upon us.

Lord *Puleſton.* Sir, you that have made ſuch attempts through ſuch guards, as were of purpoſe ſet to receive you, ought to be look'd to now. Yet, if Mr. Sheriff pleaſe, I am content.

Col. *Morris.* Mr. Sheriff, I deſire that this manacling may be forborn: if you pleaſe to clap a guard of an hundred men upon us, I ſhall pay for it. This is not only a diſgrace to me, but in general to all Soldiers; which doth more trouble me than the loſs of my life. Mr. Sheriff, what do you ſay?—*Mr. Sheriff.* Sir, Irons are the ſafeſt guards.

Col. *Morris.* My Lords, hitherto (I thank God) I have not done any unſoldiery or baſe act, and to begin now, I will not do it to ſave my life; and though you look upon me *Samſon*-wiſe, I vow to God, I would not touch the pillars, though it lay in my power to injure you; therefore I ſtill beg pardon, that I may not be manacled.

Under-Sheriff. Come, Sir, it cannot be help'd, we are commanded.

Col. *Morris.* My Lord, I beſeech you grant me this favour; it is not my life I beg, but to forbear this manacling, which ſhame and diſhonour doth more trouble me, than the loſs of my life.

Under-Sheriff. It muſt be done. And upon that, did it, and carried him away. After dinner the Jury brought in their verdict, guilty of Treaſon *.

* Letters from *York*, " That one *Morris*, and one *Blackſton*, were arraign'd before Baron *Thorpe*, and Judge *Puleſton*, *for levying War againſt the Kingdom*; they pleaded " *not guilty, but deſired, as they were martial men, that they might be tried by martial Law:* which was denied them.

" *Morris* at laſt ſaid, *He would be tried by God and the Country*, and ſeventeen Witneſſes proved foul Crimes againſt him." He had two ſheets of paper written with matters of Law, and Statutes, many of which he pleaded, " and urged the cauſe of the War betwixt the two Houſes of *York* and *Lancaſter*, the difference of which from his " caſe was ſhewed by the Judges."

Then he produced a Commiſſion from the King when he was Prince; the Judges told him, that the Prince was a Subject as well as he, and muſt be tried by the ſame Law.

" He was found guilty of Treaſon, and manacled with Irons: at which he ſaid, *What, a martial Man Ironed? The like precedent was never before known.*

" He deſired to have a ſtrong Guard, ſaying, *Let me be damned if I eſcape*; but it was denied, ſo was a Copy of his Indictment, and to have Counſel, or to be exchanged.

" He and *Blackſton* were both condemn'd." *Whitlock*'s Memorials of the *Engliſh* Affairs, *Page* 421. *Edit.* 1732.

Col. *Morris.* My Lord, I am here found guilty of Treaſon by that villain *Brooke*, whom I know to be mine enemy, and the firſt man that I did except againſt: in which I conceive I have received hard meaſure, for none could have found me guilty of Treaſon, had they gone according to the Letter of the Law, which they did not.

Lord *Puleſton.* Sir, you ſpeak too late, you are not to diſpute it now.

Col. *Morris.* Neither would I, my Lord, if this were a Court of *Chancery*, but being a Court of Law, bound up in expreſs words and letter, I conceive I ought to diſpute it, and my buſineſs better weighed.

Lord *Puleſton.* Well, Sir, you are found guilty, therefore hold your peace.

Col. *Morris.* If I muſt ſuffer, I receive it with all alacrity and chearfulneſs, and I thank God I ſhall die for a good Cauſe, and the teſtimony of a good Conſcience; for which, had I as many Lives as there are Stars in the Firmament, I would ſacrifice them all for the ſame.

Court. Sheriff, Gaoler take them away.

Col. *Morris.* Well, I beſeech God bleſs King *Charles*, and fight for all thoſe that fight for him, or have fought for him.

After he was condemned, Colonel *Bethel* writ to the General and his Council of War, that *Morris* might be reprieved; but Colonel *Pride* oppoſed it, urging, *That it would not ſtand with the Juſtice of the Army, nor the Safety of the Commonwealth, to let ſuch Enemies live, the Parliament having adjudged him worthy of Death, and given Inſtructions to the Judges accordingly.*

The Speech of Col. John Morris, *Governor of* Pontefract-Caſtle, *at the Place of Execution at* York, Auguſt 23, 1649.

'WHEN he was brought out of priſon, looking upon the ſledge 'that was there ſet for him, lifting up his eyes to Heaven, 'knocking upon his breaſt, he ſaid, I am as willing to go to my death, 'as to put off my doublet to go to bed; I deſpiſe the ſhame as well as the 'Croſs; I know I am going to a joyful place:' with many like expreſſions.

When the Poſt met him about St. *James*'s Church, that was ſent to the Parliament to mediate for a reprieve; and told him he could not prevail in it, he ſaid, 'Sir, I pray God reward you for your pains, I 'hope, and am well aſſured to find a better pardon than any they can 'give; my hope is not in man, but in the living God.'

At the place of Execution he made this profeſſion of his faith, his breeding, and the cauſe he had fought in.

'*Gentlemen*, Firſt I was bred up in the true Proteſtant Religion, having my education and breeding from that honourable Houſe, my dear 'Lord and Maſter *Stafford*'s, which place, I dare boldly ſay, was as well-'governed and ruled as ever any yet was before it; I much doubt, better 'than any will be after it, unleſs it pleaſe God to put a period to theſe 'diſtracted times; this Faith and Religion, I ſay, I have been bred in, 'and I thank God I have hitherto lived in, without the leaſt wavering, 'and now I am reſolved by God's aſſiſtance to die in.

'Theſe pains are nothing, if compared to thoſe dolors and pains, 'which *Jeſus Chriſt* our Saviour hath ſuffered for us; when in a bloody-'ſweat he endured the wrath of God, the pain of Hell, and the curſed 'and ſhameful death which was due to our ſins; therefore I praiſe the 'Lord that I am not plagued with far more grievous puniſhment; that 'the like hath befallen others, who undoubtedly are moſt glorious and 'bleſſed Saints with *Chriſt* in Heaven. It is the Lord's affliction, and 'who will not take any affliction in good part when it comes from the 'hand of God? And what, Shall we receive good from the hands of 'God, and not receive evil? And though I deſire, as I am carnal, that 'this Cup may depart from me, yet not my will, but thy will be done. 'Death brings unto the godly an end of ſinning, and of all miſeries due 'unto ſin: ſo that after death there ſhall be no more ſorrow, nor cry, 'nor pain, for *God ſhall wipe away all tears from our eyes*; by death our 'ſouls ſhall be delivered from thraldom; and this *corruptible body ſhall put 'on incorruption, and this mortal immortality.*

'Therefore bleſſed are they that are delivered out of ſo vile a world, 'and freed from ſuch a body of bondage and corruption; the ſoul ſhall 'enjoy immediate communion with God in everlaſting bliſs and glory; 'it takes us from the miſeries of this world, and the ſociety of ſinners, 'to the city of the living God, the celeſtial *Jeruſalem.*

'I bleſs God I am thought worthy to ſuffer for his name, and for ſo 'good a cauſe; and if I had a thouſand lives, I would willingly lay 'them down for the cauſe of my King, the Lord's anointed; the Scrip-'ture commands us to fear God and honour the King, to be ſubject to 'every Ordinance of man for the Lord's ſake; whether to the King as 'ſupreme, or to thoſe that are in authority under him. I have been al-'ways faithful to my truſt: and, though I have been moſt baſely ac-'cuſed for betraying *Liverpool*; yet I take God to witneſs, it is a moſt 'falſe aſperſion, for I was then ſick in my bed, and knew not of the de-'livering of it, till the Officers and Soldiers had done it without my 'conſent, and then I was carried priſoner to Sir *John Meldrum.* After-'wards I came down into the Country, and ſeeing I could not live 'quietly at home, I was perſuaded by Col. *Forbes*, Col. *Overton*, Lieut. 'Col. *Fairfax*, whom I took for my good friends, to march in their 'Troops: which I did, but with intention ſtill to do my King the beſt 'ſervice when occaſion was, and ſo I did: and I pray God to turn the 'hearts of all the Soldiers to their lawful Sovereign, that this Land may 'enjoy peace, which till then it will never do: and though thou kill me, 'yet will I put my truſt in thee; wherefore I truſt in God he will not 'fail me nor forſake me.' Then he took his Bible, and read divers Pſalms fit for his own occaſion and conſolation, and then put up divers prayers, ſome publickly, and ſome privately; which being ended he was executed.

XXIV. The Proceedings, Examination, and Trial of Col. Euſebius Andrewe, (a Barriſter of *Gray's-Inn,)* before the High-Court of Juſtice, *Aug.* 16, 1650, for High-Treaſon.

Publiſhed by *Francis Buckley*, Gent. who was Aſſiſtant to Mr. *Andrewe* in the time of his Impriſonment, and an Eye-witneſs of all the bloody and execrable Proceedings.

ON *Monday* the 24th of *March*, 1649, Col. *Andrewe* was taken priſoner at *Graveſend* by Major *Parker.*

The next day, he was convented before the Lord-Preſident *Bradſhaw*, Sir *Henry Mildmay*, Knt. and *Thomas Scot*, Eſq. three of the Members of State, delegated by the Council for the taking of the examination of him, and of Sir *Henry Chichley*, Knt. Dr. *Henry Edwards*, and Mr. *Clark*, caſually found in the ſame Inn with Mr. *Andrewe.*

Thoſe Gentlemen examined him ſo punctually to every action and circumſtance that had paſſed on his part ſince he took up arms, and eſpecially ſince the ſurrender of *Worceſter*, and his return from thence to *London*; and alſo concerning his ſeveral Lodgings, Names, Acquaintances, Removes, Abodes in the Country, Correſpondencies by Letters, and Intereſt in places and perſons, as if they had kept a Diary for him. Which conſidered, and that Sir *John Gell*, Bart. Major *Barnard*, Capt. *Smith*, Capt. *Benſon*, and Capt. *Aſhley*, (with whom he had the laſt and moſt queſtionable correſpondence) were all in cuſtody, he found himſelf to be betrayed, but could not at preſent gueſs by whom; but well ſaw that he had better be fair in his confeſſion, than to deny what he ſaw by the perfectneſs of his examiners, would be proved againſt him, by the diſcovery of ſome of thoſe formerly ſecured, and examined before his coming up.

In his Anſwers, he would have been circumſtantial, but was kept cloſe to the Queſtion: at his departure he deſired that he might ſet down his own Narrative, according to his own ſenſe, which was granted him to prepare, and to ſend or bring to them as there was opportunity. And having totally, as much as in him lay, excuſed his fellow-priſoners as to any thing relating to his Delinquency, he was with them committed to the *Gatehouſe.*

Wedneſday following, he was re-convented and re-examined.

On *Friday*, he was again convented, and delivered in his Narrative to the Lord-Preſident, and the Houſe. But buſineſs happening, detaining the other two examiners, he was by the Preſident returned.

On *Saturday* he was recalled, and then, as at all times before, uſed and treated with civility, and no little preſſure to diſcover ſome great perſons, his ſuppoſed confederates: the aim, as he conjectur'd (and that upon ſtrong inference, and ſome expreſſions) was at Sir *Guy Palmes*, Sir *John Curſon*, and Sir *Thomas Whitmore*, &c. But he accounted it a great bleſſing in his unhappineſs, that his misfortune was not fatal to any of his friends or familiars, who yet knew nothing of the reaſon of his Impriſonment, more than for what they were beholden to common fame.

On *Sunday*, he was called out of his bed, and by two Meſſengers, his Keeper, and his Man, brought into a boat at *King's-bridge*, at *Weſtminſter*, and thence carried to the *Tower.* The warrant, which at the Lieutenant's houſe was read, imported, that he was committed cloſe priſoner for High-Treaſon, in endeavouring to ſubvert the preſent Government, *&c.* to be kept till delivered by Law.

The Narrative follows.

To the Right Honourable the Council of State;

*The humble Narrative * of Col.* Euſebius Andrewe, *as to the Queſtions and Matters of charge, whereupon he was examined before Preſident* Bradſhaw, *Sir* Henry Mildmay, *and* Thomas Scot, *Eſq. in that behalf delegated by the Council the 27th of* March, 1650.

May it pleaſe your Lordſhips,

BEING unfortunately, and by a treacherous practice ſeduced into an action which renders me obnoxious to your Lordſhips Diſpleaſure and Juſtice, and thereupon convented and brought to examination, I aſſured your Lordſhips delegates that I came with a reſolution to deal candidly, and not to preſerve my life by framing a lye, or denying a truth. The ſame purpoſe I ſtill retain, caſting myſelf wholly at your Lordſhips feet; humbly praying leave, that while I anſwer to matter of fact, I may be permitted to cloath it with pertinent circumſtances; that while the one lays me liable to

* The Narrative is here printed at large, being the Evidence urged againſt him at his Trial.

your Juſtice, the other may bring me within the capacity of your mercy; which in caſe it be afforded, I ſhall embrace with all humility and thankfulneſs. And if denied, I ſhall find cauſe within my boſom to juſtify God Almighty in his permiſſion of my ruin; and I hope Charity enough to forgive whoſoever have, or ſhall be inſtrumental to it, and bear the gurdon of my folly, with a ſober confidence of God's reſerved favour.

My engagement for his late Majeſty began ſoon after *Hillary Term*, 1642, and continued until the ſurrender of *Worceſter*, in *July* 1645.

I have omitted to make my compoſition, not having a conſiderable, and not willing to own an inconſiderable eſtate.

I have not taken the proteſtation, ſolemn league and covenant, negative Oath, nor ſubſcribed the preſent engagement.

John Barnard, ſometime a Major under me, and by reaſon of his good parts and ſober demeanor, being in my good opinion, at my return to a private practice in my calling for my neceſſary ſupport, frequently viſited me, and imparted to me ſuch occurrences as he met abroad in diſcourſe, and did often intimate the diſcontent of the Reformades, the factions of the Levellers and Agitators, and the proceeding of a certain Committee, or ſelect Council of Officers, of which Col. *Cook* was chief, and himſelf their Clerk, upon a printed charge againſt ſome for oppreſſion, and againſt others for conceal'd delinquency; to the penning, promoting or counſelling in which I was originally a ſtranger, nor did ever intereſt myſelf therein further than the hearing his diſcourſe; neither did ever mediately or immediately meddle with any of the perſons or actions of the Reformades, Levellers, or Agitators upon any of his diſcourſes.

About * *Trinity-Term* laſt, Major *Barnard* obtruded to my acquaintance one Capt. *Holmes*, who ſoon after brought with him one *John Benſon*, (who pretended to have had command under Sir *John Gell*, was anciently his ſervant, and until this time his dependant,) who, uninvited frequently produced to me tranſcripts of Letters, (with the copying of which he pretended to be entruſted under Mr. *Ruſhworth*) which did appear to purport the occurrences in reference to the affairs of State, and their concernments at home and abroad, from their ſeveral agents; which I only read in his ſight, and immediately delivered them back, he pretending that he was to carry them to Mr. *Thomas Buſhel* to be tranſmitted over ſea.

Capt. *Holmes*, and *John Benſon*, in their diſcourſes did inſinuate that their intereſt was great in the Reformades, and that by them great advantage would upon any importunity be done for the Royal Party, and magnified Sir *John Gell*'s intereſt in his Country, his reluctance at what he had done in the Parliament's ſervice, and his willingneſs to expiate his former fault with a beneficial ſervice to the Prince. And Major *Barnard* propounded, that a former deſign in the time of the war laid by me for the taking of the Iſle of *Ely*, might by their help, and the conjuncture of ſome ſtrength to be raiſed by Sir *John Gell*, then to me a ſtranger, and by *Holmes* and *Benſon*, pretended to be willing and able to raiſe conſiderable numbers, be revived and executed; and thereupon it was concluded, that I ſhould with *Benſon* try who in *Cambridgeſhire* would engage in it, and then ride down to Sir *John Gell*, to ſee if his ſtrength and purpoſe were ſuch as pretended; and this not to be executed but upon the contingency of ſucceſſes in *Ireland*, and *Scotland*, was let fall as ſoon as conceived.

About the middle of *December*, Capt. *Holmes* brought me inſtructions, to draw a petition for Sir *John Gell*, for the getting of his arrears, which I drew accordingly; and not long after, I was invited to give him a meeting, till then having not ſeen or correſponded with him, and received an invitation and inſtruction to arbitrate between him and his Lady, with Sir *Thomas Prieſtwich*. And amongſt other diſcourſes, Sir *John Gell* did take notice of his irrequital of his ſervice, and his loſſes, and the miſapplication of his, and other ſervices, to an end they intended not, and that he deſired to be ſo underſtood, and when opportunity ſhould be, to be ſo repreſented to the Prince; and did intimate, that if ever he took up arms again, it ſhould be for the Prince: and at ſeveral other ſubſequent meetings the diſcourſes were general, and much to this purpoſe, but no particular deſign laid or contrived.

The time limited by the Act for departure, *&c.* being near expired, and myſelf being purpoſed to withdraw into the Country, until the Summer Voyage, into ſome of the Plantations, and to that purpoſe being in treaty with Sir *Edmund Plowden*, about the conditions of *New Albion* plantation, of which he writes himſelf Count Palatine, and Proprietor; on *Saturday* 16 *Martii*, I was unexpectedly viſited by Major *Barnard* and *John Benſon*, and they enquiring my reſolution concerning my leaving the Town in obedience to the Act, I ſignified my purpoſe to go to *New Albion* or to *Virginia:* upon which they took an opportunity to make a propoſal to me in effect, that they had a conſiderable deſign laid, and friends and money to ſet on foot and back it, and that I ſhould have two hundred pounds in hand, and power to draw money by Bills of Exchange, for what more ſhould be neceſſary for my ſupport, and management of what ſhould concern the ſaid deſign in *Holland*, if I would undertake to go over, and promote it to the Prince. And they did then in general terms ſignify, that it was an eaſy matter, eſpecially the Cavaliers going out of the Town, by correſpondence in all Counties, to ſurprize the horſe of the army in their ſeveral quarters; and did intimate, that Major *Barnard* had a deſign in draught, which as I remember he produced, and I believe was concerning ſuch ſurprizal, but was not read, but referred to further time of conſideration. My anſwer was, that if the money were ready, I would divert my former purpoſe from any Plantation, and entertain the motion.

Sunday morning, they came again and informed me, that ſeveral perſons of quality and fortune in *Kent*, *Buckingham*, and *Dorſet*, were, or would then preſently come up near the Town, and would join in an engagement, and advance money; and that Sir *John Gell* would alſo engage, and might with a word of his mouth bring in his friends, and Sir *Andrew Kniveton*, Sir *Guy Palmes*, and Mr. *Fitzherbert*, and a fourth perſon, whoſe name I remember not; and therefore deſired me to draw an engagement, (which I did in a looſe paper, after the ſenſe of them or one of them, the ſaid *Barnard*, or *Benſon*, inſtructed) and to move Sir *John Gell* to join in ſuch an engagement; but did preſs me to join in the ſame at that preſent, for the encouraging of their before mentioned friends, amongſt whom, I remember only theſe Surnames *Boyes*, *Thatch*, *Baker*, all to me abſolute ſtrangers.

That day I ſpake with Sir *John Gell*, and acquainted him with their offer and propoſal to me, and deſire from him. He anſwered, that he would not meddle with acting in that deſign (which he took upon him to be acquainted withal), for which he was as then in no capacity, nor would be engaged under his hand and ſeal, to be bound to, by any future action for them; for that *Benſon* was a fellow given to drink, and laviſh of his tongue: but entruſted me, that if I went over upon this occaſion, to poſſeſs the Prince with a good opinion of him, and that he would do nothing againſt him; and if he were at all in command, he would be ſo to his advantage, or to that effect.

I returned to them Sir *John Gell*'s anſwer, with which they were not, or ſeemed not altogether unſatisfied, and appointed on *Monday* at five of the clock, that the perſons of the Counties of *Kent*, *Buckingham* and *Dorſet*, or ſome of each County from the reſt, ſhould give a meeting at the *Three Cranes*, at the *Savoy-Gate*, and be all ſatisfied in the deſign, and agree their reſpective portions of money to be paid in preſent, and raiſed for the future; deſiring me to take care to move, that they might be alſo provided for, to be able to hold intelligence, and ride about from place to place to lay the deſign.

At the time I came; and Major *Barnard* produced two letters, one ſubſcribed by *Smith*, another by *Thatcher*, purporting that the *Kentiſh* Gentlemen were come as far as *Rocheſter*, and would that night be within twelve miles of *London*, and lie there all day, and then in the evening, on *Tueſday* by eight of the clock, would at any place give meeting to himſelf, and his Colonel; and that they had ſent a ſpecial guide to bring *Barnard* to them that night, whither he was inſtantly deſired to repair, and that they durſt come no nearer, in fear of the watchfulneſs of Colonel *Blunt*; and that the two hundred and fifty pounds were ready to be laid down to perform their undertaking: No man of any County giving any meeting according to the firſt appointment at the *Cranes*, but the ſaid *Barnard* and *Benſon*, and one who calls himſelf Captain *Aſhley*, only known in face to me, who pretended to be privy and knowing of the truth of all that their former diſcourſe and theſe letters tended to; and *Barnard* pretending to go inſtantly to horſe from *Weſtminſter*, I brought him and *Benſon* to the water-ſide, and in the walk they importun'd me again to obtain Sir *John Gell*'s ſignature and ſeal to the engagement, which *Benſon* had then ready engroſſed, and that I would go preſently to *Weſtminſter* with them about it; which I refuſed, and told them, that I was able to ſatisfy any man of quality, diſcretion, and ſecrecy, concerning Sir *John*'s reality, though not actually engag'd; and ſo left them.

That night about eight of the clock, one *Smith* came to me (till then) an abſolute Stranger, and Capt. *Aſhley* came to me, and brought me a letter from Major *Barnard*, highly reproving me and Sir *John Gell* of backwardneſs, in with-holding our own hands from the engagement, and that we intended our own honours upon their dangers, without giving them aſſurance of our ſecrecy and conſtancy; and that unleſs the engagement were ſubſcribed by Sir *John Gell*, his *Kentiſh* friends would not proceed further. I was known to Mr. *Smith*, who took upon him to come as from them for ſatisfaction in that point. And in anſwer, I under a vow of ſecrecy told him, that I was ſatisfied concerning Sir *John Gell*, and preſumed, that if any Gentleman of quality in whoſe judgment the reſt would abide, ſhould addreſs to Sir *John*, that under an Oath of ſecrecy he would ſatisfy him, but durſt not truſt *Benſon*, and *Barnard* was to him a ſtranger. With this they departed, aſſuring me that they thought no more would be expected from Sir *John*, and that they would, or one of them, away that night to the company; and that the next day being *Tueſday*, the money ſhould be paid at the *Palſgrave's-head*.

They broke their time, and my occaſions preſt me into *London*, being next day to be gone by the Act; and about nine of the clock at night, I was ſent for by Captain *Aſhley* and *Benſon*, who delivered me a letter from *Barnard*, preſſing me to ſubſcribe the engagement which *Benſon* engroſſed; and that being done, he would go with me the next day to *Graveſend*, and the Gentlemen of *Kent* ſhould meet there, and there the money to be paid.

The tide being fit for paſſage on *Wedneſday*, *Barnard* came not, but *Benſon* pretended him to be at *Tottenham-Court* with the *Buckinghamſhire* Gentlemen, and that he was well-hors'd, and would come preſently, and ſhould follow; and ſo Captain *Aſhley* and myſelf, with no more than fifty ſhillings in my purſe, preſuming upon the money there, went to *Graveſend*, and expected till *Thurſday* night, but found no *Kentiſh* men, and no one from *London* coming. Capt. *Aſhley* went that night with the evening-tide for *London*, to enquire the reaſon; and on *Friday* morning early came Major *Barnard*, and Mr. *Smith* with a letter from *Benſon*, purporting that if Sir *John Gell* would not co-ingage under his hand and ſeal, with thoſe whoſe names were ſubſcribed (of which I only know *Barnard*, *Smith*, *Benſon*, and *Aſhley*,) they would go over themſelves (meaning himſelf and *Barnard*) to the Prince, and ſpoil both mine and Sir *John*'s credit with him, and diſappoint all that I intended in his favour: and that he had letters from Sir *John*, which he could produce, ſhould make him repent his refuſal, or to ſuch effect; and therefore deſired me to write to Sir *John Gell*, to let him ſee his danger; which I did, laying the caſe before him, and not preſſing him, but leaving him to do as God ſhould direct him, and his judgment lead him. With which letter *Barnard* and *Smith* went away, with aſſurance that whether Sir *John Gell* engaged or not, I ſhould hear next day from them, and if he did engage, they would come down and go for *Rocheſter*, where their former undertaking ſhould be performed to me; and if he did not, I ſhould be diſengag'd, and have my ſubſcription and ſeal ſent me, and the deſign ſhould fall. I expected till *Saturday* night, and finding no anſwer, reſolved on *Monday* to intend my privacy in the Country, upon my firſt purpoſe for *New Albion*; and in the morning early was ſeized by a party of horſe, and brought to *London*.

My Lords,

In that Narrative you will ſee a believing nature wrought upon by treacherous men, ſuch who cannot be true to any, whilſt falſe to parties.

The pretended deſign vaniſh'd, as never being more than a phantaſm, and not worth your regard, the real deſign effected, ſo far as they had power or opportunity; that is, to bring the game into the toil, and there leave them to be entangled and made a quarry.

* This Error in time, as ſome others both of ſubſtance and circumſtance, are rectified upon better memory, by ſome following papers ſent to the Lord-Preſident.

You

You will find me paſſively active, being prompted and enticed by their inſinuation, and not once but hearkening to them.

It lies in your Lordſhips power to cut me off, by extending which, you can arrive to no honour amongſt men; and poſſibly, by an Act of lenity, you may do an office acceptable to God.

Cujus fiat voluntas, modo in ruinâ meâ.

Whoſoever ſhall be preſent at my Trial, or into whoſe hands this Narrative ſhall fall, will eaſily conclude with me,

Quos vult perdi Deus, hos dementat prius.

EUS. ANDREWE.

On *Tueſday* the firſt of *April*, after his remove to the *Tower*, he was called to be further examined, and at his return writ back to them ſome particulars, (*viz.*) concerning Captain *Holmes*, by want of memory not before ſignified. And in caſe the ſtate ſhould have ſuffered aught by the ſaid *Holmes*, it might have made Mr. *Andrewe* incapable of lawful favour by reaſon of his tenacity concerning the ſaid *Holmes*, who (for aught Mr. *Andrewe* knew) was guilty of his being betrayed; and if ſo, might as well intimate his knowledge of *Holmes*'s purpoſes, to the end that Mr. *Andrewe*'s concealment of them might augment his crime; and alſo concerning Mr. *Thomas Barnard*, who being at large and unqueſtioned, Mr. *Andrewe* had cauſe to have the like jealouſy of.

On *Friday* ſevennight following, being the 11th of *April*, he was called again, and was confronted with Sir *John Gell*, and avowed what he did indeed neither directly deny, nor was troubled that he did aver; freely telling the Preſident, that howbeit he did not remember ſome things in point, yet he was confident that he would not do him, nor any man wrong: and then declared to the Preſident, that he look'd upon Sir *John Gell*, as upon himſelf, as a betrayed man; but as concerning others, he knew not by whom, he had been free in his confeſſions, though to his own injury.

He then acquainted their Lordſhips, that he had ſomething to rectify in his former examinations and papers, upon better memory, in point of material circumſtances. They directed him to put them into writing, and to ſend them, and they called for his hand to the former examinations and papers; which he gave them, and the ſame day writ to them as followeth:

To the Right Honourable the Lord-Preſident and Council of State.

May it pleaſe your Lordſhips,

ACcording to the favourable licence by your Lorſhips to me given, I have digeſted into writing thoſe matters of circumſtance, wherein my Examinations and Narrative are in defect of my memory only incertain and ſhort; humbly praying, that they may be received and made a part of that relation, which I muſt abide by at my Trial; and that the former errors may be rectified, and defects ſupplied ſo far, as by this ſupplementary account upon my ſerious recollections given, may be done. And I ſhall then be confident, I ſhall appear not to have wilfully concealed (however guilty) or miſrendered any thing pertinent, whether the ſame carry with it my condemnation, or excuſe.

What paſſed between myſelf and Mr. *Barnard*, before my acquaintance with *Holmes* and *Benſon*, and which is expreſt in my Anſwers and Narrative, was in time before *Eaſter-Term* laſt, when there was an order for departure of perſons in my condition, from this Town; and I, in obedience thereunto, did leave this city on *Saturday* the 6th of *May*, and came to Mr. *Oſborn*'s houſe at *Carlton-Hall* in *Suffolk*, on *Thurſday* following; from whence I ſtirred not at any time more than five miles, until the ſixth of *Auguſt*, when I was ſent for to make aſſurances between a Kinſwoman and her huſband in point of jointure, by them to me mutually referred: in which buſineſs, and in other matters between another Kinſwoman, and a Merchant of *London*, being under reference to arbitrement; as alſo in endeavouring to get ſome friend to contract in the behalf of my daughter, for the reverſion of a Leaſe holden of the Dean and Chapter of *Ely*, in which ſhe is intereſted for a life in being, I continued in and near the City until the third day of *September*; in which time *Barnard* voluntarily brought to my acquaintance *Holmes* and *Benſon*, upon the pretences in my Anſwers and Narrative ſet forth, to which I humbly refer.

The note which mentions *Benſon*'s going with me to *Cambridgeſhire*, and ſo to Sir *John Gell*, which in my Anſwers I have expounded, was drawn from me by *Barnard*'s importunity, and written at his requeſt; but what uſe he made of it, (other than to lay it up, and reſerve it for his preſent purpoſe) I know not, nor had any account of it, but went away the third of *September*, there being no concluſion of any thing to be done in ſubſtance, or circumſtance poſitive. But Mr. *Barnard*, who knew how to direct to me, promiſed by Letter to intimate further to me; from whom after that, I never received any Letter or Meſſage to that, or any other purpoſe, until my return near *Michaelmas-Term*; when he told me, that the unſucceſsfulneſs of things in *Ireland* had been the impediment.

As to the day, *viz.* the 18th of *October*, being the Fair-day at *Ely*, it was only in diſcourſe mentioned to be an opportune time, in caſe the Iſle were (as indeed it was not) garriſoned. Neither any ſolemn, or ſerious deſign or concluſion, then-to-fore or then-after made or laid, other than in tranſient communication; nor any perſon engaged ſo much as by word or promiſe, until this freſh ſtratagem was ſet on foot by *Barnard*.

I drew Sir *John Gell*'s petition before *Chriſtmas*, and had ſeveral complements from him by *Holmes*, (at leaſt pretended) before I ſaw him, and I believe, after Twelf-tide I was invited to him, and entruſted by him in the compoſing the differences between him and his Lady: in the laſt Term I drew his anſwer, and in the ſeveral times of our caſual or occaſional meetings, the diſcourſes have amounted to what I have before ſignified, and in your preſence and his avowed; and how more exactly to give your Lordſhips an account in time, I cannot.

As to the matter of the engagement, I abide by what I have formerly ſaid, with this only, that at my engaging, which was late in the night, before my going out of Town, in obedience to the Act, I was promiſed by *Benſon* that if Sir *John Gell*, and their pretended friends of the Country did not co-engage, I ſhould be diſengaged; and in the hour of my going away, *Barnard* being not ready according to promiſe, but by *Benſon* pretended to be at *Tottenham-Court* with ſome *Buckinghamſhire* men, and that he would undoubtedly follow; I told *Benſon*, as I remember, in the preſence of Captain *Aſhley*, that whether he came or not, I muſt for the preſent remove to *Graveſend*, not having convenience of horſe to go elſewhere ſo ſuddenly. And if there were performance on *Barnard*'s part with me, I ſhould be ready on mine; and if not, I deſire to be diſengaged, and left to purſue my private occaſions into *Surry*. And I did really carry with me deeds of my Clients to have employed myſelf upon, in caſe of their failure with me.

I humbly beg your Lordſhips pardon for a favourable interpretation of this trouble, which is a duty to truth, and right to others and myſelf; which could not be omitted by

(My Lords)

Your Lordſhips humble priſoner, and ſervant,

EUS. ANDREWE.

This, together with a petition for allowance and liberty of friends reſorts, being the ſame day ſign'd in the preſence of the Lieutenant, were ſeal'd up, and ſent to the Lord Preſident's own hand.

This was his ſecond petition, which with a former to the ſame effect, (and not of moment to ſubſcribe) did never receive any anſwer.

At the ſame time he writ to Sir *Henry Mildmay* on the behalf of the Gentlemen who were taken with him.

Mr. *Andrewe* at ſeveral times took upon him to aver to the Committee of State, that they had ſpies upon him for ſome years, and particularly *Barnard*; which the Lord-Preſident did not deny, but juſtified the State, by the practice of all States, to ſet watches upon perſons of ill affections to them.

This day the Lord *Grey* was with the other three of the State.

His third petition ſent about *Eaſter*, being by Sir *Henry Mildmay* and Mr. *Scot* put upon it, to ſubmit himſelf, with promiſe of favour if he ſought the State in ſuch manner; which for his relations ſake he did, but with ſome caution, in theſe words:

To the Right Honourable the Lord-Preſident, and Council;

The humble Petition of Euſebius Andrewe,

Sheweth,

THAT your Petitioner is ſeriouſly ſenſible, and humbly acknowledgeth, that for his high delinquency againſt the State he is become forfeited to their Juſtice.

That he hath not in the leaſt prevaricated with your Lordſhips, in the confeſſion of his proper faults and follies, nor hath kept aught reſerved concerning himſelf, or any perſon, or thing, which may ſatisfy your Lordſhips, and more ſecure the State; and is not hopeleſs to be look'd upon as capable of your preſent favour and future mercy, which he now doth, and ſhall always implore.

That his preſent, deſerved condition is made more uncomfortable, by his wants, and the excluſion of his friends and relations; without a ſupply, in which life itſelf becomes a puniſhment.

Your Petitioner caſting himſelf at the feet of your Lordſhips, humbly prays,

That his being proſecuted before the High Court of Juſtice, may be ſuſpended.

That by your order, his paſt and future charge of neceſſaries may be diſcharged, whilſt he remains your priſoner.

That his friends and kindred may have recourſe to him, and that he may have the freedom of his pen.

And in caſe your Petitioner ſhall be found in the leaſt to miſapply thoſe favours, he ſhall adjudge himſelf worthy of a total deprivation of them, and of your future goodneſs towards him.

And your Petitioner, &c.

This was leſs than was look'd for, though as much as he could venture on; in which his deſire for reſpite of his Trial was inſerted, to prevent only his being the firſt, and exaſperating them by giving others aim in the ſcrupling the Court.

This petition was ſolicited thirty-three days, but no anſwer could be obtained; and his wants growing upon him daily, he put in the Lieutenant's hands this following petition:

The Petition, (with ſtile as formerly, &c.*)*

Sheweth,

THAT your Petitioner hath been twelve weeks cloſe priſoner, his friends neither permitted to viſit, nor daring to relieve him, his ſcore for neceſſaries ſwoln beyond his ability to diſcharge, his credit proteſted, and nothing more viſible to him than his immediate periſhing.

That he hath not been wanting to pray your favours, having three petitions lodged with your Lordſhips, conſtantly ſolicited, but unanſwered.

That he hath in his confeſſions ſpared nothing which can more conduce to the State's ſecurity, or his own condemnation.

Your Petitioner therefore humbly prays,

That if at all he muſt, he may ſpeedily receive his Trial, he being ready to ſubmit to the will of God in the iſſue.

That if mercy be reſerved for him, which he hath, and doth implore, your Lordſhips would pleaſe to admit him to ſue out his pardon, and to a free converſation in this Commonwealth, upon ſecurity given for his future good demeanor.

That in the mean time he may have the liberty of the Church and *Tower*, and the freedom of his friends reſort, and that order may be given for the debt incurred there in the time of his cloſe reſtraint to be diſcharged.

And your Petitioner, &c.

The Warrant of Commitment, which I could not get a Copy of till the 14*th of* July, *is as followeth:*

THESE are to will and requre you, herewith to receive into your cuſtody the body of *Euſebius Andrewe*, Eſq. and him you are ſafely to keep in cloſe impriſonment in the *Tower* of *London*, in order to his further examination, he being committed unto you for High-Treaſon, in plotting and endeavouring the ſubverſion and alteration of the preſent Government. Of this you are not to fail; and for ſo doing, this ſhall be your Warrant.

Given at the Council of State ſitting at Whitehall, *this* 30*th day of* May, 1650.

Signed in the name and by the order of the Council of State appointed by Authority of Parliament.

To the Lieutenant of the Tower *of* London.

John Bradſhaw, *Preſident.*

This

This Warrant is vicious in itself, for two Reasons, which make a right Warrant of Commitment, *Coke*'s 2*d* Part Instit. *fol.* 52, 590, 591. allowed by the Parliament.

1. That it is not done by due Process of Law.

2. That it hath not a Conclusion, *viz.* 'And safely to keep until he 'be delivered by due Course of Law.'

But leaves it indefinite, and is rather a Condemnation to perpetual, at least, to arbitrary Imprisonment, which is worse.

The close Imprisonment is but in order to his further Examination, and he had been twice since examined, and signed his Examinations before *Easter*, and did not refuse to answer any Question demanded of him.

The Warrant is dated from the Council of State sitting at *Whitehall*, the 30*th* of *May*; whereas he was brought to the *Tower* the 30*th* of *March*, being *Sunday*, by seven in the Morning, at the opening of the Gate (no Council sitting) and the Warrant signed on *Saturday* the 29*th* of *March*.

Having attended a Month in Expectation of an Answer to his last Petition, he petitioned the Parliament again.

To the High and Honourable the Parliament of *England*;

The humble Petition of Eusebius Andrewe, *Esq. close Prisoner in the* Tower *of* London,

Sheweth,

THAT your Petitioner hath been, by a confederate Pack of Setters, wrought into Actions, which (abstracted from their Circumstances) render him liable to your Justice; and this done, not without their further Hope, that your Petitioner, as they supposed, had Interest to have drawn divers Persons of Quality and Fortune into the same Entanglement.

That failing of that Part of their Aim, the said Confederates did betray your Petitioner to the honourable Council of State, by whose Warrant he hath been sixteen Weeks a strictly close Prisoner, without a Fortune of his own, the Access of Friends, or Means of Subsistence allowed; and is to perish by his Wants, before it be distinguished by a publick Trial, whether he be a fitter Object for the applying of your Justice, or your Mercy.

That he is hereby disabled to be accountable to the Service of God, the Duty to his Family and Friends, and to those who give him Credit for Bread. And in case he should be called from such his close Restraint to his Trial, must be destitute and deprived of all fair Means of making his reasonable Defence; which, however it may suit with Policy, will not be consistent with Religion and Honour.

Your Petitioner having for Relief in the Premises, by all opportune Addresses, and by four Petitions importunely solicited and sought the said Council of State without Answer; in the deep Sense of his pressing Sufferings humbly appealeth to this high Court, casting himself wholly thereupon, and as humbly prayeth,

1. That you would prevent your Justice by your Mercy, and admit him to sue out his Pardon, upon Security given for his future good Demeanor to the State in this Commonwealth.

2. That if that be too great a Favour, you would grant him Licence to depart the Commonwealth, he engaging not to act, or contrive aught to the disservice of the State.

3. That if he be not thought capable of either, but that he must receive a publick Trial, he may have a convenient time of Preparation, after a qualifying of his Imprisonment.

4. That in the mean time he may have the Liberty of the *Tower*, and resort of his Friends; and that by your Order, his Debt for Livelihood, incurred in his close Restraint, may be discharged.

In all which your Petitioner is ready to submit to the Will of God, whose Providence hath put Justice and Mercy into your present dispensing.

And shall ever pray.

Notwithstanding his Petitions and Letters, he was brought before the High Court of Justice (in *August*), of which *John Bradshaw* was President, and his own Narrative was urged against him as a Confession; and Attorney-General *Prideaux* used him with very ill Language. But he put into Court his Answers in writing, which were as follow:

The humble Answer of Eusebius Andrewe, *Esq. in his Defence, to the Proceeding against him before the Honourable the High Court of Justice, presented the* 16*th Day of* Aug. 1650.

THE said Respondent (with the Favour of this honourable Court) reserving and praying to be allowed the Benefit and Liberty of making further Answer, offereth to this honourable Court;

First, That by the Statute or Charter, stiled *Magna Charta*, which is the fundamental Law, and ought to be the Standard of the Laws of *England*, confirmed above thirty times, and yet unrepealed, it is in the 29th Chapter thereof granted and enacted,

1. That no Freeman shall be taken, or imprisoned, or be disseised of his Freehold or Liberties, or free Custom, or be outlawed, or exiled, or be any otherwise destroyed; nor will we pass upon him, nor condemn him, but by a lawful Judgment of his Peers, and by the Laws of the Land.

2. We shall sell to no Man, nor defer to any Man Justice or Right.

Secondly, That by the Statute of 42 of *Edw.* III. *chap.* 1.

1. The Great Charter is commanded to be kept in all the Points. And,

2. It is enacted, that if any Statute be made to the contrary, that shall be holden for none; which Statute is unrepealed.

The Respondent observeth, That by an Act of the 26th of *March*, 1650, entitled, *An Act for establishing an High Court of Justice*, Power is given to this Court to try, condemn, and cause Execution of Death to be done upon the Freemen of *England*, according as the major Number of any twelve of the Members thereof shall judge to appertain to Justice.

And thereupon the Respondent doth humbly infer and offereth for Law,

That the said Act is diametrically contrary unto, and utterly inconsistent with the said Great Charter, and is therefore by the said recited Statute to be holden for none.

That it can with no more Reason, Equity, or Justice, hold the Value and Reputation of a Law (the said Statute before recited being in Force), than if, contrary to the second Clause in the 29th *Chap.* of *Magna Charta*, it had been also enacted, that Justice and Right shall be deferred to all Freemen, and sold to all that will buy it.

Thirdly, That upon premising, by the Petition of Right, 3 *Car.* that contrary to the Great Charter, Trials and Executions had been had and done against the Subjects by Commissions Martial, *&c.* it was therefore prayed, and by the Commission enacted, That,

1. No Commissions of the like Nature might be thenceforth issued, *&c.* And that done,

2. To prevent, lest any of the Subjects should be put to Death, contrary to the Laws and Francise of the Land.

The Respondent humbly observeth and affirmeth, That

This Court is (though under a different Stile) in nature, and in the Proceedings thereof, directly the same with the Commission-Martial; the Freemen thereby being to be tried for Life, and adjudged by the major Number of the Commissioners sitting (as in Courts of Commissioners Martial was practised, and was agreeable to their Constitution), and consequently against the Petition of Right; in which he, and all the Freemen of *England* (if it be granted there be any such) hath, and have Right and Interest; and he humbly claims his Right accordingly.

Fourthly, That by the Remonstrance of the 15th of *December*, and the Declaration the 17th of *January*, 1641, the Benefit of the Laws and ordinary Courts of Justice are the Subjects Birth-rights.

By the Declarations of the 12th of *July*, and the 16th of *October*, 1642, the Preservation of the Laws, and the due Administration of Justice, are owned to be the justifying Cause of the War; and the Ends of the Parliament's Affairs managed by their Swords and Councils. And God's Curse is by them imprecated, in case they should ever decline those Ends.

By the Declaration of the 17th of *April*, 1646, Promise was made not to interrupt the Course of Justice in the ordinary Courts thereof.

By the Ordinance or Votes of Non-addresses, *Jan.* 1648, it is assured on the Parliament's behalf, That

Though they lay the King aside, yet they will govern by the Laws, and not interrupt the Course of Justice in the ordinary Courts thereof.

And thereupon the Respondent humbly inferreth and affirmeth, That

The Constitution of this Court is a Breach of that publick Faith of the Parliament, exhibited and pledged in the Declarations and Votes to the Freemen of *England*.

And upon the whole Matter, the Respondent (saving as aforesaid) doth humbly affirm for Law, and claim as his Right,

1. That this Court, in defect of the Validity of the Act, by which it is constituted, hath not Power against him, or to press him to a further Answer.

2. That by Virtue of *Magna Charta*, the Petition of Right, and the before-recited Remonstrance and Declarations, he ought not to be proceeded against by this Court, but by an ordinary Court of Justice, and to be tried by his Peers.

And prays, that this present Answer and Salvo may be accepted, and registered, and that he may be tried by his Peers accordingly.

EUS. ANDREWE.

The farther and second Answer of Eus. Andrewe, *Esq. to the Honourable the High Court of Justice, presented the* 16*th Day of* Aug. 1650.

THE said Respondent (with the Favour of this Honourable Court) reserving and praying to be allowed the Benefit and Liberty of making further Answer (if it shall be adjudged necessary), in all Humbleness for present Answer, offereth to this honourable Court,

That by the Letter and genuine Sense of the Act, entitled, *An Act for establishing an High Court of Justice*, the said Court is not qualified to try a Freeman of *England* (and such the Respondent averreth to be) for Life in Case of Treason.

First, For that, 1. The said Court is not constituted a Court of Record, and (but upon Record) cannot at all have that Account of their Freemen, which Kings were wont to have of their Ministers of Justice.

2. The Freemen, and such who are and may be concerned in him, can have no Record to resort unto, by which to preserve the Rights due to him and them respectively, *viz.* of

1. A Writ of Error, in case of erroneous Judgment, due by the Precedents.	*Pasch.* 39 *Ed.* III. *fol.* of *Gaunt*'s Case. 4 *Ed.* III. *Rot. Par. Num.* 13. *Count de Arundel*'s Case. 42 *Ed.* III. *Rot. Par. Nu.* 23. Sir *John* of *Lee*'s Case.
2. A Plea of Auterfoys acquit, in case of new Question for the same Fact; the Right to which, and the Necessity of such Record, appears by	*Wetherel* and *Darley*'s Case, 4 *Rep.* 35 *Eliz.* *Vaux*'s Case, *ibid.* 33 *Eliz.*
3. A being enlarged upon Acquittal, as is the Freeman's Due, by the Stat. 14 *Hen.* VI. *C.* 1. and the Case thereupon grounded.	*Dyer fol.* 120. and *Abridg. fol.* 33. The Year Book of *Edw.* VI. 10. *fol.* 19.
4. A Writ of Conspiracy against those who have practised the betraying the Life of the Respondent not to be brought before Acquittal, and no Acquittal but upon Record, as appeareth by	The *Poulterer*'s Case, 9 *Rep. fol.* 55.

This Court is to determine at a Day, without account of their Proceedings, have Power to try, judge, and cause Execution, but not to acquit or to give Enlargement; so that the nocent are thereby punishable, the innocent not preservable; the injured and betrayed not vindicable; which are Defects incompatible with a Court of Justice, and inconsistent with Justice itself, and with the Honours of a Christian Nation and Commonwealth.

Secondly, For that the Members of this Court are by the Act directed to be sworn,

1. Not *in conspectu populi*, for the Freemen's Satisfaction.
2. Not in Words of Indifferency, and obliging to Equality.
3. In Words of manifest Partiality, *viz.*

You ſhall ſwear that you ſhall well and truly, according to the beſt of your ſkill and knowledge, execute the ſeveral powers given unto you by this Act.

The Reſpondent humbly offers, That

1. The Court in their capacity of Triers ought (in reaſon) to have been appointed by their conſtitution, to have been ſworn as Triers in full Court, according to the practice in all equal ways of Trial.

2. The Court as Commiſſioners of Oyer and Terminer, (being authorized by the Act to hear and determine) ſhould in like reaſon be appointed by an Oath, ſuch as is uſual for perſons ſo qualified, as provided by 18 *Edw.* III. *viz.*

You ſhall ſwear, that well and lawfully you ſhall ſerve our Lord the King, and his People (mutatis mutandis) *in the office of Juſtice*, &c. *and that you deny to no man common right*, &c.

Or ſome Oath equivalent at leaſt to that of a Juſtice of Peace, *Dalton, fol.* 13.

I A. B. *do ſwear, that I will do equal right; and according to my beſt wit, cunning and power, after the Laws and Cuſtoms of the land, and the Statutes thereof made*, &c.

3. The Court in the capacity of Triers ſhould (in reaſon) be obliged by an Oath, of as equitable ſenſe as that uſually adminiſtered to Jurors, *viz.*

You ſhall well and truly try, and true deliverance make between our Sovereign Lord the King, (mutatis mutandis) *and the priſoner at the bar; ſo help you God.*

Whereas when this Court ſhall (as it is now conſtituted) have condemned the Freeman, the Reſpondent, or other, by applying their ſkill and knowledge, to their power, whether juſtly or not, the Oath by them taken is not in the letter broken; as to be exactable by man, though God will probably have a better account.

And therefore upon the whole matter premiſed, the Reſpondent (ſaving as before) offers for law and reaſon, that the honourable Court, the High Court of Juſtice, is not, by the letter and proper ſenſe of the words of the Act, by which it is conſtituted, qualified in reſpect of the pre-objected defects to paſs upon him for his life, upon a charge or crimination of High-Treaſon.

And humbly prays, that this his ſecond Anſwer, and Salvo, *may be received, and regiſtered; and that he may be tried, as in his former Anſwer he prayed.*

EUS. ANDREWE.

The farther and third Anſwer of Euſebius Andrewe, *Eſq. to the Honourable the High Court of Juſtice, preſented the 16th day of* Aug. 1650.

THE ſaid Reſpondent (with the favour of this honourable Court) reſerving and praying to be allowed the benefit and liberty of making further anſwer, (if it ſhall be adjudged neceſſary) in all humbleneſs for preſent Anſwer, offereth to this honourable Court,

That, *Firſt*, It is his right (if he muſt admit this Court to be duly and legally eſtabliſhed and conſtituted, as to their being a Court) to be tried by his Peers, men of his own condition and neighbourhood.

Secondly, It is within the power of the Court by the Letter and Senſe of the Act, or at leaſt as being not repugnant to the Act, to try him by ſuch his Peers, *&c.*

Firſt, That it is his right to be ſo, and only ſo tried, appears by *Magna Charta, cap.* 29. 25 *Edw.* I. *cap.* 1, and 2. 25 *Edw.* III. *cap.* 4. 25 *Edw.* III. *cap.* 2, and 4. 28 *Edw.* III. *cap.* 4. 37 *Edw.* III. *cap.* 18. 42 *Edw.* III. *cap.* 3.

By all which Statutes made in full Parliament, conſiſting of the head, and all the members actually, as well as virtually, this the Reſpondent's right is maintainable, and demandable, and the contrary proceedings thereunto are to be held for none, and redreſſed, *&c.* to be held for void, and error, *&c.*

So that, if the Laws and Courts were not obſtructed, (in the caſes of ſome ſort of Freemen of *England,*) the whole proceeding contrary to theſe Laws, without a Jury of his Peers, were avoidable, and reſervable by Writ of Error, as appears alſo by the precedents vouched by the Reſpondent in his ſecond Anſwer.

Secondly, That it is in the Court's power to try the Freeman, and conſequently the Reſpondent, by a Jury of his Equals; the Court is humbly deſired to conſider the words of qualification.

The Court is,

Firſt, Required to hear and determine; and ſo, if at all Commiſſioners, then Commiſſioners of Oyer and Terminer, and ſuch Commiſſioners, in their natural conſtitution and practical execution, do proceed againſt the Freemen according to Law, by a Jury of his Equals, and not otherwiſe.

Secondly, Authorized to proceed to trial, condemnation, and execution, *&c.* But not reſtrained to the manner of Trial, *limitativè*, as to trial by the Court's opinion as Triers, *non excluſivè*, as to trial *per Pares*; but is left in the manner, as in the judgment itſelf, to the opinion of the major number of twelve; and if they ſhall think fit to try by a Jury, it will be no offence againſt the Act, there being no clauſe or prohibition to the contrary.

And therefore the Reſpondent humbly claimeth his ſaid Right, as conſiſting with the ſaid Power.

And the more to induce the Court to grant him ſuch his right, and the benefit thereof, the Reſpondent humbly repreſenteth the manifeſt wrong, and multiplied diſheriſon, done to him, and in him to the *Freemanry of England*, in the following particulars of their like juſt right (depending upon ſuch trial to be allowed) if denied him, by this honourable Court.

Firſt, The benefit of

Challenge to the Triers, thirty-five peremptorily, and for Treaſon *ſans* number. } *Stampf. pl. Cor. fol.* 150. *Tit. Challenge, Poyning*'s caſe. 32 *Hen.* VI. *Fitz. fol.* 26. *Allowed Hill.* 1 *Jacobi* to Sir *Wal. Raleigh* and *Brooks.*

Secondly, The liberty of

Seeing, hearing, and counter-queſtioning the witneſſes, for clearing the evidence in matter of circumſtance, as well as in matter of fact; which appears to be the Reſpondent's right by

Stampf. pl. Cor. fol. 163, 164. the Statute of } 1 and 2 *Phil.* and *Mary, cap.* 10 and 11. 1 *Edw.* VI. *cap.* 12.

The Authority of (the Law's Oracle) *Coke* 2 part *Inſt. fol.* 12. commenting upon the words in 25 *Edw.* III. *cap.* 2. *Provablement Attaint*, becauſe the puniſhment was heavy, the proof to be punctual, and not upon preſumptions, or inferences, or ſtrains of wit, but upon good and ſufficient proofs: alſo by the Statute of 1 *Eliz. cap.* 6. 13 *Eliz. cap.* 1.

Thirdly, The being

Convinced, or acquitted by a full, free, and fully-conſented verdict. For,

Firſt, A verdict by a Jury paſſeth from all, or not at all. In the proceeding by voices, a ſentence paſſeth by way of concurrence, with which the *Star-Chamber, High-Commiſſion*, and *Courts-Martial*, were branded, and condemned of *Inequality*.

Secondly, A verdict paſſeth upon a Jury before diſcharged, upon their affairs of Eſtate, or ſupplies of Nature, to prevent corruption of money and power; but as this Court proceeds (if it will proceed by voices), a Trial may be had this day, and a ſentence may be given at leiſure; when the will of thoſe by whom the Freeman is proſecuted, be firſt known.

And upon the whole matter,

The Reſpondent humbly claims the benefit and right of being tried (if before this honourable Court) *per Pares*, men of his own condition, and of his neighbourhood, and that he may hear and ſee all the witneſſes produced againſt him, *viva voce & aperto vultu*; and may have power, liberty, and time to produce witneſſes in his defence.

And (ſaving as formerly) humbly prays that this his Anſwer, and Salvo, *may be received and regiſtered.*

EUS. ANDREWE.

The ſeveral Arguments of Col. *Andrewe* at his Trial.

The Firſt Argument.

My Lords, and you Gentlemen, Members of this Honourable Court,

I Have (as becomes me) been attentive to the charge which has been read againſt me. It appears in that dreſs it is put already, (though I preſume it ſhall be clad in other apparel by Mr. Attorney) ſo ſpecious, and ſo great as that my friends (if I have any here) begin to fear, the indifferent to doubt, and the partial to deſire, and join in my condemnation; myſelf (I hope I am not partial to myſelf) believe, that it will be no more than the mountain's labour, and when it ſhall come to be diſſected, will prove to be *inane aliquid*; like the Apples of *Sodom*, that however they take the firſt ſenſe, the eye, as this the ear, do rather foul the fingers that touch them, than ſatisfy the appetite in its expectation upon them.

My Lord,

I am at an unuſual bar, and engaged in a great cauſe of a far extendable concernment, my fee is life, and my duty is ſelf-preſervation; which in itſelf were leſs conſiderable, if by a precedent of my ſuffering, the conſequence would not prove miſchievouſly epidemical.

I do not wilfully refuſe to plead to the charge, but humbly crave leave to offer my reaſons for the ſuſpending of my Plea. And if I be importunate (yet within the bounds of civility) I beg your pardon, and that I may have a full, free, and an uninterrupted hearing.

My Lord,

When the *Jews* preſſed *Pilate* to ſentence *Chriſt*, they obtruded to him that they had a Law, and by that Law he ought to die. What they thought reaſonable to claim, when it ſerved their turn to vent their malice, will be, I hope, warrantable for me to lay hold on in a better ſenſe, for the vindication of *Chriſt*, who ſuffers when Juſtice is a ſufferer. We have a Law too, and by that Law, I ought not to plead, not to be tried, not to be judged.

The Laws of *England* were not unknown, but miſpractiſed, when the Barons fought King *John* into a conſent to the (not new making, but) reſtorement of the ancient Laws.

And * *Magna Charta* itſelf is but a confirmation or reſtitution of the Common Law, and is become the ſtandard by which Laws are reducible, and is the foundation of all other Acts of Parliament.

It hath been at no time diſmembered; no part abrogated by any repeal.

It hath been confirmed above thirty times, and commanded as often to be obſerved and put in execution.

In the Act called *Confirmatio* † *Chartarum*, it is directed to be allowed as the Common Law in judgment, in all points, by all the ‖ Judges and Diſpenſers of Law, or which have the Law to guide.

It hath in former ages gained an honourable eſteem in the old books: ‡ *Charta libertatum communis Libertas Angliæ, Charta de Libertatibus*, &c. theſe are the Appellations.

It was a *Noli me tangere*, and for ſeeking a reverſal or avoidance of it, *Hubert de Burgh* was ſentenced by the Barons, and the ſentence confirmed by § King *Hen.* III.

The great *Hugh Spencer*, in the reign of *Edw.* II. was baniſhed, but for raſhly counſelling againſt the ** *Encounter la forme de la grande Chartre.*

And to draw downwards yet one King's reign, and to the point to which I would apply; I find in the 42d †† of *Edw.* III. this great Charter was not only barely confirmed and commanded to be kept in all the points, for thoſe are the words; but to prevent any alteration of it, it is enacted, That if any Statute be made to the contrary, that ſhall be holden for none.

By this ‖‖ *Magna Charta* it is granted, and enacted too; if my Lord *Coke* ſay true, who ſaith it is a Statute, as well as a Charter, being made by aſſent and authority of Parliament; That

No Freeman ſhall be taken or impriſoned, or be diſſeiſed of his freehold, or liberties, or free cuſtoms, or be out-law'd, or exiled, or any otherwiſe deſtroyed; nor will we paſs upon him, nor condemn him, but by lawful judgment of his Peers, and by the Law of the Land.

* Coke 1ſt part inſtit. fol. 80, 81. † 25 Edw. I. cap. 1. ‖ Bracton 414, 491. Fleta lib. 2. cap. 48. lib. 3. cap. 3. ‡ Mirror cap. 2. 18. Briton fol. 177.
§ 17 Hen. III. Rot. Cla. mem. 1. 2. Pro utriuſ. M. 1. ** 14 Edw. II. †† 42 Edw. III. cap. 1. ‖‖ Coke 1ſt Inſt. fol. 81.

We

We shall sell to no man, nor defer to any man either Justice or Right.

If this be truth and Law, which I have in these particulars premised to you; then, my Lords, give me leave to take notice,

That by that Act by which you are constituted a Court of Justice, you are authorized to try the Freemen of *England*; not *per Pares*, upon or for offences against articles, and the punishment to reach to life, as the major part of any twelve of the Commissioners shall judge to appertain to Justice.

Laying these together, a posting rider may read, that these Laws are diametrically opposite, and consequently inconsistent.

The latter hath its doom inherent by its innate contrariety to the former, and is a building, a superstructure so unsuitable to the foundation, that if it had not a double-edged support, it need no help to be demolish'd, but would fall, I know not whether to say, *sua mole*, or *sua pencilitate*.

The Constitutors of this Law are *Gladiis cincti*; and therefore as I am not in opportune place to speak to them, so there is something of danger to speak too freely to them; but, my Lord, your Lordship, as you are in this place, are (I am sure ought to be) like the Escutcheons of Princes, with their adopted supporters, Knowledge and Conscience: and if you are, I am confident you will doubt of your Commission or Warrant to proceed against me, and compel me to preserve an inch of life, by giving away mine and my Countrymen's liberty, in condescending to a Plea and Trial, in this contra-legal way, and by power of this Act.

The Second Argument.

My Lord,

I Shall further beg leave to call to your memory the Petition of Right; which was made the business of the Parliament, at the time when it was preferred, and received the Royal Assent; must never be forgotten by those who hold in esteem the care of Parliaments, and gracious concessions of Kings.

In the Proem, or leading part of that Petition, the Statute of *Magna Charta* is instanced as to this particular, Trial for life by proper Courts, with other the Laws and Statutes, (some of which I have cited, and the rest shall upon another point in their place) and as it is complained, that proceedings had been by Commissioners martial, when and where, if by the Laws and Statutes of the Land they had deserved death, by the same Laws and Statutes also they might, and by no other Laws ought to have been judged; so it is prayed, and accordingly enacted, That no Commissions of like nature may be henceforth issued to any person or persons whatsoever to be executed, *&c.* and this to prevent, lest by colour of them, any of the subjects should be destroyed or put to death, contrary to the Laws and Franchise of the Land.

My Lord,

1. The Commissioners Martial were not evil in respect of the persons commissioned, being as this power is to you, so those always given to persons of quality and learning; but the evils of them were their proceedings by their own will and opinion, being themselves the Judges and the Jury; offices incompatible and inconsistent with the people's liberties, by the former Laws become their rights. When your Lordships shall read the Act by which you now sit, I am confident you will grant this power to be of the same nature, though not under the same name; and consequently in that petition complained of, in supposition that such might be, and enacted against *in Terminis*, that none such should be.

2. For that you are called by the Act, Commissioners, and yet have no Commission, but the Act itself; whereas you should, in regard you are not a Court of Record in yourselves, have Commissions returnable at a day, into some Court of Record, where your proceedings might be extant and visible: and as you are now constituted, you have a day prefixed to determine in; but that being come, you are to vanish, and your *vestigia* will be as imperceptible to the times and men to come, as the trace of a Swallow in the Air; which is inconsistent with the Honour and Justice of any Kingdom, or of any Christian Commonwealth.

For that you have only by this Act, a bare and single power to adjudge, and cause execution to be done, in case you shall judge it to appertain to Justice; but you have no power, if you think it appertain to Justice, to acquit, and upon acquittal to discharge the person tried, as is the Law expresly in my * Lord *Dyer*; and in the Year-book of *Edw.* IV. grounded upon the Statute of † *Hen.* VI. 14 of his reign, *cap.* 1. That

Justices of *Nisi prius* (who are Commissionary Justices) shall have power of all the cases of Felony and of Treason, to give their judgment, as well where a man is acquit of Felony, and of Treason, as where he is thereof attainted, at the day and place where the Inquisition, Inquest, and Jury shall be taken; and then from thenceforth to award execution to be made by force of the same judgments, which in an acquitted man's case can only be an enlargement.

But, my Lord, you have only power, if you can, to reach my life, if in your opinion deserving it: but not to reach me out of prison; so that if you kill me not here with the sword of Justice, you must leave me in worse hands, to be buried alive in restraint and want.

Which all is against the Laws of Nature and Nations, and particularly of this land, that are all so balanced and poised, as that they have equal regard to the delivery and freeing the Innocent, as to the Condemnation of the Nocent.

And *Isidore* in his Etymologies says of a Law, thus;

Erit autem lex honesta, justa, possibilis secundum naturam & consuetudinem patriæ; loco, temporique conveniens necessaria, & utilis; manifesta quoque, ne aliquid incautum per obscuritatem captione contineat; nullo privato commodo, sed pro communi civium utilitate conscripta.

And as Laws should be, so should Courts and the Dispensers of Laws be.

But, my Lord, if this Court must be granted to be a Court, yourselves can make no more of it than a Court, *ex parte*, and set up to serve a particular end, with the privation of the common utility and liberty, however ushered in with a preamble of another stile, of preservation of peace, and prevention of war; but *Thucidides* will tell you, my Lord, in his fourth book, That

Turpius est his qui impia tenent insidiare honesto prætextu, quam insidiosâ malevolentiâ uti; nam violentia videtur aliquid Juris habere, propter potentiam à fortunâ datam, sed fraus tantum ab injustitiâ oritur.

The Third Argument.

BUT, my Lord, if your Lordship be in your judgment and conscience satisfied, that the Act itself, in and as to its constitution, is good and valuable, and impowereth you sufficiently to proceed against me some way; then *Argumenti ergo dato, sed non juris ergo concesso*, that it is a Law, or an Act, and that all those Ordinances are out of doors; yet I pray your Lordship's leave, that I may make evident to your Lordship, that you are not hereby constituted a Court capable, in defect of the very letter of the Act, to pass upon any man, and consequently not upon me, in matter of life, or where life may be the concernment.

1. For Reason, you are not constituted a Court of Record ‡, which is absolutely necessary, having life and forfeiture of lands in your charge.

First, For the State, that they may have an account, (not in their Council-Chamber, but upon Record) what is become of the matter in issue, and of the person put upon his Trial.

2. For the Freeman of *England*, that in case he be acquitted of the crime wherewith he shall stand charged before this Court, he might at all times resort to the Record, upon any new question for the same fact, in any other Court holding Pleas of that nature, by which Record to plead his Auterfoys Acquit, and to make his defence, as also to preserve his estate, *si non legalement acquitte en le Poulterer's case*, 9. *R. Beneg: ſt demant acquittal nul req. si non de Record.* as also my benefit, a writ of Conspiracy.

To come neater our own times, the like cause to complain, and the same redress is given in the Act § for abolishing of the *Star-Chamber*, upon the grounds and reasons drawn from these Laws; the Innovations and Invadings, upon which (as being fundamentals) was a great part of the substance of the grand remonstrance, committed to the whole World against the late King by the press: The ‖ charges against the Earl of *Strafford*, and the Archbishop of *Canterbury*.

The Interest of the Subject in these Laws was cryed up to be so precious, as that it had influence even to the absolving of all old Oaths, and the imposing of new, and to bring to adventure estate, and life, and soul, rather than to be usurped, or in the least intrenched upon.

Four ** several Declarations of the present Parliament have entitled the subject to them, and to the benefit of the ordinary Courts of Justice, as their birth-right. They have owned the preservation of them to be the cause of the war, and the ends of their affairs managed by their Swords or Councils; and God's curse is by them imprecated, in case they should ever decline the ends.

My Lord,

We have the Parliament's word and †† promise, not to interrupt the course of Justice in the ordinary Courts.

And in the ordinance of *Non-addresses* to the late King, they say, *Though they lay the King aside*, yet they will govern by the Laws, and not interrupt the course of Justice in the ordinary Courts thereof.

My Lord,

I am entitled to all these Laws, and these Promises and Declarations; and if this Court proceed against me, those notwithstanding, (the ordinary Courts of Justice being open and unobstructed) I am robb'd, and divested of them all, and in me the Freemanry of *England* are all despoiled, at the Parliament's will (according to this precedent) despoilable; and may with Mr. *Stampford*, in his Pleas of the Crown, take up this saying, it will serve for a lamentation, *Misera servitus est, ubi jus est vagum & incognitum.*

Attorney-General *Prideaux*. Take heed you scandal not the Court.

The Fourth Argument.

THomas *Aquinas* (who, though a Papist, is not the less worthy to be vouched, where not Religion, but Policy, is the thing in question) saith, That *Lex est regula & mensura actuum agendorum vel omittendorum*, not *Actorum* and *Omissorum*.

And St. *Paul* says, *Rom.* vii. 7. *Concupiscentiam nesciebam, nisi lex diceret non concupisces.*

My Lord, your authority is in two several places to proceed against, as Traitors, such who have broken articles before they were made, viz.

Whosoever hath, or shall plot, contrive, or endeavour, *&c.*

Whatsoever Officer, *&c.* hath, or shall desert their trust, *&c.* shall die without mercy.

And thus, my Lord, the end of Laws and Law-making is perverted; which are not merely to punish offenders, but to prevent offences, which amongst Christian Men was never otherwise done, but by way of premonition; by Laws first interdictory, and then subpenatory.

The Earl of *Strafford* did (and very reasonably) take it unkindly, and so expres's'd himself upon his Trial, that a neglected Law should lie moulding amongst old parchments 200 years unused and unexercised, and be at last brought out to measure his past actions by; or to use his own words, *To lie like a Coal raked up in the ashes*, to be at pleasure blown into a flame, and to make him and his family the first fuel to feed it. Truly if he had seen these articles (as he felt after somewhat like them), he would have cried out, and but modestly enough, that it is not mending of the fault, but the destruction of the person, which is manifestly designed in these Articles of *Retrospection*.

Disusage of Law, is some excuse for him who falls into a transgression; but the *non-existence* of a Law is a justification of the greatest offence.

And, my Lord, as you are to look backward to actions done before the Law made, so you are to take cognizance of offenders against two former Acts, which make the Crimes therein certain in the matters of fact, fault and punishment; and if they be Laws, they must be deemed part of the Laws of the land, and desirable and dispensable by the ordinary Courts of the land, in cases criminal: for extraordinary Courts

* Read's case, Dyer fol 120. 10 Edw. IV. fol. 19. † 14 Hen. VI. 1. Oath of a Juror.

‡ Wetherel and Darley's case, 35 Eliz. § 17 Car. Act for abolishing the *Star-Chamber*. ‖ Articles contra Strafford. Art. 1, 2. partes 1. 14 part. secunda. ** Declar. Dec. 15. 1641. Jan. 17. 1641. July 12 1642. Oct. 3. 1642. †† Declar. April 17. 1646. Jan. 1648.

of

of that kind, have long ſince (even by the Parliament, of which this is the ſurviving part) been denied.

And although it is true, that when ſome particular fact is committed by ſome one or more particular perſons againſt the Laws criminal, it often falls (and properly enough) that eſpecial Commiſſions of Oyer and Terminer are for ſome urgent and expedient reaſon iſſued to try the matter and men; yet thoſe Commiſſions do not reſtrain the Commiſſioners to proceed only againſt thoſe perſons, and upon thoſe particular crimes, which the common fame hath rendred *hac vice*, to be triable; but run in general terms, and with general enablement to try all manner of Treaſons, Felonies, *&c.*

And the Reaſon is,

1. For that it might poſſibly fall out, that a grand Jury will not find the bill againſt *John a Stile*; and if not, the Commiſſioners are ſent down without their errand, if only directed to try *J. S.*

2. It may fall out, that where there are Treaſons or Felonies committed by *J. S.* they may be accompanied with miſpriſions and miſdemeanours in *J. O.* And if the particular crime of Treaſon, and the particular perſon of *J. S.* be only authorized to be enquired of, then the Commiſſioners can do but half their work: and therefore this commiſſionary power of yours, my Lord (the ordinary Courts being not obſtructed, and you limited to particulars), is ſo far againſt the Common Law and Uſage, that it is againſt common and vulgar reaſon; and (pardon that I muſt ſay it) ſavours more of a Snare, than of a Law; and more of a warrant of arbitrary execution, than of an enablement, to and for a judicial and legal Proceeding or Trial.

The Fifth Argument.

My Lord,

IN all Courts of Juſtice, as there is ſuppoſed to be an equality intended to ſuch as ſhall fall under their cognizance and inquiry, which is a principle of morality innate, as well as a practical policy; ſo there have always in this Nation, at leaſt beyond memory, or indeed record to the contrary, been certain Oaths obligatory, and of indifference adminiſtered to perſons either enquiring of, or paſſing judgment againſt, or upon the ſubjects in all caſes whatſoever. And the ſame thing is but neceſſary in your Lordſhips and this Court to be done (if at all you will proceed in ſo weighty a matter as life), againſt which I make this exception,

1. If you are at all ſworn, you are not ſworn *in conſpectu*; and if you will be my Jury and my Judges alſo, I ought to have ſatisfaction that you are ſo ſworn. Had you been only my Judges, and conſtituted after the ordinary manner, and to ordinary ends, I would have taken your being ſworn for granted.

2. If you are ſworn, and to no other words of Oath than what are comprized in the Act (which myſelf and all men elſe will eaſily believe you are not), then you are not ſworn to any manner of equality.

The words are,

You * ſhall ſwear, that you ſhall well and truly, according to the beſt of your ſkill and knowledge, execute the ſeveral powers given unto you by this Act.

I beſeech your Lordſhip, † that I may compare theſe words with the Oaths of Judges in *England*, when it was a Kingdom.

The words pertinent are only theſe,

You ‡ ſhall ſwear, that well and lawfully you ſhall ſerve our Lord the King, and his People in the office of Juſtice, *&c.*

And that you deny to no man common right, by the King's letters, or none other man's, nor for none other cauſe, *&c.*

I § *A. B.* do ſwear, that I will do equal right, *&c.* according to my beſt wit, cunning and power, after the Laws and Cuſtoms of the Land, and the Statutes thereof made, *&c.*

My Lord, theſe will concern you as my Judges, to conſider how little the ſtiles agree, and how far your Oath is in reſpect of theſe unobligatory, and conſequently unſatisfactory, to the perſons which are or ſhall be concerned.

1. As to the firſt, yours contains no ſuch words of equality.

2. As to the ſecond Oath, yours hath ſuch words as ſkill and knowledge, holding ſome reſemblance with thoſe of wit, cunning and power. But, my Lord, if your words were as well uſher'd, and as well paged as thoſe, it were ſome ſatisfaction, *viz.*

To do equal right, according, *&c.*

After the Laws and Cuſtoms of the Land, and the Statutes thereof made.

My Lord, as you are my Triers alſo, as well as my Judges, I beſeech you to obſerve the Oath of a Juror, and the difference in ſenſe (in letter, I know, for the dignity ſake it ought to differ).

You ‖ ſhall well and truly try, and true deliverance make between our ſovereign Lord the King, and the priſoner at the bar, &c. I preſume it is ſtill the ſame (*mutatis mutandis*).

Truly, my Lord, when I look upon your enablement to try the matters and perſons, which, and whom you are to try: you have power to deſtroy, and not to ſave; though to ſpare, yet not to acquit, or diſcharge; and your obligation by Oath to execute that power, according to your beſt ſkill and knowledge. I muſt needs ſay, and it is apparent, that when you have deſtroyed me, you have diſcharged all the duty that man can exact from you (though God will have a better reckoning), and inſtead of being tried by ſworn Jurors, and adjudged by ſworn Juſtices, myſelf and all who are or may fall into my condition, are to be tried by our ſworn adverſants, I might have ſaid ſworn enemies: and we cannot in reaſon expect more Juſtice, than when the Son lays the wager, the Mother keeps ſtakes, and the Father is Judge, in a point of controverſy.

More and better you may do, more or better we cannot by any light of reaſon expect.

The Sixth Argument.

BUT, my Lord, if all this be but a wind againſt a Rock, and move you to no declining of the exerciſe of your power, though againſt my right; yet certainly, my Lord, where your power and my right may be conſiſtent, you will not ſtretch your power to the taking away my right; but rather by giving me my right, magnify your power.

This I may reaſonably expect.

It is my right (granting you to be my Judges) to be tried by my Peers, the good men of my neighbourhood, and it is in your power (if your power be not inward) to try me ſo.

That this is my right, I muſt reviſit ** *Magna Charta, Niſi per legale Judicium parium ſuorum.*

The Law of *Ed.* I. having confirmed the great Charter, †† ſaith, 'And 'we will, that if any judgment hereafter be given contrary to the points of 'the Charter aforeſaid, by the Juſtices, or by any other our Miniſters that 'hold Plea before them againſt the points of the Charter, it ſhall be un-'done and holden for nought.'

And upon this very Law or Clauſe, a writ of error was brought by the ‡‡ Earl of *Lancaſter*, for the miſattainder of his brother, whoſe heir he was; and in that the points were two, and upon them both, judgment given for a reverſal.

1. *Quod non fuit araniatus & ad reſponſionem poſitis tempore pacis, eo quod cancellaria, & aliæ curiæ Regis fuerant apertæ, in quo lex fiebat unicuique prout fieri conſuevit.*

Attinctus.

2. *Quod condemnatus ſive adjudicatus fuit abſque araniamento ſeu reſponſione, ſeu legali judicio parium, contra legem, & contra tenorem Magnæ Chartæ.*

The like reverſals, and upon the like reaſons, have been had,

In the §§ Count *de Arundel*'s caſe.

In Sir *John* of *Lee*'s caſe,

It is provided, that no man from thenceforth ſhould be attached by any accuſation, nor forejudged of life, nor of limb, nor his lands, *&c.* againſt the form of the great Charter, and the Law of the land ‖‖.

My Lord,

Our fathers ſaw a Parliament (and reaped the bleſſing of it), which was called *Benedictum Parliamentum* (which hath circumſcribed the looſe interpreters of Treaſons to a ſtandard, and not left it to be *Individuum vagum*); and there it is ſaid, that perſons guilty of High-Treaſon (and my charge is not for leſs) muſt be provably attaint of open deed, by people of their own condition.

And again it is accorded, aſſented and eſtabliſhed, that from henceforth none ſhall be taken by petition, or ſuggeſtion made to the King, or his Council, unleſs it be by indictment, or preſentment of his good and lawful people of his neighbourhood where ſuch deeds be done, in due manner, or by proceſs made by writ original at the Common Law; Nor *** that none be ouſted of his franchiſes, or of his freehold, unleſs he be duly brought to anſwer, and fore-judged of the ſame by the courſe of Law; and if any thing be done againſt the ſame, it ſhall be redreſſed, and holden for none.

It is aſſented and eſtabliſhed (for the good governance of the Commons), that no man be put to anſwer without preſentment before Juſtices, or matter of Record, or by due Proceſs and Writ original, according to the old Law of the Land; and if any thing from henceforth be done contrary, it ſhall be void in Law, and holden for error.

My Lord,

That it is my right to be tried by a Jury of twelve men *de vicineto*, is evident; and it is as evident, that if you otherwiſe proceed with me (if Law were not out of faſhion), you would but weave *Penelope*'s web, and one day's judgment would be unravel'd by the next day's writ of error.

But after-games for life are dangerous; and for eſtate, I have no great cauſe to be ſolicitous: but my right is my duty to preſerve, as in relation to myſelf, and my honour to keep it, if it may be, from being in my precedent taken alſo from my Countrymen, the Freemen (if any ſuch be now) of *England*, who have equal reaſon, though they may be wanting (ſome of them) of the ſame reaſons wherewith to defend it.

That your Lordſhip may proceed by Jury, for aught is ſaid, or contained in your Act to the contrary;

1. I pray conſider the before-recited Laws are all unrepealed; and therefore if this Law intend to oppoſe thoſe Laws, it ſhould have repealed them, or at leaſt have afforded a ſlight *Non-obſtante*, or have given the ſubject the comfort of a *hac vice tantum*, that we might not have thought ourſelves robb'd of all, but only plundered of a part of our right for neceſſity and experience ſake, or at leaſt have given us the favour of the Earl of *Straford*'s Act, that it ſhould never be drawn into example: but I am ſure in this Act, that proceeding againſt him is ſuper-exampled.

2. I deſire you would conſider your qualification; you are made Commiſſioners, and that of Oyer and Terminer, and thoſe are not Proceeders in their own proper, natural and habitual conſtitution and practices, upon and according to their own judgments in matters of fact: you are in theſe words, *viz.*

Required to hear and determine, *&c.* conſtituted Commiſſioners of Oyer and Terminer.

3. You are authorized to proceed to Trial, Condemnation and execution, *&c.* but you are not reſtrained to the manner of ſuch proceedings to Trial excluſively, as to Trial *per pares*, but left to do the manner of the Trial, as well as the judgment or execution, as you, or the major part of you, or twelve of you ſhall judge to appertain to Juſtice: And if ſuch major part ſhall think fit to proceed by preſentment and Jury, doubtleſs ſuch your proceeding is no *Præmunire* againſt the power given you by the Act; but it is juſtifiable to fall within the letter of the Act, and that without a ſtrained conſtruction.

4. And if when you may lawfully (I mean by your own Law, if, *Argumenti ergo*, it be granted a Law) try me by a Jury, and will not; then, my Lord, pardon me, that I muſt aver, that you take from me, and in me from the commonalty of *England*, three great privileges, franchiſe and rights; to which I and they are, by the known, ancient, and unabrogated, unrepealed, and conſtantly practiſed Laws, entitled; which will be neither equitable nor honourable for you to do.

1. You take away the benefit of challenge, which I might make to a Jury or Jurors.

And that is contrary to my right, which is given me by the ††† Common Law, *in favorem vitæ*, to challenge in caſe of High-Treaſon, (for

* The Oath of the Commiſſioners. † 18 Edw. III. ‡ Oath of Juſtices. § Dalton's Juſtice of Peace, fol. 13. ‖ Oath of a Juror. ** Magna Charta, 9 Hen. III. 29. †† 25 Edw. I. cap. 1 and 2. ‡‡ Paſch. 39. Edw. III. John of Gaunt's caſe. §§ 4 Edw. III. Num. 13. Rot. Parl. 42 Edw. III. Num. 23. Rot. Parl. 5 Edw. III. 9. ‖‖ 52 Edw. III. 2. cap. 4. ejuſd. *** The like in effect in 28 Edw. III. 3. 37 Edw. III. 18. 42 Edw. III. 3. ††† Stamp. pl. Cor. T. Chaleng. fol. 150.

I go to no leſs) thirty-five peremptorily, and for reaſon of challenge *ſans* number.

This was judged in 32 *Hen.* VI. abridged by * *Fitz-Herbert*, *fol.* 26. *per challeng.* where eight Jurors were ſworn, and the reſt challenged, a new return made; and thoſe eight returned, and though formerly allowed and ſworn, yet challenged, and adjudged good.

The like allowed in *Hill.* 1 *Jac.* in the caſes of Sir *Walter Raleigh* and *Brook.*

If this benefit were allowed me, my Lord, to except or challenge the whole Court, who are in number and quality my Triers, as a Jury are, I ſhould not need to be peremptory in my challenge, being furniſhed with abundant reaſon.

(Here he was interrupted by *Keeble*, who ſaid, thoſe Statutes and Caſes were out of date now).

My Lord,

A Jury of *Middleſex* will be no more nor leſs, if what I am accuſed of, to have endeavoured, ſhould take effect; and therefore are not leſs concerned: I cannot ſay the ſame of the Court (or if I ſhould, I ſhould not be believed), and he that but whiſpers againſt † *Diana* at *Epheſus*, makes all the Craftſmen his enemies.

2. The ſecond benefit and right, which by denying me a Trial *per pares*, you take from me, is the benefit of ſeeing, hearing, and counter-queſtioning the witneſſes produced againſt me; which, in ſuch way of Trials, ought to be *viva voce.*

That ſuch is the Law, ‡ Mr. *Stamford* averreth in his Pleas of the Crown. And,

In Treaſon, two *ſufficient* witneſſes by the Statute ** of *Edw.* VI. are requiſite; *ſufficient* in relation to their quality, and to the fulneſs of their teſtimony.

Sir †† *Edward Coke* (an Author as authentick as any) puts this for Law in his expoſitions of the words in the Statutes for Treaſon, *Provablement attaint*; becauſe the puniſhment was great, the proof ſhould be punctual; not upon preſumptions or inferences, or ſtrains of wit, but upon good and ſufficient proofs. And this he makes good by the Authority of ‖‖ *Stamford*, and the ſeveral Statutes of *Philip* and *Mary*, and of Queen *Elizabeth*, and of *Edw.* VI.

Now, my Lord, an evidence either taken in writing, as the perſon will voluntarily give it, or cautiouſly taken as the examiner will aſk it (who is not ſworn to take it indifferently, no more than the framers of the queſtions are to propound them fairly), may be a ſeeming fair, appoſite, and a full teſtimony; or concerning the perſon giving teſtimony, or concerning the *modus*, the *ubi*, the *quando*, &c. the whole laid together may prove either nothing, or a malicious thing.

The caſe of Sir *Thomas More*, Lord-Chancellor, accuſed for bribery, is common; and I hope, if mine have fair play, it will prove no worſe.

3. The third and laſt right and privilege you take from me, is the main of all the reſt, and to the making of which (as it ſhould be made up) all the reſt are but conducing, and leading; that is, of a fair verdict.

My Lord,

By a Jury a verdict paſſeth from all, or not at all; and one knowing and conſcientious man may preſerve that innocent man, whom eleven either ignorant or careleſs men would deſtroy.

This Court's ſentence is to be ſtated by number of voices, and ſome of them poſſibly not judging their own judgments, but concurring where their opinion of another's judgment ſhall lead them; which, as it was the great evil of the late Court of *Star-Chamber*, ſo whereſoever it is uſed (in Trials of Life eſpecially) it is and can be no other than an evil.

My Lord,

By and from a Jury a verdict paſſeth before their diſcharge upon their neceſſary affairs, nay affairs of nature; and therefore they will give it both the righter, becauſe their evidence is freſh in memory, without the intervention of other matters, as alſo for that they are without opportunity to be perverted by money or friendſhip. If this Court receive the evidence to-day, they may at any time (before the 29th of *September* next) give their ſentence; for *vere-dictum* I never expect but from a Jury: and in the mean time, how much their own affairs may put the remembrance of me out of their heads, and how much the State's power may put my ſafety out of their hearts, I have juſt cauſe to ſuſpect. For fear, I will not, being reſolved never to be in love with that life which the Common Law of *England* cannot protect; and had rather die the Law's Martyr, than live the State's Slave.

The Cloſe.

My Lord,

I have ſaid; and now it only remains that I tell your Lordſhip, that I deſire you to take into conſideration what I have ſaid; and that you would not ſuddenly, but deliberately give your judgment, whether I ought to plead before you as Judges, and to the charge in the Articles, and not in a Preſentment or Indictment? Whether to be tried without a Jury, and condemn'd upon evidence unſeen? Which this is (and I deſire it may be recorded). As I do not now wilfully refuſe to plead or anſwer, but offer my reaſons for the ſuſpenſion of my Plea, until your judgment in the points be known and pronounced; ſo, if I be in them over-ruled, I ſhall then give ſuch anſwer to the charge, as ſhall become a man in my condition.

Fiat voluntas Dei, modo in ruinâ meâ.

EUS. ANDREWE.

3. 7. 2. 1650.

Here the Attorney-General *Prideaux* put a ſtop to Mr. *Andrewe*, telling him, that the Court was not at leiſure to take notice of thoſe Law-Caſes, but of his confeſſion; *That he had an affection to act, though nothing acted, was ſufficient Treaſon, and for that affection he deſerved death.* And thereupon the Court pronounced ſentence againſt him, That he ſhould be hang'd, ‡‡ drawn and quarter'd: but on his Petition to the Parliament, an Act paſs'd authorizing Commiſſioners of the High Court of Juſtice to iſſue their warrant for the beheading him according to his Petition.

Col. *Andrewe*. If I be over-rul'd by the Court, that I muſt either anſwer or be ſentenced for my wilfulneſs; then I move that I may have a Copy of my charge, and a day aſſigned me to deliver my Anſwer under my hand.

Upon theſe Reaſons:

1. If the Court proceed upon Articles, they cannot in reaſon conceive that I can plead the general iſſue to particulars; for in ſo doing, in caſe I be convinced of any one Article, I ſhall receive the doom of all.

2. For that *de facto* ſome of the Articles may be true, yet *de modo* they may not be available againſt me; and upon the general iſſue, I ſhall not be received to qualify fact with circumſtance, and ſo inſtead of being allowed the freedom of my defence, which is allowed to every Thief in *Newgate*, I ſhall be tried and ſnared by ſuch confeſſion, or proof, as will ſerve the turn of my proſecutors, and not preſerve myſelf, by making myſelf and actions underſtood.

The Articles are of ſeveral kinds and crimes; and as one ſingle Plea will not be applicable to them all, ſo it is but requiſite that I have a Copy of them, to give thereby to each one its proper Anſwer; which though in Indictments is not allowed, yet in this way of proceeding was never denied in the moſt arbitrary Courts.

The Council-Table gave a charge, and received anſwer in writing, in caſes of Contempt againſt themſelves or commands.

The *Star-Chamber* afforded the Defendant a Copy of the Bill, and liberty to examine and croſs-examine witneſſes, in caſe the fact charged were denied by the Anſwer.

The High-Commiſſion the like, by their Articles and Proceedings upon them.

My Anſwer, if not in writing, may either not be underſtood, or miſ-apprehended, or miſ-ſet down by the Clerk, to my prejudice.

If this be denied me, then I muſt conclude they intend to wipe off my head, with the ſmooth glazed ſword of pretended Juſtice; and muſt apply myſelf to my memory, in reference to the charge, and ſhall hear it read, which by my own knowledge of what has paſſed between the State and me, I may conjecture; and therefore prepare theſe following heads to help my memory, which in a caſe of ſo much concernment, is not totally to be relied upon.

Firſt, As to what may be alledged againſt me in general terms, as a diſaffected perſon, an oppugner of the State, or otherwiſe, *&c.*

There are two things which draw ſubjection, and oblige perſons to a Commonwealth.

(1.) Protection in the State.

(2.) Perſonal engagement, or fealty in the ſubject.

(1.) Protection I have received none, but ſtand in the condition of a proſcribed perſon.

1. Eſtate (if any) ſequeſtrable, and not permitted by the Laws of the Nation to vindicate it.

2. Calling taken away, which the *Turk* would not have done, had he been Conqueror.

3. Dwelling not permitted where I can ſubſiſt, but where I may be obnoxious to want, and to the State's infliction of puniſhment, when they ſhall take occaſion to repeat upon me any thing they ſhall call a crime, in reference to my paſt actions for the late King, and my Sovereign.

4. Right I can have none, unleſs I will damn my ſoul to preſerve my eſtate, or repair my wrong by a contra-legal and contra-evangelical engagement.

This was ſufficient reaſon, owned and juſtified by the Parliament, for their ſubſtraction of obedience, ὁ Βασιλευς ὁ Πρωτομάρτυρος λάων, by their § Declarations, and Ordinances.

(2.) Fealty or perſonal engagement I have given none, *viz.*

1. I have not taken the proteſtation of *May* 1642.

2. I have not taken the ſolemn Oath and Covenant; yet if I had, I might have juſtified my actions by them.

3. I have not taken the negative Oath, becauſe my Oath of Allegiance (from which no man can abſolve me) is a negative to that, *&c.*

4. I have not taken the preſent engagement, much more againſt my Oath of Allegiance than the negative Oath.

If I had had ſo little conſcience as to have taken them, I would have had ſo much as to have kept them; and the State cannot in reaſon expect from me, or any other, that we ſhould take a ſecond, when we ſee no conſcience made of keeping the firſt; nor to take a third, the firſt and ſecond being broken, without other diſpenſation than power; which, like *Alexander*'s ſword, cuts the *Gordian* knot which it cannot untie.

Neither hath any man aſſurance, if he ſhould take the laſt engagement, that he ſhould have liberty to keep it longer than the fancy of the State held to the now new faſhion of Government.

And therefore I ſtand clear as a down-right ſubject of *England*, to ſtand or fall by the Common Laws of *England*; and if they will deny me that, they deny my Birth-right, which is equally righteous, and no more juſt, than to deny me my eſtate, my calling, my abode, my means of right.

Secondly, As to my action at *Linton*, I juſtify myſelf,

1. By the late King's Commiſſion, which my accuſer knows I had, and under which he was by the ſame King conſtituted my Major.

2. *** What was done, was ſo done, when he who gave me the Commiſſion was in being, and oppreſſed by injurious impriſonment; and what I did, was in order to his inlargement from his thraldom, and reſtorement to his lawful power; which was that to which my duty as a ſubject, by my Oath of Allegiance did bind me in general terms, and the duty of my qualification laid me under a particular obligation.

It was done before the now reputed Parliament were, or pretended to be the ſupreme authority of the Nation, or had aſſumed the power of Government, or were fram'd into a State; and conſequently I am not anſwerable to them for any oppoſition to them, further than the Common

* Poyning's, caſe. † Acts cap. 19. ‡ Stam. P. C. fol. 163, 164. Stat. Philip and Mary 1, and 2. cap. 10. ** 1 Edw. VI. cap. 11. Clauſe ult. †† Coke 3 Inſt. fol. 12. ‖‖ Stam. P. C. 164, 89. 1 Ed. VI. cap. 12. 1 and 2 Philip and Mary, 10, 11. 1 Edw. VI. and 16 Eliz. 1.

‡‡ *Bernard* and *Pits*, Witneſſes againſt Col. *John Andrewe* and Sir *John Gell*, were apparently ſuborn'd by *Bradſhaw* and Sir *Henry Mildmay* againſt them, and good proof offer'd to the Court that they were both flagitious men, of ſcandalous Life and Converſation: both *Bernard* and *Pits* were ſet to work to betray *Andrewe* and *Gell*, for which *Bernard* had 300l. and a Troop of Horſe conferr'd on him. See the Hiſtory of Independency in *4to. Page* 29, 34.

§ Declar. 17 April, 1646. Ordinance of Non-Addreſſes, in Jan. 1648.

*** 11 Hen. I. cap. 1. That the Subjects of this Realm are obliged, by reaſon of their allegiance, to ſerve the Prince for the time being, in his Wars for the defence of him and the land againſt every rebellion or foreign power, within the land or without; and ought not to ſuffer in Life, member, eſtate or office for ſo doing.

Law binds to Parliaments without their head and hand, or defective in their members; and as to ſuch offence (if it be one) this Court is not qualified to take any cognizance.

Thirdly, As to the deſign concerning the ſurpriſe of the Iſle of *Ely*, it was but a bare diſcourſe or communication, and no formal deſign laid, agreed unto, nor perſon engaged in it, ſo much as by promiſe.

And in caſes of conſpiracy againſt the Lives of Kings there were ſome Statutes made, that very words and communication ſhould be reputed Treaſon; but all repealed, or expired;

And not thought fit by wiſdom of Law-makers (having indiſputable power to make Laws) to be revived ſince the days of Queen *Mary*, notwithſtanding thoſe very many Treaſons hatched and deſigned againſt Queen *Elizabeth*, and King *James*, *&c.*

If in the higheſt point of Treaſon, communication be not Treaſon againſt lawful Princes, certainly an affection, where the offence (ſuch as it is) is of a far inferior nature of itſelf, ſo it had a far inferior object, or ſubject, concerning whom ſuch diſcourſe was holden.

Fourthly, As to my ſuppoſed correſponding with the King, the Lord *Hopton*, and the Earl of *Cleveland*, (if true) it was ſo long ſince, as that it falls not within compaſs of this Court's Commiſſion to try, *being confined to infant matters of a year old*, and my charge not exhibited to the Court of Juſtice, before *Monday* the 15th of *July*. My laſt letter received from Lord *Hopton*, bears date at the *Hague*, 18th or 28th of *June*, and was received in two days into *Suſſex*.

Fifthly, As to the drawing, ſigning, or ſealing of the engagement, it conſiſts of ſeveral branches.

That *de facto* I did it, and muſt not deny it, becauſe I have confeſſed it, which was more than needed, to them who knew it without enquiry; for I dare aver, that they had their inſtrument by them employed, and cheriſh'd in betraying me to it: And have ſome years paſt had a man in my boſom to watch me and my motions, which I did affirm to the Lord-Preſident, and he not denied it, but ſaid, it was no more than did become any State to do, who had ſo much cauſe to hold an active man in ſuſpect, as they had me, having never come in, and laid down the Cudgels, but held to my principles, and was ready upon every occaſion to take fire.

And this I will prove, if I have legal (or becauſe that word is worn out of uſe), fair dealing from the Court. And,

Out of that I may juſtly infer, what will be viſible enough, that it is the State's Act, and but my Conſent, and they in no danger of me, but that I ſhould preſerve myſelf from their new Laws; into the lapſe of which I was not otherwiſe, or by any other action fallen.

As to the parts of it,

1. It conſiſts of an Oath of ſecrecy.
2. An owning of King *Charles* II. to be ſuch.
3. A reſolution to endeavour to make him ſuch.
4. A crimination of the State, under the names of rebels, and oppoſers, who would not have him to be ſuch.

To theſe, as they are rank'd,

The Oath of ſecrecy hath relation only as to the not diſcovering the co-engagers in that reſolution, and the reſolution itſelf being not Treaſon, the Oath of keeping ſecret that reſolution is not greater than the thing reſolved.

1. The thing reſolved was to endeavour, but was not an actual endeavouring.

2. If it were an actual endeavouring, yet it can only be ſuppoſed, that it muſt be endeavoured by a war to be levied; and the endeavour to levy a war never actually levied, is not Treaſon againſt the King, againſt whom only, and his relations, by our old Laws, which are Laws, a Treaſon can be committed; and Petty-Treaſon I am not accuſed for.

That a bare intention, reſolution, or engagement to levy a war is not Treaſon, I refer myſelf to my * Lord *Coke*; who tells us, (and he is a man of credit) in his Book (printed and allowed for Law by the Houſes when they were two) that a conſpiracy (and this engagement amounts not to ſo much, but rather to an intention only to conſpire) to raiſe a war, (as hath been ſaid, and ſo reſolv'd) is no Treaſon by the † Act of *Edw.* III. until the War levied, as within, or to be reached by thoſe words in that Law (Overt Act): and if it were not Treaſon in thoſe words in the original, it falls not within the words of the tranſlation of this new-born Law, *viz.* by any open deed.

As to the firſt and third branches of the engagement, which are interwoven, I conclude that neither of them, that is to ſay, neither the Oath, nor the Reſolution, are Treaſons either within the old, or the new Laws, either in reſpect of the perſons againſt whom, or the progreſs made in the thing itſelf.

2. As to the owning of *Charles* II. it falls not within your Law; for that it is not a Publiſhing, Proclaiming, or publickly Declaring his Title. The words of the Act are, [*proclaim, declare, publiſh, or any way promote*] which promoting is matter of action more than a private owning.

And this by the Oath itſelf was not to be publiſh'd, nor could, without publiſhing the engagement itſelf, which was contrary to the Oath.

And though it may be objected, that the raiſing the war could not be done, but by publiſhing his Title, and the Engagement at laſt; yet that, if it be granted, was no forwarder than an intendment; no more was this publiſhing, and being not done, falls not within your Act.

The crimination of the State is but gueſſed at by implication (for they are not named) to be meant, and I believe your Law reaches only to things literal, and not conſtructive only; and for the word Rebels, I hope they will not take that to themſelves, and the word Oppoſers is a very innocent expreſſion, and at the worſt is all but a ſcandal.

Laſtly, Be this engagement what it will, yet the terms upon which I ſigned and ſealed it were ſuch, as that it was my act not abſolute, but upon condition, and to be undone and avoided, in caſe of the *non-co-engaging* of others, by the State's decoy aſſured to be ready to do it; and at whoſe inſtance, and for whoſe ſatisfaction, it was pretended to be deſired at my hands.

If the Court proceeds by way of Indictment, then I ſhall move, that thoſe perſons may be confronted, whom in my Narrative, Examinations and Letters I have named; and that I may demand of them, *&c.*

* Coke 3. Inſt. fol. 14, and 38. † 25 Edw. III. cap. 2.

As alſo that Major *Parker* may be produced to be likewiſe demanded of, as a perſon by me lately, and ſince my papers ſent to the State, diſcovered to be of the Plot to betray me.

If the Court proceed by way of Articles, and upon Examinations taken againſt me; I deſire, and that is but reaſon, that I may examine my defence, as in all Courts, where ſuch proceedings were uſed, was allowed.

If it be objected, That it was not uſed in caſes of Treaſon, I anſwer, it is true; if they hold the ancient way of Trials, not; but if they proceed this way, it is but juſt; and otherwiſe the Court are at liberty to uſe all means, public or private, to catch me; but I have none to defend myſelf: ſo that it appears, that they ſeek not to do Juſtice, but Execution.

And whether they be confronted or examined, theſe queſtions are to be propounded, either *viva voce*, or by Interrogatory; and if by Interrogatory, I muſt ſtand upon a fair way of examination, *viz.*

That ſome one from me, as well as one for the State's behalf, may be preſent, and ſet down the examinations or depoſitions; and that I may have a Copy of them as well againſt me, as for me, as well taken already by the State, or to be taken upon my motion.

The Queſtions.

1. Whether he knows Major *Barnard*, how long? *&c.* What communication and correſpondence concerning me, or my actions held between them? Whether he knew of the ſuppoſed deſign againſt the Iſle of *Ely*, and of the late engagement? How he knew them, and upon what reaſon, and to what end diſcovered to him, and by whom?

2. Whether he did inform the State (or any Member of the Council) of them, and how long he hath ſo informed?

3. Whether he ever had in his cuſtody the engagement under the hands and ſeals, and my letter to Sir *John Gell?* If ſo, where, and whether not at *Graveſend* at my being there? Whether he were ſent to watch me, and knew of my being there, before my being apprehended?

The ſame queſtions *(mutatis mutandis)* to be propounded to *Barnard*; and farther to him, and to *Benſon*, *Holmes*, *Aſhley*, *Smith*, as they are marked.

4. Whether he did propound in both deſigns to me, or I to him? Whether I ſought him, or he me? In what diſpoſition he found me, upon the time by the Act limited for departure? *&c.*

5. Whether he were real to me in the particulars of perſons, confederates or money, ready to engage and to be advanced; and if not, then to what end he feigned theſe to me?

6. Whether the letters by him to me produced from *Smith*, and *Thatch* or *Thatcher*, were true, or feigned; and if feigned, to what end, and by whom ſet on work?

7. Whether he were ſet upon me, to watch my ways and motions? And whether he were not promiſed, or did deſign unto himſelf profit for the diſcovering of me, and ſuch whom I ſhould bring in?

8. Whether I fram'd, or ever read the ſaid ſuppoſed deſign? Or was to be *de futuro* acquainted with it?

9. Whether he brought, or I ſought *Benſon*, or *Holmes?* And whether confederates with him, or deſigned upon by him?

10. Whether my engagement were abſolute, or conditional, and what I ſignified at my departure, and upon *Barnard*'s not coming; and where *Barnard* was pretended to be, and where he really was? What promiſe I had concerning the return of my engagement, in caſe Sir *John Gell* did not engage at *Graveſend?*

11. Whether copies of Letters weekly ſhewed to me were real or feigned? And if feigned, why pretended to be real?

12. Whether there were really any *Kentiſh*, *Dorſet*, or *Buckinghamſhire* men, and who, confederates? *&c.*

Theſe preparations formerly made in rough notes, were tranſcribed and put into form, and finiſhed the 8th day of *July* 1650, by God's good aſſiſtance; notwithſtanding my abundant diſadvantages of cloſe impriſonment, and want of Books, or Advice; and I commit and ſubmit the iſſue to God, whom I beſeech to fortify my ſpirit, and enlarge my underſtanding, when they ſhall come to be made uſe of; myſelf reſolving to be the Law's Confeſſor while I live, and (if called to it) to be the Law's Martyr, when I die by the hand of the impending violence, under the ſpecious name of Juſtice.

Sed terras Aſtræa reliquit,
&
Judica me, Domine, ne in furore, &c.

EUS. ANDREWE.
8. 7. 2. 1650. *Domini.*

His Exceptions to his Triers.

John Hurſt, Eſq. a man who hath had his hand in blood, *viz.* Mr. *Bartin Hazelrigge* in a duel, for which arraigned, *&c.*

A perſon trying, *viz.* a Juror, and in this way of Trial he is ſuch, ought to be a Freeman, *viz.* not in perſon, but in his pre-judicating opinion; which he is not, having publiſhed that the Reſpondent was the greateſt Traitor in *England*, and that there was enough under his hand to hang him the Reſpondent.

Sir *William Roe*, Captain *John Stone*, two of my Triers, were employed to examine the Reſpondent, on the 2d of *July* 1650, and brought with them all the evidence againſt him; and therefore in their capacity of my Triers, by the rule in challenges, they are challengeable, and incapable to ſit.

But no regard was had to any of his Exceptions, or any Anſwer returned to his Queſtions; and he was ordered to be beheaded.

The laſt Speech of Col. Euſebius Andrewe, *on the Scaffold on* Tower-Hill, Auguſt 22, 1650.

THE Lieutenant of the *Tower* delivering the Colonel to the Sheriff, ſaid, He had brought him thus far on his journey. The Colonel replied, I hope I ſhall neither tire in the way, nor go out of it.

When he came on the Scaffold (kiſſing the block) he ſaid, I hope there is no more but this block between me and Heaven. After he had been ſome while on the Scaffold, he ſpake to the people as followeth:

Chriſtian

Chriſtian Gentlemen and good People,

Your buſineſs here this day is to ſee a ſad ſpectacle, a man brought in a moment to be unmann'd, cut off in the prime of his years, taken from further opportunity of doing ſervice to Himſelf, his Friends, the Common-wealth, or eſpecially to God. It ſeldom happens but upon very great cauſe; and though, truly, if my general known courſe of life were enquired into, I may modeſtly ſay, there is ſuch a moral honeſty, as ſome may be ſo forward as to expoſtulate, why this great judgment is fallen upon me? But know, I am able to give them and myſelf an anſwer; and out of this breaſt, to give a better account of my judgment and Execution, than my Judges themſelves, or you: It's God's juſt diſpleaſure towards me, for my ſins long unrepented of; many judgments withſtood, and mercies ſlighted; therefore doth my gracious Father chaſtiſe me with this correction, that he may not loſe me; and I pray you aſſiſt me with your prayers, that this rod may not be fruitleſs: that when under his rod I have laid down my life, by his ſtaff I may be comforted, and received into Glory.

I am very confident, by what I have heard ſince my ſentence, there are more exceptions made againſt the proceedings againſt me, than ever I made; my Triers had a Law, and the validity of that Law is indiſputable, for me to ſay againſt it, or to make a queſtion of it; I ſhould but ſhame myſelf and my diſcretion. In the ſtrictneſs of the Law, ſomething is done by me, that is appliable to ſome clauſe therein, by which I ſtand condemned; the means by which I was brought under that interpretation, of that which was not in myſelf intended maliciouſly, being teſtimony given by perſons whom I pity, ſo falſe, yet ſo poſitive, that I cannot condemn my Judges for paſſing ſentence againſt me according to legal Juſtice; for equity lies in higher breaſts. For my accuſers, or rather betrayers, I pity, and am ſorry for them; they have committed *Judas*'s crime, I wiſh and pray for them St *Peter*'s tears; and I wiſh other people ſo happy, they may be taken up betimes, before they have drunk more blood of Chriſtian men, poſſibly, leſs deſerving than myſelf.

It is true, there have been ſeveral addreſſes made for mercy, and I will lay the obſtructions to nothing more than my own ſins; and ſeeing God ſees it fit, (I having not glorified him in my life) I ſhall do it in my death, I am content.

I profeſs, in the face of God, particular malice to any one of the State or Parliament, to do them a perſonal injury, I had never; for the cauſe in which I had a great while waded, I muſt ſay, my engagements and purſuance in it, hath laid no ſcruple upon my conſcience; it was upon principles of Law, whereof I am a Profeſſor, and upon principles of Religion, my judgment rectified, and my conſcience ſatisfied, that I have purſued theſe ways; for which (I bleſs God) I find no blackneſs upon my conſcience, nor have I put this into the bead-roll of my ſins.

I preſume not to decide controverſies, I deſire God to glorify himſelf in proſpering that ſide that hath right with it, and that you may enjoy peace and plenty here, when I ſhall enjoy my God.

In my converſation in the world, I do not know where I have an enemy with cauſe, or that there is a perſon to whom I have regret; but if there be any whom I cannot recollect, under the notion of Chriſtian men, I pardon them as freely as if I had named them; yea, I forgive all the world, as I deſire my heavenly Father for his Chriſt's ſake to forgive me.

For the buſineſs of Death, it is a ſad ſentence in itſelf, if men conſult with fleſh and blood: But, truly, without boaſting I ſay it, or if I do boaſt, it is in the Lord, I have not to this minute had one conſultation with fleſh about the blow of the Axe, or one thought of it, more than my paſſport to Glory.

I take it as an honour, and I owe a thankſulneſs to thoſe under whoſe power I am, that they have ſent me hither to a place, however of puniſhment, yet of ſome honour, to die a death ſomewhat worthy my blood; and this courteſy of theirs hath much helped towards the ſatisfaction of my mind.

I ſhall deſire God, that thoſe Gentlemen in that ſad bead-roll to be tried by the High Court of Juſtice, that they may find that really there, that is nominal in the Act, *An High Court of Juſtice, or Court of High Juſtice*; high in its Righteouſneſs, not in its Severity: no more clouded with the teſtimony of folks that ſell blood for gain. *Father, forgive them, and I forgive them, as I deſire thee to forgive me.*

I deſire you now to pray for me, and not give over praying until my laſt moment; that as I have a very great load of ſins, ſo I may have the wings of your prayers aſſiſting thoſe Angels that ſhall convey my ſoul to Heaven. And I doubt not but I ſhall there ſee my bleſſed Saviour, and my gallant Maſter the King of *England*, and another Maſter which I much honour, my Lord *Capel*; hoping this day to ſee Chriſt in the preſence of the Father, the King in the preſence of him, my Lord *Capel* in the preſence of them all, and myſelf with them, and all Saints, to rejoice for evermore.

Dr. *Swadling*. You have this morning, in the preſence of a few, given ſome account of your Religion, and under general notions or words, have given account of your Faith, Charity and Repentance: (then ſpeaking to the ſtanders-by) if you pleaſe to hear the ſame queſtions aſked here, you ſhall, that it may be a general teſtimony to you all, that he dieth in the favour of God.

(To the Colonel.) Now, Sir, I begin to deal with you; you do acknowledge, that this ſtroke you are by and bye to ſuffer, is a juſt puniſhment laid upon you by God for your former ſins.

Col. *Andrewe*. I dare not only not deny it, but dare not but confeſs it. I have no opportunity of glorifying God more, than by taking ſhame to myſelf; and I have a reaſon of Juſtice for juſtifying God in my own boſom, which I have intruſted to yours.

Dr. You acknowledge you deſerve more than this ſtroke of the Axe, and that a far greater miſery is due to you, even the pains and torments of Hell, that the Damned there endure.

Col. I know it is due in righteous judgment; but I know again, I have a ſatisfaction made by my elder brother Chriſt Jeſus, and then I ſay it is not due; it's due to me, but acquitted by his mediation.

Dr. Do you believe to be ſaved by that mediation, and no other?

Col. By that, and that only, renouncing all ſecondary cauſes.

Dr. Are you truly and unfeignedly ſorry before God, as you appear to us, for all theſe ſins that have brought you hither?

Col. I am ſorry, and can never be ſorrowful enough, and am ſorry that I cannot be more ſorry.

Dr. If God ſhould by a miracle, not to put you to a vain hope, but if God ſhould, as he did to *Hezekiah*, renew your days, what life do you reſolve to lead hereafter?

Col. It is a queſtion of great length, requires a great time to anſwer; men in ſuch ſtreights would promiſe great things; but I would firſt call ſome friends to limit how far I ſhould make a vow, that I ſhould not make a raſh one, and ſo offer the ſacrifice of fools: but a vow I would make, and by God's help endeavour to keep it.

Dr. Do you wiſh health and happineſs upon all lawful Authority and Government?

Col. I do prize all obedience to lawful Government, and the adventuring againſt them is ſinful; and I do not juſtify myſelf (whatever my judgment be) for my thus venturing againſt the preſent Government; I leave it to God to judge whether it be righteous; if it be, it muſt ſtand.

Dr. Are you now in love and charity with all men? Do you freely forgive them?

Col. With all the World freely; and the Lord forgive them, and forgive me, as I freely forgive them.

Dr. You have for ſome late years laid down the Gown, and took up the Sword, and you were a man of note in theſe parts where you had your reſidence; I have nothing to accuſe you for want of diligence in hindering the doing of injuries; yet poſſibly there might be ſome wrong done by your Officers, or thoſe under you, to ſome particular men; if you had your eſtate in your hands, would you make reſtitution?

Col. The wrongs themſelves you bring to my mind are not great nor many; ſome things of no great moment; but ſuch as they are, my deſire is to make reſtitution, but have not wherewithal.

Dr. If you had ability, you would likewiſe leave a legacy of thankfulneſs to Almighty God; ſomething to his poor ſervants, to his lame members, to his deaf members, to his dumb members.

Col. My will hath been always better than my ability that way.

Dr. Sir, I ſhall trouble you very little farther; I thank you for all thoſe heavenly *Colloquies* I have enjoyed by being in your company theſe three days; and truly I am very ſorry I muſt part with ſo heavenly an aſſociate: we have known one another heretofore, but never to Chriſtianity before; I have rather been a Scholar to learn from you, than an Inſtructor.

I wiſh this ſtage whereon you are made a ſpectacle to God, Angels and the World, may be a School to all about you; for though I will not diminiſh your ſins, nor ſhall conceal or hypocrize my own, for they are great ones between God and myſelf; but I think there are few here have a lighter load upon them than you have, if we conſider things well, and I only wiſh them your repentance, and that meaſure of faith God hath given you, and that meaſure of courage you have attained from God, and that conſtant perſeverance God hath crowned you hitherto with.

Col. His Name be praiſed!

Here the Doctor prayed with him almoſt a quarter of an hour, after which the Colonel turning himſelf again to the people, ſpake as followeth:

One thing more I deſire to be clear in; there lieth a common imputation upon the Cavaliers, that they are Papiſts, and under that name we are made odious to thoſe of the contrary opinion. I am not a Papiſt, but renounce the Pope with all his dependencies. When the diſtractions in Religion firſt ſprung up, I might have been thought apt to turn off from this Church to the *Romiſh*, but was utterly unſatisfied in their Doctrine in point of Faith, and very much as to their Diſcipline. The Religion I profeſs, is that which paſſeth under the name of *Proteſtant*, though that be rather a name of diſtinction, than properly eſſential to Religion: but that Religion found out in the Reformation, purged from all the Errors of *Rome*, in the Reign of *Edw.* VI. practiſed in the Reign of Queen *Elizabeth*, King *James*, and King *Charles*, that bleſſed Prince deceaſed; that Religion, before it was defaced, I am of, which I take to be Chriſt's Catholick, though not the *Roman* Catholick Religion.

Then he turned himſelf to the Executioner: I have no reaſon to quarrel with thee; thou art not the hand that throws the ſtone: I am not of ſuch eſtate to be liberal, but here is 3*l.* for thee, which is all I have; now tell me what I lack?

Executioner. Your hair to be turned up.

Col. Shew me how to fit myſelf for the block.

After which, his doublet off, his hair turned up, he turned himſelf about to the people, and prayed a good while. Before he lay down to the block, he ſpake to the people as followeth:

There is none that looks upon me, though many faces, and perhaps different from me in opinion and practice, but hath ſomething of pity in it; and may that mercy that is in your hearts, fall into your own boſoms when you have need of it: and may you never find ſuch a block of ſin to ſtand in the way of your mercy as I have met with.

I beſeech you join with me in Prayer. Then he prayed, leaning on the Scaffold, half a quarter of an hour. Having done, he had ſome private conference with Dr. *Swadling*; then he taking his leave of the Sheriff and his friends, kiſſing them, and ſaluting him next him, he prepared himſelf for the block, kneeling down, ſaid, let me try the block; which he did. After caſting his eyes, and fixing them very intentively above, he ſaid, when I ſay, *Lord* Jeſus *receive me*, Executioner then do thy office. Then kiſſing the Axe, he lay down, and with as much undaunted, yet Chriſtian Courage as poſſibly could be in man, did he expoſe his Throat to the fatal Axe, his Life to the Executioner, and commended his Soul into the hands of God, as into the hands of a faithful and merciful Creator, through the meritorious paſſion of a gracious Redeemer. Saying the fore-mentioned words, his head was ſtricken off at one blow.

Vera copia exam.

He died very reſolutely *.

* Mr. *Whitlock* in his Memorials, *page* 473, ſays, The High Court of Juſtice (afterwards) proceeded againſt Sir *John Gell*, and he was ſentenced by the High Court, for Miſpriſion of High-Treaſon, to forfeit his Eſtate, and to be impriſoned during his Life.

Page 474. Capt. *Aſhley* was ſentenced by the High Court of Juſtice to have his Head cut off, and one *Benſon* to be hanged, for conſpiring againſt the Commonwealth, in the treaſonable engagement of Col. *Andrewe*.

Mr. *Benſon* was executed at *Tyburn* (the 7th of *October* 1650,) according to the Sentence of the High Court of Juſtice; but in regard that Capt. *Aſhley* only ſubſcribed the engagement, but acted nothing in it, he was pardoned by the Parliament.

XXV. *The Trial of* Richard Faulconer, *at the* King's-Bench, *in* Term. Paſch. 1652. *for* Perjury.

ON the 12th day of *July*, 1652, an Indictment of Perjury was delivered to the Grand-Jury at *Guildhall*, *London*; the Copy of which Indictment was as followeth:

London. ſſ. Be it remembered, that at the general Quarter-Seſſions of the public Peace holden for the City of *London*, at the *Guildhall* of the ſame City, on *Monday* the 12th day of *July*, in the year of our Lord one thouſand ſix hundred and fifty-two, before *John Kenrick*, Mayor of the City of *London*, *Thomas Atkin*, *Thomas Andrewe*, and *Thomas Foot*, Aldermen of the ſame City, and others their Fellow-Juſtices, aſſigned to keep the publick Peace in the City aforeſaid; and alſo to hear and determine divers felonies, treſpaſſes, and other miſdemeanors committed within the ſame City; by the Oaths of *Robert Dawkes*, *John Harvey*, *William Pitcher*, *Pelham Moore*, *George Boddington*, *Thomas Pierſon*, *Joſeph Ruthorn*, *Samuel Coleman*, *Richard Payn*, *John Drafgate*, *Robert Trolaffe*, *Richard Bartholomew*, *John Robinſon*, *Robert Alvington*, and *Thomas Wilmer*, good and lawful men of the City of *London*, then and there ſworn, and charged to enquire for the Keepers of the Liberty of *England*, by the Authority of Parliament, and the Body of the City aforeſaid, it is preſented that the Bill following is true.

London, *ſſ.* The Jurors for the Keepers of the Liberty of *England*, by authority of Parliament, upon their Oath do preſent, That *Richard Faulconer*, of *Weſtbury*, in the County of *Southampton*, Gent. not having the fear of God before his eyes, but moved and ſeduced by the inſtigation of the Devil; and minding and endeavouring to bring the Right Honourable *William* Lord *Craven*, Baron of *Hampſtead-Marſhal*, in the County of *Berks*, in danger of the loſs of his life, and of the ſequeſtration, confiſcation, forfeiture of all his Lands, Goods, and Chattels within this Commonwealth of *England*; the 10th day of *February*, in the year of our Lord God, one thouſand ſix hundred and fifty, at the Pariſh of *Mary-Stainings*, in the Ward of *Cripplegate*, *London*, before *Samuel Moyer*, Eſq. *James Ruſſel*, Eſq. *Edward Winſlow*, Eſq. *Joſias Barners*, Eſq. and *Arthur Squib*, Eſq. then being Commiſſioners for compounding with Delinquents, and for managing of all and every the Eſtates of Delinquents, and *Popiſh* Recuſants, that the 15th Day of *April*, in the ſaid Year of our Lord, One thouſand ſix hundred and fifty, were, or then after ſhould, be under ſequeſtration, did, upon the Holy Evangeliſts, corruptly, wilfully, falſely, and maliciouſly, of his own proper act, conſent and agreement, ſwear, and upon his corporal Oath before the Commiſſioners aforeſaid, on the ſaid 10th day of *February*, in the ſaid Year, one thouſand ſix hundred and fifty, then having power to adminiſter the ſaid Oath, then and there depoſe concerning the ſaid Lord *Craven*, in theſe *Engliſh* words following; that is to ſay, that about a fortnight before the concluſion of the Treaty at *Breda*, the Lord *Craven*, the Queen of *Bohemia* and her two Daughters came to *Breda* to the *Scots* King *Charles*, and went not thence till the King went to *Honſlaerdike*, a houſe of the Prince of *Orange*. That during that time, this Informant ſaw the Lord *Craven* divers times in preſence with the ſaid King, and every Day with the ſaid King at the Court there, he being there with the Queen of *Bohemia*, and her two Daughters, to take their leave (as they ſaid) of the King of *Scots*, before he went to *Scotland*. That ſeveral Officers, about thirty in number, made a Petition to the ſaid King, to entertain them to fight for him againſt the Commonwealth of *England*, by the name of *barbarous and inhuman Rebels* either in *England* or *Scotland* for the recovering of his juſt rights, and reinſtating him in his Throne; and deputed this Informant and Colonel *Drury* to preſent the ſaid Petition, who indeed drew the ſame. That when this Informant and ſome other Officers came to the Court at *Breda*, intending to preſent the ſaid Petition immediately to the King's hand; but finding the Lord *Craven* very near to him, likewiſe the Marquis of *Newcaſtle* (who preſented his brother Sir *Charles Cavendiſh*, to kiſs the ſaid King's hand the evening before the ſaid King's departure, who this Informant ſaw kiſs the King's hand accordingly;) the Lord *Wilmot*, the Earl of *Cleveland*, the Queen of *Bohemia*, the Lord *Gerrard*, *&c.* and a great buſtle of buſineſs; this Informant, with Colonel *Drury*, applied themſelves to the Lord *Craven*, intreating him to preſent the Petition to the Queen of *Bohemia*, to preſent it to the King of *Scots*. The ſaid Lord *Craven* taking the Petition and reading the ſame, chearfully ſaid to Colonel *Drury* and this Informant, *There is the Queen of* Bohemia, *deliver* it to *her*, *and I will ſpeak for you*. Upon which they applied themſelves to the ſaid Queen; and ſhe preſented the Petition; after which, the King of *Scots*, the Lord *Craven*, the Marquis of *Newcaſtle*, and the Queen of *Bohemia*, with ſome other Lords, went into a withdrawing Room, where this Informant and company could not enter. But the Lord *Craven* came forth of the withdrawing Chamber, and told this Informant and Company, *That they ſhould receive an Anſwer from the Queen of* Bohemia *to their Petition*, *and that he had ſpoken to the Queen of* Bohemia *in their behalf:* who afterwards came and told this Informant and company, that ſhe had delivered their Petition, and that the King had taken order for it. The next Morning at three of the clock, the King departed, but this Informant and Company had their quarters ſatisfied by the Princeſs of *Orange*, according to the ſaid King's order upon their Petition; and thereby to enable them to follow the ſaid King in the proſecution of thoſe wars againſt the Parliament of *England*, which was the effect of their aforeſaid Petition: That this Informant ſaw the Lord *Craven* very often and familiar with the ſaid King, and enter with the ſaid King into the withdrawing Chamber, and ſtaid there the laſt Night the ſaid King was at *Breda*, very late: which ſaid Oath was, the ſaid 10th day of *February*, in the year of our Lord one thouſand ſix hundred and fifty, at the Pariſh and Ward aforeſaid, reduced into writing, and taken before the ſaid Commiſſioners, then having ſufficient and lawful power to adminiſter the ſaid Oath, and to take the teſtimony and depoſitions of witneſſes upon their Oaths in ſuch caſes. Whereas in truth neither did the ſeveral Officers, or any Officer make a Petition to the ſaid King, to entertain him or them, to fight for him againſt the Commonwealth of *England*. Nor did ſeveral Officers, or any Officer, make a Petition to the ſaid King to entertain him or them, to fight for him againſt the Commonwealth of *England*, by the name of *barbarous and inhuman Rebels*, either in *England* or *Scotland*; for the recovering of his juſt Rights, or re-inſtating him on his Throne: nor deputed he the ſaid *Richard Faulconer*, and Colonel *Drury*, to preſent the ſaid Petition, in the ſaid Oath mentioned; nor did the ſaid *Richard Faulconer*, with the ſaid Colonel *Drury*, apply themſelves to the ſaid Lord *Craven*, intreating him to preſent the ſaid Petition to the ſaid Queen of *Bohemia* to preſent it to the ſaid King of *Scots*. Nor did the ſaid *Richard Faulconer*, with the ſaid Colonel *Drury*, intreat him, the ſaid Lord *Craven*, to preſent the ſaid Petition to the ſaid Queen of *Bohemia*, to preſent it to the ſaid King of *Scots*. Nor did the ſaid Lord *Craven* take the ſaid Petition, or read the ſame; nor ſaid unto the ſaid *Richard Faulconer* and Colonel *Drury*, *There is the Queen of* Bohemia, *deliver it to her*, *and I will ſpeak for you*. Nor did the ſaid Lord *Craven* tell the ſaid *Richard Faulconer* and company, in the ſaid depoſition mentioned, that they ſhould receive an anſwer to their ſaid Petition, or that he had ſpoken to the Queen *of Bohemia* in their behalf; as the ſaid *Richard Faulconer* in and by the ſaid depoſition hath depoſed. And ſo the Jurors aforeſaid, upon their Oaths aforeſaid, do ſay, that the ſaid *Richard Faulconer*, in manner and form aforeſaid, corruptly, wilfully, falſely, and maliciouſly, of his own proper act, conſent and agreement, did commit wilful, falſe, and corrupt Perjury; to the great diſhonour of Almighty God, and to the great damage, loſs and infamy of the ſaid *William* Lord *Craven*, and in contempt of the Laws of this Commonwealth; to the evil example of all others in the like caſe offending, and againſt the publick peace, *&c.*

SADLER.

This Indictment, upon the Teſtimony then produced upon Oath, was accordingly found by the Grand Jury.

The ſame day that this Indictment was found, Colonel *Drury*, who had given Evidence to the Grand Jury, repaired to *Whitehall*, to Captain *Biſhop* (having been formerly examined by him concerning the Lord *Craven*, and told him, that as he was that morning going down *Holborn-hill*, he was ſerved with a *Subpœna* to appear that day at *Guildhall*, *London*; and that he was examined there concerning the Information given by *Faulconer* againſt the Lord *Craven*: and that after he was ſworn before the Lord-Mayor, he gave the ſame Evidence to the Grand Jury, which he had formerly given to Captain *Biſhop* upon his examination. Whereupon the ſaid Captain *Biſhop* took the Writ under ſeal out of his hand, with which he was ſerved to appear, and ſaid to *Dury*, How durſt you be examined againſt the Commonwealth, and not acquaint me firſt therewith? And ſaid further, Mr. Mayor (meaning the Lord-Mayor) had better have done ſomething elſe than to have ſuffered that Indictment to be found; and immediately calls for a Meſſenger, and commits the ſaid *Drury* to the Cuſtody of one *Middleton*, a meſſenger to the Council of State; who forthwith carried *Drury* away Priſoner into the *Strand*, to the houſe of the ſaid *Middleton*, where the ſaid *Drury* was kept by him in ſtrict cuſtody, from *Monday* that the Indictment was found, and the Seſſions begun, till *Saturday*, that the Seſſions was paſt; by which reſtraint of *Drury*, who had *Faulconer*'s own hand-writing to produce againſt himſelf; and being otherwiſe the moſt material witneſs againſt *Faulconer*, there could be no further proſecution upon that Indictment that Seſſions.

In *Michael-Term*, courſe was taken to remove the Indictment by a *Certiorari* into the Upper-bench, to the end the ſaid *Faulconer* might be outlawed for Perjury. The Record being accordingly removed, a *Capias* in order to an Outlawry was taken out againſt the ſaid *Faulconer*, who for ſeveral Seſſions before had refuſed to appear. At laſt the ſaid *Faulconer* was taken upon the ſaid *Capias*, and carried to *Newgate*, where he lay for ſome time, but would not appear, nor plead to the Indictment; whereupon the Proſecutors for the Commonwealth were enforced to move the Court for a *Habeas Corpus*, to bring him to the Bar, that he might be enjoined to plead; and accordingly the Court required him to plead; whereupon he pleaded *Not guilty* to the Indictment.

In *Hillary-Term* following, a day was appointed for Trial upon the Indictment, at *Guildhall*, *London*, before the Lord Chief-Juſtice *Rolls*, where the ſaid Captain *Biſhop* and *Faulconer* appeared with their Counſel and Witneſſes; and Mr. *Ruſhworth* alſo appeared in behalf of the Commonwealth with Counſel and Witneſſes, and had given in the Record to have the Jury called: but it ſo fell out, that a perſon of Integrity then in Court, who had gotten certain knowledge when and where the ſaid Oath was taken, gave Mr. *Ruſhworth* notice, that the Oath given to *Faulconer*, was adminiſtered unto him at *Whitehall* in *Middleſex*, and not at *Haberdaſhers-hall* in *London*; and therefore the place being miſlaid in the Indictment, a *London* Jury could not find a fact done in *Middleſex*: whereupon Mr. *Ruſhworth* immediately withdrew the Record for that time, and gave a ſtop to the Trial.

No time was miſ-ſpent to recover this Miſtake; for within two Days a new Indictment was drawn, and preferred to the Grand Jury in *Middleſex* (Sir *Henry Blunt* being Foreman), where the Indictment was found; and was as followeth:

Hillary Term, 1652.

Middleſex. Before this time, that is to ſay, upon *Tueſday* next after the Morrow of the Purification of the Virgin *Mary*, this ſame Term, before the Keepers of the Liberty of *England*, by Authority of Parliament, in the Upper-Bench at *Weſtminſter*, by the Oaths of twelve honeſt and lawful Men, it is preſented, That *Richard Faulconer*, late of *Weſtbury*, in the County of *Southampton*, Gent. not having the Fear of God before his Eyes, but moved and ſeduced by the Inſtigation of the Devil; and minding and endeavouring to bring the Right Honourable *William* Lord *Craven*, Baron of *Hampſtead-Marſhal*, in the County of *Berks*, in Danger of the Loſs of his Life, and of the Sequeſtration, Confiſcation, and Forfeiture of all his Goods and Chattels, Lands and Tenements, within this Commonwealth of *England*; the 10th Day of *February*, in the Year of our Lord God, one thouſand ſix hundred and fifty, at *Whitehall*, in the Pariſh of *Martins in the Fields*, in the County of *Middleſex*, before *Samuel Moyer*, Eſq. *James Ruſſel*, Eſq. *Edward Winſlow*, Eſq. *Joſias Barners*, Eſq. and *Arthur Squib*, Eſq. then being Commiſſioners for compounding with Delinquents, and for managing of all and every the Eſtates of Delinquents, and Popiſh Recuſants, that the 15th Day of *April*, in the ſaid Year of our Lord God, one thouſand ſix hundred and fifty, were, or then after ſhould be under Sequeſtration, did, upon the Holy Evangeliſts, corruptly, wilfully, falſely, and maliciouſly, of his own proper Act, Conſent, and Agreement, ſwear, and upon his corporal Oath, before the Commiſſioners aforeſaid, on the ſaid 10th Day of *February*, in the ſaid Year one thouſand ſix hundred and fifty, then having ſufficient and lawful Power to adminiſter the ſaid Oath, and to take the Teſtimony and Depoſitions of Witneſſes upon their Oaths in ſuch Caſes, then and there depoſed, That ſeveral Officers, about thirty in Number, made a Petition to the *Scots* King, *Charles*, to entertain them to fight for him againſt the Commonwealth of *England*, by the Name of *barbarous and inhuman Rebels*, either in *England* or *Scotland*, for the recovering of his juſt Rights, and re-inſtating him in his Throne. And did alſo then and there, corruptly, wilfully, falſely, and maliciouſly, before the ſaid Commiſſioners, ſwear, that the ſaid Officers deputed him, the ſaid *Richard Faulconer*, and Colonel *Drury*, to preſent the ſaid Petition; who, as the ſaid *Richard Faulconer*, then and there, corruptly, wilfully, falſely, and maliciouſly, before the ſaid commiſſioners did ſwear, indeed drew the ſame; and did alſo then and there, corruptuly, wilfully, falſely, and maliciouſly, before the ſaid Commiſſioners, ſwear, that he the ſaid *Richard Faulconer*, with Colonel *Drury*, applied themſelves to the Lord *Craven* (meaning the aforeſaid *William* Lord *Craven*), intreating him to preſent the ſaid Petition to the Queen of *Bohemia*, to preſent it to the King of *Scots*; and did alſo then and there, corruptly, wilfully, falſely, and maliciouſly, before the ſaid Commiſſioners, ſwear, That the ſaid Lord *Craven* taking the ſaid Petition, and reading the ſame chearfully, ſaid to Colonel *Drury*, and him the ſaid *Richard Faulconer*, *There is the Queen of* Bohemia, *deliver it to her, and I will ſpeak for you*. And that the ſaid Queen of *Bohemia* did preſent the ſaid Petition; and did alſo then and there, corruptly, wilfully, falſely, and maliciouſly, before the ſaid Commiſſioners ſwear, That the ſaid Lord *Craven* after told him the ſaid *Richard Faulconer*, and Company, *That they ſhould receive an Anſwer from the Queen of* Bohemia *to their Petition, and that he* (meaning the ſaid *William* Lord *Craven*) *had ſpoken to the Queen of* Bohemia *in their behalf*. Whereas in Truth neither did ſeveral Officers, or any Officer, make a Petition to the ſaid King, to entertain him or them, to fight for him againſt the Commonwealth of *England*. Nor did ſeveral Officers, or any Officer, make a Petition to the ſaid King, to entertain him or them to fight for him againſt the Commonwealth of *England*, by the Name of *barbarous and inhuman Rebels*, either in *England* or *Scotland*. Nor did ſeveral Officers, or any Officer, make a Petition to the ſaid King, to entertain him or them, to fight for him againſt the Commonwealth of *England*, by the Name of *barbarous and inhuman Rebels*, either in *England* or *Scotland*, for the recovering of his juſt Rights, or re-inſtating him on his Throne. And whereas in Truth, the ſaid *Richard Faulconer*, and Colonel *Drury*, were not deputed by the ſaid Officers to preſent the ſaid Petition, in the ſaid Oath mentioned; and whereas in Truth, he the ſaid *Richard Faulconer*, with Colonel *Drury*, did not apply themſelves to the ſaid Lord *Craven*, intreating him to preſent the ſaid Petition to the Queen of *Bohemia*, to preſent it to the ſaid King of *Scots*. Nor did he the ſaid *Richard Faulconer*, with the ſaid Colonel *Drury*, intreat him the ſaid Lord *Craven*, to preſent the ſaid Petition to the ſaid Queen of *Bohemia*, to preſent it to the ſaid King of *Scots*. And whereas in Truth, the ſaid Lord *Craven* did not take the ſaid Petition, nor read the ſame; nor ſay unto the ſaid Colonel *Drury*, and him the ſaid *Richard Faulconer*, *There is the Queen of* Bohemia, *deliver it to her, and I will ſpeak for you*. And whereas in Truth, the ſaid Lord *Craven* did not tell him the ſaid *Richard Faulconer*, and Company, in the ſaid Depoſition mentioned, that they ſhould receive an Anſwer from the ſaid Queen of *Bohemia* to the ſaid Petition, nor that he ſaid Lord *Craven* had ſpoken to the Queen of *Bohemia* in their Behalf; as the ſaid *Richard Faulconer* in and by the ſaid Depoſition hath depoſed. And ſo the Jurors aforeſaid, upon their Oaths aforeſaid, do ſay, That the ſaid *Richard Faulconer*, in Manner and Form aforeſaid, corruptly, wilfully, falſely, and maliciouſly, of his own proper Act, Conſent, and Agreement, did commit wilful, falſe and corrupt Perjury; to the great Diſhonour of Almighty God, and to the great Damage, Loſs, and Infamy of the ſaid *William* Lord *Craven*, and in Contempt of the Laws of this Commonwealth; to the evil Example of all others in the like Caſe offending, and againſt the public Peace, *&c.*

[The Reaſon wherefore this Indictment did not recite the Oath *in hæc verba*, as in the former Indictment, but aſſigned the Perjury in the material Parts of the Oath, was by Reaſon it came lately to Knowledge, that the original Oath could not be found, and therefore the Oath was to be proved by the Entries in the Book of Parliament, and at *Haberdaſhers-Hall*, and by the Teſtimony of the Perſons who adminiſtered the Oath.]

The next Day after the Indictment was found, the Proſecutors for the Lord *Craven* moved the Court for a *Habeas Corpus*, to bring *Faulconer* to the Bar to plead to the Indictment; who being brought into Court, deſired Time to plead till the next Term; Whereupon the Court made this Order:

That the ſaid Faulconer, *having now in Court appeared unto the Indictment, ſhould have Time to plead unto the ſame, until the Beginning of the next Term, ſo that the Iſſue thereupon may be tried at the Bar in open Court the ſame Term.*

Term. *Paſch.* 1652.

Faulconer having all this Vacation neglected to appear, or plead to the Indictment, the Proſecutors for the Lord *Craven* were enforced again to move for another *Habeas Corpus* to bring *Faulconer* to the Bar, to appear, or plead to the Indictment; who appearing, deſired longer Time to attend his Counſel, which the Court granted accordingly: And the ordinary Rules of Court were given unto him for the peremptory Days of pleading, or Judgment to be entered againſt him; and the very laſt Day, when the laſt Rule was out, and not before, he pleaded *Not Guilty*. And the Court ordered, That the Iſſue upon the Indictment of Perjury againſt the Defendant, be tried at the Bar upon *Friday* on the Morrow of the *Aſcenſion* of our Lord, and that the Sheriff of *Middleſex* do attend *Andrew Broughton*, Eſq. with the Book of Freeholders forthwith; ſo that an indifferent Jury may be returned between the ſaid Keepers, and the ſaid Defendant, to try the Iſſue aforeſaid, by Conſent of the Parties on both Sides.

Mr. *Broughton* accordingly appointed the Sheriff to attend him the next Day in the Afternoon with the Book of Freeholders; who accordingly named the Jury, and Notice was given by the Sheriff, requiring them to appear at the Day of Trial.

Friday, *May* 20, 1652.

THE Jury appearing according to Summons, and *Faulconer* being brought in Cuſtody, the Court proceeded to Trial, and ordered the Indictment to be read; which being afterwards opened by Mr. *Boynton*, the Evidence was managed by Mr. *Maynard*, Mr. *Hales*, Mr. *Twiſden*, Mr. *Wilde*, Mr. *Phillips*, Mr. *Baldwin*, and Mr. *Drury*; who were of Counſel for the Commonwealth againſt the ſaid *Faulconer*.

Before the Counſel for the Commonwealth proceeded to produce any Witneſſes, they offered unto the Court and the Jury ſomething in general concerning the Indictment. That the Indictment was for the Crime of Perjury, wilfully and corruptly committed; that *Faulconer* makes an Oath, that there was a Petition delivered, in which there was a very ſharp Reflection (as he ſwears) upon the Parliament, by the Name of *barbarous and inhuman Rebels*; he ſwears he was deputed to deliver it, being drawn by himſelf and *Drury*, and ſubſcribed by thirty Officers; that in order to the Delivery thereof, they did require the Aſſiſtance of the Lord *Craven*, that he promiſed to ſpeak for them, and brought them an Anſwer: But they hoped to prove unto the Jury, that this Oath which *Faulconer* did take was very falſe, that it was by Deſign, a Deſign for Money; that the Conſequence of it was very notorious, the Ruin of that Gentleman, of his Eſtate, Fame and Fortune; that Witneſſes will be produced to prove what in Truth the Petition was. There was a Petition delivered, but not a Petition to this Effect at all, and *Faulconer* knew the contrary. We ſhall produce what it was, and that under his own Hand, whereby it will appear that there was no ſuch Matter in it as he had depoſed; the Witneſſes themſelves will beſt ſpeak the Particulars.

For the opening of ſome things concerning this Oath of *Faulconer*, it is to be obſerved, he took this Oath before the Commiſſioners of *Haberdaſhers-Hall*, at *Whitehall*, and it was there reduced into Writing, and a Tranſcript was made of the original; which Tranſcript was ſent to the Council of State, and they ordered the ſame to be reported to the Parliament; and being reported there, is entered in the Journal-Book, and there remains a Record in Parliament.

The firſt thing, therefore, inſiſted upon by the Counſel for the Commonwealth, was the proving of a true Copy of *Faulconer*'s Depoſition, in reſpect the original was loſt, or rather imbezzled by *Faulconer*. To prove the ſame,

A Copy thereof was produced in Court, which agreed *verbatim* with that Depoſition of his, which was filed upon Record at *Haberdaſhers-Hall* (the proper Court where it ought to remain): And though that upon the File was but a Copy, yet it was filed as Evidence of that Depoſition he was ſworn unto by them. But this was oppoſed by the Counſel for *Faulconer* as not ſufficient Proof; and thereupon a Copy of an Order of the Council of State, of *March* 6, 1650, was produced unto the Court, whereby it did appear, that the Depoſitions againſt the Lord *Craven* had been tranſmitted to the Council of State by the Commiſſioners at *Haberdaſhers-Hall*. And it appeared further by the ſaid Order, that Mr. Attorney-General was appointed by the Council of State to report theſe Depoſitions to the Parliament, ſo tranſmitted to that Council by the Commiſſioners at *Haberdaſhers-Hall*. And the Attorney-General being ſworn in Court, did declare, that he reported no other Depoſitions to the Parliament, than what he received from the Council of State; and that the Depoſitions produced to him in Court (whereof the ſaid *Faulconer*'s was one), were endorſed with the Hand-writing of the Lord *Bradſhaw*, then Lord-Preſident of the Council of State; and that the Votes of Confiſcation of the Lord *Craven*'s Eſtate did paſs upon the Report of the ſaid Depoſitions, which he preſented to the Parliament from the Council of State.

Mr. *Fermin*, Chief-Clerk to Mr. *Scobel*, Clerk of the Parliament, did depoſe in Court, That the very ſame Depoſitions ſhewed in Court to Mr. Attorney-General, endorſed with the Lord *Bradſhaw*'s Hand-writing, were entered in the Journal-Book, as read in Parliament that Day, when Mr. Attorney-general did make his Report unto the Parliament; which he knew the better to be true, for that he received the ſame from the Hands of Mr. *Scobel*, or Mr. *Darnel*, the Clerk-Aſſiſtant in Parliament, the ſame Day they were read in Parliament, to be entered in the Journal-Book: And that he did enter the ſame accordingly with the Votes of Confiſcation, which paſſed upon the reading of thoſe Depoſitions. And afterwards he and Mr. *Darnel* did examine the ſaid Depoſitions, whereof the ſaid *Faulconer*'s was one, after the ſame were ſo entered into the Journal-Book.

And for the further ſatisfaction of the Court, he produced the Journal of Parliament, wherein the ſaid depoſitions (and particularly that of *Faulconer*) were entered, which were read in Court out of the Journal; whereby it did appear that the depoſitions of the ſaid *Faulconer*, *Kitchingman* and *Reyley* were entered into the ſaid Journal, and did agree *verbatim* with the Copy of *Faulconer*'s and their depoſitions remaining at *Haberdaſhers-Hall*, and with the Copy reported by Mr. Attorney-General from the Council of State to the Parliament.

Mr. *Winſlow*, one of the Commiſſioners at *Haberdaſhers-hall*, being one before whom the ſaid *Faulconer* was ſworn; did teſtify upon Oath in Court, that the depoſition of *Faulconer* produced unto him, and whereupon there was an endorſement of the Lord *Bradſhaw*'s hand-writing; was, as he did believe, a true Copy of that depoſition to which the ſaid *Faulconer* was ſworn at *Whitehall*; for that he findeth his own hand ſubſcribed thereunto *(as examined by him to be a true Copy)*, and ſaid it was uſual with the Commiſſioners at *Haberdaſhers-hall*, when they take examinations concerning any Perſon of Quality, to appoint one of themſelves to go from the Table to examine the Copy by the Original: but whether, when he ſubſcribed his name to the Copy produced unto him, he did examine the ſame by the original depoſition before it was ſent for away by the Council of State, or afterwards, or by the Tranſcript remaining upon the file as a Record at *Haberdaſhers-hall*, he could not poſitively remember; but conceives that the Copy, to which his hand is ſubſcribed, as examined by him, to be a true Copy, was taken when they had the original in cuſtody; but cannot certainly ſay it.

Mr. *Barners*, another of the Commiſſioners at *Haberdaſhers-hall*, before whom alſo the ſaid Oath was taken, did teſtify upon Oath, that to the beſt of his remembrance, the particulars mentioned in *Faulconer*'s depoſitions then read in Court, were the ſame to which the ſaid *Faulconer* was ſworn unto by himſelf and the reſt of the Commiſſioners, though he could not remember every Syllable and Letter.

Mr. *Winſlow* and Mr. *Barners* were again produced to declare, what they did remember concerning this clauſe in the depoſition of the ſaid *Faulconer*'s (viz.) *That ſeveral Officers, about thirty in number, made a Petition to the King of* Scots, *to entertain them to fight for him againſt the Commonwealth of* England, *by the name of* barbarous and inhuman Rebels, *either in* England *or* Scotland, *&c.* And thereupon Mr. *Winſlow* did declare unto the Court, that he did well remember that clauſe in *Faulconer*'s depoſition when he was ſworn thereunto; but whether the number of Officers were thirty or no, he could not tell, but a certain number of Officers were named.

Mr. *Barners* did declare the like, but whether the word *inhuman* was in he could not poſitively ſay; but was certain that *barbarous Rebels* was contained in that clauſe; and that when *Faulconer* was ſworn unto the ſame, it was firſt read unto him, and amended in ſeveral places, and then he ſwore it to be true. And Mr. *Barners* ſaid, that he did remember his depoſition the better, for that himſelf and the reſt of the Commiſſioners had ſeveral debates upon it at *Haberdaſhers-hall*, whether they ſhould thereupon ſeize, ſequeſter, or ſecure the Lord *Craven*'s eſtate.

Having thus traced this Oath of *Faulconer*'s, which was taken at *Whitehall*, and brought to *Haberdaſhers-hall*, afterwards brought from *Haberdaſhers-hall* back again to *Whitehall*, and from *Whitehall* to the Parliament, and there entered in the Journal-Book, as the grounds upon which the Votes of Confiſcation did paſs; and having withal proved that particular clauſe of *barbarous and inhuman Rebels*, &c. the Counſel for the Commonwealth concluded as to that point, and left it to the Jury to judge, and to *Faulconer* to produce the original, which he hath got into his cuſtody, if he can find any variance in it from the depoſition recited in the Indictment.

And to prove that *Faulconer* had got the original Oath into his cuſtody, Mr. *Knight*, a Witneſs, was produced, who did teſtify upon Oath, that being in the company of *Faulconer* he did ſhew him a writing written with Captain *Biſhop*'s own hand (ſo far as he could judge one man's hand to be like another), and that *Faulconer*'s name was ſubſcribed thereunto; and that *Faulconer* told him, the ſaid *Knight*, that that writing was the original depoſition he was ſworn unto againſt the Lord *Craven*, and which he kept on purpoſe to keep Mr. *Biſhop* in awe *(Faulconer* being then in neceſſity and want); and that the ſaid *Faulconer* further ſaid unto him, the ſaid *Knight*, that he had received 20*l.* for the buſineſs of the Lord *Craven*, and was to have more; but ſaid he deſerved 2000*l.* for what he had done.

In the next place, the Counſel for the Commonwealth did apply themſelves to prove the falſity of the Oath (*viz.*) That there was no ſuch thing in the Petition mentioned by *Faulconer* in his depoſition, [*as that thirty Officers did petition to be entertained to fight for the King of* Scots *againſt the Commonwealth of* England, *by the name of* barbarous and inhuman rebels, *&c.*] And being to prove a Negative, they applied their proof to a certain time and place, which *Faulconer* in his own depoſition did prove for them; for he ſwears, that the Petition was delivered the Evening before the King of *Scots* went from *Breda*, and that the ſaid King went away the next morning at three a-clock. He ſwears further, that he and *Drury* drew the Petition, and were deputed to deliver the ſame; accordingly they applied their evidence.

Proofs as to the Falſity of Faulconer's *Oath.*

MR. *Horſnel* being produced, did teſtify, that the night before the King of *Scots* went from *Breda*, Colonel *Drury*, Capt. *Briſco*, and divers others, were with a little ſhort Petition to remember the King of a former Petition which they had delivered, that ſome courſe might be taken, that their arrears which they owed in the Town might be paid, that their Landlords where they lodged might not ſuffer, for they were not able themſelves to pay them; that he went along with them to the great window juſt over the moat, and there he, the ſaid *Horſnel*, did ſet his hand unto the ſame, and that he was in the Chamber when *Drury* and *Briſco* came in to deliver the Petition, in which there was not a word that concerned any thing, but only the relief of their preſent neceſſities. Being aſked by the Court, if there were not a mention of *barbarous and inhuman Rebels*; he anſwered, not any thing of that nature was in it. He further ſaid, that this Petition had reference to a former Petition he was not acquainted withal, nor was his hand ſet to the former Petition.

Captain *Briſco* being produced did teſtify, that there were divers Gentlemen in great diſtreſs met together in Colonel *Drury*'s Chamber, at the time of the Treaty of the *Scots* King with the Commiſſioners at *Breda*, and among other things it was agreed to draw a Petition to the King; which was drawn in Colonel *Drury*'s Chamber, expreſſing their neceſſities, that the People of the Town might be relieved, and that the Petitioners might not be left to periſh: that going to deliver it, they met with Secretary *Long* by the way, who told them it was to no purpoſe, for there was no moneys come in. Afterwards the Petitioners had notice the King was to depart from *Breda*; whereupon they met together again, and went into the further end of the Gallery, to draw a ſhort Petition, to put the King in mind of his Promiſe to Secretary *Long*, concerning the People of the Town of *Breda*, that they might be ſatisfied, and the Petitioners relieved, which Paper he the ſaid *Briſco* delivered to the *Scots* King, who threw it on a Table; and doing ſo, they ſtood all amazed, being likely to be left in diſtreſs; and unexpectedly came in the Lord *Craven*, whereupon he, the ſaid *Briſco*, having long ſerved in the Country, and knowing him to be a lover of Soldiers, he ſpoke unto him, and ſaid, Sir, we are a company of poor diſtreſſed Gentlemen, likely to be left here in miſery (he ſaid, *Well)*; and the next morning the King went away, without giving any relief unto the Petitioners. The Court demanded of *Briſco*, whether there were no ſuch matter in it as *barbarous and inhuman Rebels?* He anſwered, that he read it, and was ſure there was no ſuch thing in it, the whole ſcope of it being to relieve their neceſſities, which was the occaſion of that Petition. Being demanded again by the Court, if *barbarous and inhuman Rebels* were not in the Petition? he anſwered, No, not any ſuch words at all, nor ſo much as any mention of the Parliament.

Colonel *Drury* was in the next place produced, who teſtified, that being at *Breda*, Lieutenant-Colonel *Bardſey*, Major *Faulconer*, Major *Hall*, Captain *Kitchingman*, and divers others came to his lodging, and told him that they were in a condition of ſtarving, and deſired him that he would aſſiſt them to draw a Petition to the King of *Scots*, to relieve their neceſſities, or elſe they muſt periſh; that the ſaid *Drury* being in their condition conſented unto it, and in his Chamber, in his ſon's paper-book, the Petition was drawn, Major *Faulconer* writ it with his own hand; which, ſaith *Drury*, I have here to ſhew, and ſo preſented the original under *Faulconer*'s hand unto the Court: in which Petition (ſaid *Drury)* we deſired ſome relief from his Majeſty, ſhewing how we had ſerved the former King, and in what neceſſities we were. That they were adviſed to deliver it to Secretary *Long*, for that they were told that the King had not a Piſtole to relieve himſelf, and it would be a vain thing, ſaid *Long*, to deliver it. That they followed Secretary *Long*, and ſolicited him daily for three weeks together, and ſtill he put them off; and the day before the King went from *Breda*, they drew a ſhort Petition to mind the King of his promiſe to Secretary *Long*, and to deſire that the Inhabitants of *Breda* that had relieved them, might not be undone; that *Briſco* was deputed with him to deliver it, and he accordingly delivered it to the King: that the King laid it down upon the Table: in ſteps the Lord *Craven*; then Captain *Briſco*, having trailed a Pike under the Lord *Craven*, went to him, and told him there were many Gentlemen ready to ſtarve, and deſired him to ſpeak a favourable word to the Queen of *Bohemia*. To which the Lord *Craven* anſwered, *Well*, as *Briſco* then told him. The next morning the King of *Scots* went away, and ſo nothing at all was done for the Petitioners; that original Petition, which *Drury* produced unto the Court, of *Faulconer*'s own hand-writing, and in the preſence of *Faulconer*, was publickly read in Court, and was as followeth, *viz.*

May it pleaſe your Majeſty,

" THE great ſenſe we have always had of your Majeſty's preſent con-
" dition hath been the prime cauſe of our long ſilence; but now our
" neceſſities are grown ſo great and inſupportable, that we are inforced ei-
" ther to petition or periſh: Moſt humbly deſiring your Majeſty, to take
" into your princely conſideration their extremities, who have been ever
" ready to proſtrate their Lives in your Majeſty's Royal Father's ſervice:
" nor no leſs willing and ready to proſecute the ſame in what your Majeſty
" ſhall command: Moſt humbly petitioning your Royal Order, that
" ſome courſe may be taken for our preſent ſubſiſtence, that our future
" endeavours may not be buried in that unavoidable calamity, which our
" Loyalty hath reduced us unto."

And we ſhall cordially pray for your Majeſty.

The Court demanding of Colonel *Drury*, if the ſaid Petition was *Faulconer*'s own hand-writing; he ſaid Yea, and looking back upon *Faulconer*, ſaid, he cannot deny it: I did dictate unto him, and *Faulconer* did write it in my Chamber; and that is the very original that was ſo drawn, and being fair written was afterwards delivered to Secretary *Long:* the other that was delivered was a memorial, to put the King in mind of his promiſe when money came in. And *Drury* further ſaid, that when he was examined by Mr. *Biſhop*, he did give in his Examination the contents of the firſt and latter Petition; and ſaid, he did expreſs himſelf at that time of his Examination by Mr. *Biſhop*, to the ſame effect which he had now done in Court. Being aſked by the Court, if the words *barbarous and inhuman Rebels* were in that firſt petition? the ſaid *Drury* anſwered, that *Faulconer* moved to have *barbarous and inhuman Rebels* inſerted into that Petition ſo drawn by himſelf, but was anſwered by the Petitioners, that as they were Soldiers of fortune, it was uncivil language, and ſo they would not give way unto it. Being demanded by the Court, who was deputed to deliver the laſt Petition, he ſaid, Captain *Briſco* was one, in regard he had many wounds at *Cannon-Froom*, that the King might commiſerate his caſe the more; and that he, the ſaid *Drury*, was alſo deputed with *Briſco* to deliver the ſame, becauſe he was known to the Queen of *Bohemia*, and ſome other perſons of quality, and *Faulconer* was not at all deputed. Being aſked, if the Lord *Craven* was preſent at the delivery of the firſt Petition? he anſwered No, the Petition was delivered three weeks before: but the Lord *Craven* was preſent when the laſt Petition was delivered, to mind the King of his promiſe. The ſaid *Drury* further informed the Court, that afterwards *Faulconer* being diſcontented that he got no money, ſaid, as he was going into Town, *This is a horrid Thing, that we ſhould be in this caſe, to follow a thing they call a King* (God damn me). *I will go into* England, *and do all the miſchief I can.*

Proofs as to the Credit of Faulconer.

IN the next place, the Counſel for the Commonwealth did apply themſelves to offer proof as to the credit of *Faulconer*. Mr. *Wooldridge* of *Clements-Inn*, Attorney at the Common-Law, being ſworn, did teſtify to this purpoſe;

purpoſe; That being in his chamber at *Clement's-Inn*, about this time twelve-month, *Faulconer* came to him, aſked how ſome of his Countrymen near *Petersfield* did? That he aſked *Faulconer* where he had been of ſo long a time? Who anſwered, he had been in the *Low Countries*; had ſeen ſome Lords ſit in Council for the King; that he had been ſworn againſt the Lord *Craven*, which would bring a great deal of advantage to the State; that he had money for the doing of it; and ſaid, that he had received already 80 *l.* (it was that ſum here mentioned, ſaid Mr. *Wooldridge*, to the beſt of his remembrance), but *Faulconer* ſaid, he did expect a greater reward; that the ſaid *Faulconer* hath been as wicked a man as any in *England*; that he ſpent his Eſtate, and left the Country, did wicked acts while he was there: that being at *Petersfield*, he drank an health to the Devil in the middle of the Street, of which information being given, we ſent to the Juſtice of the Peace in the Town, and had him bound over to the Seſſions for doing of it; but ſaid, he did not ſee him drink the health to the Devil.

Mr. *Jackſon* of *Petersfield* being produced, teſtified, about five years ago, *Faulconer* was ranting and drinking of healths, that he did drink a health to the Devil, and ſaid this, *I have ſpent my Brother's Eſtate and my own; I will never want money, for whilſt there is any in the Nation, I will get it one way or other, and I will do ſomething of Infamy to be talked of, that the name of* Faulconer *ſhall never die.* Being aſked in what manner he did drink the health? He anſwered, in the Street, down upon his knees; that he was preſent, and thouſands can witneſs it; that he was had before a Juſtice of Peace for it.

James Graham being ſworn, did teſtify, that in *May* 1647, after the Siege at *Exeter*, it was his fortune to fall into the company of *Faulconer*, and as he was with him in the cellar, he was ſwearing *damn him, blood and wounds*; takes a two-and-twenty ſhilling piece of Gold, put it into his hand, and ſaid, *God damn him, blood and wounds*, he would *bugger his Soul to Hell*, and theſe words he uſed frequently to Man, Woman, and Child, *bugger, bugger, bugger*; and correct him for it, he would ſay, *damn him, blood and wounds*, he would do it. Being aſked by the Court, if *Faulconer* did any thing upon him? He anſwered, No, *he was able to deal with as good a man as he.*

Mr. *Hughes* hath often heard *Faulconer* ſwear, *damn him* and *ſink him*, and ſuch wicked expreſſions.

Mr. *Bradley* did teſtify, that he heard *Faulconer* ſay, *our Saviour Chriſt was a Baſtard, and a Carpenter's Son, and carried a baſket of Tools after his Father.*

Mr. *Dyer* being produced, did declare, that *Faulconer* confeſſed to him, that he had ten pound of a man, by procuring one to perſonate Captain *Biſhop*; it was thus (as *Faulconer* told him): That a Citizen, as he remembered *Faulconer* ſaid, did deſire *Faulconer* to get Captain *Biſhop* to do a buſineſs for him, which Citizen did promiſe him twenty pound, ten in hand, and ten afterwards: whereupon *Faulconer* ſaid he got one to perſonate Captain *Biſhop*, and to go along with him to the Citizen: which man ſo perſonating Captain *Biſhop*, promiſed the Citizen, upon the account of Major *Faulconer*'s good ſervices for the publick, to afford him his beſt aſſiſtance in the effecting of what was deſired in his Petition, which ſtory *Faulconer* himſelf told. And *Faulconer* further ſaid, that Captain *Biſhop* had uſed him ill, in keeping him ſo low in money; that he had it one time in his thoughts, as Captain *Biſhop* came from the Committee-chamber, through the Guard-chamber, down the ſtairs, to have cut his throat. Being aſked by the Court, what money *Faulconer* had of Captain *Biſhop?* He anſwered, he paid to *Faulconer* with his own hands, by Captain *Biſhop*'s direction, twenty pound at one time, and about thirty pound more at other times, in ſeveral portions; that *Faulconer* confeſſed to him he had twenty pound afterwards. Being demanded what it was for he gave that money? He ſaid, *I will not ſpeak to that, I cannot ſpeak to that.*

Captain *Ballard* being produced, did teſtify, that about three or four years ago, he came to *Faulconer*'s lodging, and ſaw him write a letter in his chamber, and that he writ it as if it had come from Colonel *Burgeſs* from *Jerſey*, and ſet *Burgeſs*'s name to it; and *Faulconer* would have had him, the ſaid *Ballard*, to carry this letter to one Capt. *Biſhop* that belonged to the Council of State, and to ſay he had the letter from one of *Briſtol*, and get ſome money of *Biſhop* for that intelligence mentioned in the letter, of which the ſaid *Ballard* was to have half: but he, the ſaid *Ballard*, refuſed to go with the ſame, knowing it to be unjuſt.

Mr. *Powel*, a Juſtice of Peace of the County of *Middleſex*, did teſtify to the Court, that this *Faulconer* was brought before him upon ſuſpicion of Felony, and committed, which *Mittimus* he produced in Court; and that afterwards the Lord Chief-Juſtice *Rolls* did ſend for him out of *New-Priſon* to *Newgate*; that *Faulconer* hath a common name for a Robber on the highway.

Mr. *Goodman*, Goaler of *Aileſbury*, did teſtify unto the Court, that the ſaid *Faulconer*, the 20th of *March* 1648, was committed to *Aileſbury* Gaol, by Sir *Thomas Saunders*, Mr. *Bulſtrode*, and two other Juſtices of the Peace, upon ſuſpicion of Felony, Robbery and Murder, and tendered a Certificate thereof in writing unto the Court.

The Defence made on the behalf of Faulconer.

THE evidence being given on the behalf of the Commonwealth, Mr. *Windham*, Mr. *Latch*, Mr. *Lechmere*, and Mr. *Haggat*, of Counſel for *Faulconer*, did offer ſomething to the conſideration of the Court, before they did produce their Witneſſes; *viz.* that although it concerns every man that Perjury ſhould be puniſhed; for every man's life, liberty, fortune and eſtate depends upon an Oath, and in theſe times it is ſomewhat dangerous if they ſhould be forſworn; ſo on the other ſide, if *Faulconer* be not forſworn, it is but juſt he ſhould be acquitted. That the Council for the Commonwealth have endeavoured to prove that there was a Petition, but that there was no ſuch words in the Petition as are ſuggeſted, and have endeavoured to impeach the credit of *Faulconer:* that they have produced a copy of *Faulconer*'s Oath, which ought not to be admitted; becauſe it is but a Tranſcript of a Tranſcript, a Copy of a Copy, brought from *Haberdaſhers-hall* to the Council of State, and from the Council of State to the Parliament, and there the Copy is entered in the Journal-book. And the Witneſſes that have been produced, do not ſwear poſitively to the Oath as it is in writing, and one particle may turn the whole ſenſe of an Oath; and though theſe words *barbarous and inhuman Rebels* were in it, yet how it is applied, and how the ſenſe of it falls, it cannot be judged, but by the original writing itſelf, and it concerns the Counſel for the Keepers to produce it. How it ſhould come into *Faulconer*'s hands, there is no account given, but by one *Knight*, who ſaith *Faulconer* ſhewed him a thing, which *Faulconer* ſaid was his [original] depoſition againſt the Lord *Craven*; but the credit of *Knight*'s teſtimony is left to the Jury. It is ſworn, that that copy produced in Court was examined; but Mr. *Winſlow* doth not poſitively ſay it was examined by the original, when in their cuſtody.

That as to the Witneſſes produced againſt the credit of *Faulconer*, they did hope to counterpoiſe his life to be, as of a man that might be credited: that in the Petition delivered at *Breda* there is ſomething of thoſe words, though there be not *barbarous and inhuman Rebels*, which was but a nominal thing; yet the proſtrating of themſelves to proſecute the cauſe, is deſired, may be obſerved; though the actual words be not there, yet the ſenſe doth bear it: that the caſe is ſomewhat hard with *Faulconer*, who was employed at the Court of *Breda* as an emiſſary, as a ſpy: and at his return in giving an account of his obſervations at *Breda*, let ſomething fall concerning the Lord *Craven*, without any deſign in him; and that what *Faulconer* delivered in his depoſition was with qualifications, as he did believe, to his beſt remembrance, and the like.

Hereupon Captain *Biſhop* was produced on the behalf of *Faulconer*, as a Witneſs, whoſe diſcourſe was long, and conſiſted of three parts.

1. It took notice how the Council of State ſent for him from his habitation at *Briſtol*, to be employed in matters of great truſt; and afterwards what truſt was repoſed in him and Mr. *Scot*, in order to the ſafety of the Nation.

2. By way of argument on behalf of *Faulconer*, he did declare what ſervices *Faulconer* had done for the Commonwealth, and that *Faulconer* was one by whom this Commonwealth ſat ſafe at this hour, and by whom he enjoyed his life: and what an ill requital this was to be thus proceeded againſt.

The third part of his diſcourſe was, to declare what particular deſigns the State formerly had in hand, and what deſigns the enemy had againſt the State; and what ſervice he did to countermine the enemy in their deſigns: the laſt of the three being not (as was conceived) ſo adviſedly ſpoken in publick, and which would be more unfit to be in print, ſhall therefore here be paſt over in ſilence, as alſo what Captain *Biſhop* ſaid at large concerning the two firſt particulars, in reſpect they are no proofs pertinently to be applied, as to the perjury in queſtion.

An account only ſhall be therefore given what Captain *Biſhop* properly ſpoke as a Witneſs.

As a Witneſs, Captain *Biſhop* ſaid, he had never ſeen *Faulconer* in drink, or miſbehave himſelf, but ever obſerved him as a ſober man; that he drew *Faulconer*'s information [which *Faulconer* did deliver as the ſubſtance] and that he muſt ſay, that the words [*or to that effect*] ſhould have been put in, and that it was his fault they were not in, and he could not tell but that they were in; that the Commiſſioners at *Haberdaſhers-hall* were deſired to come to *Whitehall* to adminiſter an Oath to the ſaid *Faulconer* privately, leſt danger ſhould befal the Witneſſes if they were diſcovered.

That *Horſnel* was formerly an Agent for the Prince, and was to receive orders from *Tom Cook* in the *Tower*, and was ordered to be tried by the High Court of Juſtice: that Colonel *Drury* was a Papiſt in arms, and being brought before him to be examined, ſtill had the Lord *Craven* in his mouth, before he was aſked a queſtion.

The like of *Briſco*. He ſaid, that before *Drury* and *Briſco* came from beyond ſeas, his Agent gave him notice of their coming, and thereupon he laid wait for them, and caught them; that *Drury* ſaid, when he was examined, that he had not a penny of money; that he did not commit him to priſon, but took his parole, and in commiſeration gave him two ſhillings and ſix-pence for his ſupper. He ſaid further, that *Drury* did contradict himſelf in what he had formerly informed the Council of State, and to that end produced in Court the copy of *Drury*'s Information; which being read in Court, agreed with the teſtimony which *Drury* then gave to the Jury.

[By way of digreſſion obſerve, *That* Drury's *and* Briſco's *Informations, which Captain* Biſhop *had taken above twelve months ſince, and which tended to clear the Lord* Craven, *he concealed till this hour that he produced the ſame in Court, and never tranſmitted thoſe two Men's Examinations to the Parliament; though before the Bill of Sale did paſs, he did tranſmit* Bardſey's *and* Kitchingman's *Re-examination taken by himſelf, and which he apprehended made againſt the Lord* Craven.]

Captain *Biſhop* further ſaid, that whereas it was objected that *Faulconer* had money; he anſwered, that it is great reaſon he ſhould have money, for there was a real effect of the ſafety of the Commonwealth by his ſervices: that notwithſtanding any thing hath been ſworn againſt *Faulconer*, he believes what he ſwore was truth.

Captain *Biſhop* ſpeaking again of *Faulconer*'s depoſition, that the words [*or to that effect*] ſhould have been added; the Court aſked him, whether *Faulconer* gave any directions to expreſs theſe words in his Examination? To which Captain *Biſhop* made anſwer, That the depoſition he made, was the ſubſtance of things, and he put it in words, and that [*or to that effect*] if they were not in, ſhould have been in. The Court again aſked him, if *Faulconer* did direct him to put in theſe words [*or to that effect?*] He replied again, he did deliver the whole, *as the effect of it.*

Captain *Biſhop* being further aſked by the Court, if he were preſent when the Commiſſioners gave the Oath, and took what *Faulconer* ſaid in way of Information? He anſwered, *That he prepared it before the Commiſſioners were ſent for*, and then they had only the adminiſtring the Oath; and ſaid again, *I prepared the Information which he made Oath of.* Hereupon Mr. *Winſlow* deſired leave to inform the Court, that when he and the reſt of the Commiſſioners came to *Whitehall* to adminiſter this Oath, being ſent for to that end, the Information was ready prepared by Captain *Biſhop*, and having no Regiſter with them, they made uſe of Captain *Biſhop*, being well ſkilled in the uſe of his pen, to write over the depoſition: for though he had prepared the depoſition, the Commiſſioners did ſee occaſion to alter much of it; and it was writ over again, and then read to *Faulconer*, and atteſted by him, and ſubſcribed unto by the hands of all the Commiſſioners then preſent; and the Oath which we gave him was this, *Whether the depoſition thus drawn, and that which he was*

was examined unto, was the Truth, the whole Truth, and nothing but the Truth; Mr. *Barners* atteſted the like: then Captain *Biſhop* ſat down.

After this Lieutenant-Colonel *Joyce* was produced, who likewiſe ſpoke of very great deſigns, and of matters of State, and what diſcoveries were made by *Faulconer*; which being not pertinent to the Perjury, ſhall be here omitted: but as a Witneſs he ſaid, that *Horſnel* was formerly an Agent for the Prince.

That *Faulconer* was a *Hampſhire* man, a Gentleman well-bred, that he was an enemy to himſelf in ſpending his Eſtate, that he was always faithful to the Parliament; that he believes *Faulconer* hath cufft ſome of the Witneſſes produced againſt him for their malignancy, and that nothing could be expected to come from them to the credit of *Faulconer*: that *Faulconer* was ſent over by him as a ſpy into *Holland*, upon account of his faithfulneſs.

Lieutenant-Colonel *Bardſey* was produced in the next place, on the behalf of *Faulconer*, who teſtified, that he put his hand to the Petition at *Breda*; that the Lord *Craven* was deſired to deliver it to the King of *Scots*; that the Lord *Craven* ſaid he was no Courtier, but a Servant to the States of *Holland*; that it was fitter for the Princeſs Royal to deliver it, than himſelf, and ſo returned the Petition again. That the Queen of *Bohemia* told the Petitioners, the King would do for them what he was able; but about four o'clock in the morning he went away, and they had no other anſwer: that the contents of it was to put the King in mind of his promiſe, that ſome money might be delivered to the Petitioners for diſcharge of their quarters at *Breda*. Being aſked by the Court, if there were any ſuch expreſſions in it as *barbarous and inhuman Rebels*, he anſwered No. Being aſked, if to that Petition which *Faulconer* drew, he would have had *barbarous and inhuman Rebels* added; he anſwered Yea, *Faulconer* did move to have thoſe words in, but was refuſed it: that he the ſaid *Bardſey* read over that Petition, and ſet his hand to it, and was at the penning of it, and *Faulconer* wrote it.

Captain *Kitchingman* being produced, did teſtify, that a Petition was drawn at *Breda*, and ſigned by him, *Faulconer*, and others, to be preſented to the King of *Scots*; that it was in purſuance of gaining money to diſcharge their quarters, and to enable them to ſerve the King, but knows not by whom it was delivered; that Secretary *Long* was to iſſue out money unto them, but they never had any; and in order to the gaining of that money, there was another Petition drawn, but by whom delivered he knew not; only he ſaw a paper in the Queen of *Bohemia*'s hand, which was told him was the Petition; and after a quarter of an hour's diſcourſe with the King, ſhe delivered it to the King, but they never received any money upon that neither: that he did not read the laſt Petition at all, nor heard it read; that it was the firſt Petition which he ſigned.

Colonel *Dove* was produced in Court on the behalf of *Faulconer*, who ſaid, he knew nothing of his birth, he only knew his Father and Mother, that they lived in good faſhion and credit; but how this *Faulconer* hath been brought up, and where he hath inhabited for theſe ten or twelve years, he knew not: and that this was as much as he could ſay.

Michael, an Alehouſe-keeper, was then produced, who ſaid he knew nothing of *Faulconer*, but that he was a very honeſt man, *Faulconer* having lain in his houſe a year and three quarters; that he knows nothing to the contrary, but that he was a good Scholar, an honeſt man, and brought up at the Univerſity.

Captain *Mowbrey* being produced as a Witneſs, did teſtify, that *Anno* 1649, in *Amſterdam*, he met accidentally with Captain *Briſco*, who ſaid to him and others, Gentlemen, I ſee you are in a ſad condition, I will ſet you in a way to get money; here are *Dutchmen* taking up Men to go to Plantations, and you ſhall have twelve ſtivers a-piece a-day, but I will warrant you, I will force them to leave you behind: and accordingly they received twelve ſtivers a-day, and *Briſco* would have had them on ſhipboard; but one *Church*, an *Engliſhman*, bid them take heed what they did, for he ſerved ſome *Engliſhmen* ſo before, clapt them under decks, and received ſo many ſix Dollars a-piece for them, and ſo left them: that he hath known *Faulconer* five years, and he hath behaved himſelf civilly for aught he ever knew.

Mr. *Corey* did teſtify ſomething to this purpoſe, in reference to *Briſco*'s ſending men to Plantations; who ſaid further, he had no more to ſay againſt *Briſco*, but that he was a man would drink, and ſometimes ſwear, as well as other men that are accuſtomed to it: that he knows nothing to the contrary, but that he came to *Breda* to wait for employment: in the mean time, whilſt he was there, he did as other men did, ſtrive to ſeek for relief.

After the Court had with much patience heard Captain *Biſhop*, and the reſt of the Witneſſes on the behalf of *Faulconer*, the Counſel for *Faulconer* ſumm'd up the Evidence, and left it to the Jury, with ſome further obſervations, *viz.*

That though the words *barbarous and inhuman Rebels* were not in the Petition, yet there were words of tender of ſervice, as the King ſhould command, and to proſecute his cauſe, which was the ſubſtance of the thing informed by *Faulconer*; that Captain *Biſhop*, and Lieutenant-Colonel *Joyce*, who have teſtified of *Faulconer*'s ſervices, were Witneſſes to be preferred before any witneſſes produced againſt *Faulconer*; that the endeavour is not only to convict this man, but by conviction and diſabling of his credit, to undermine that which hath been acted by the Parliament, upon his teſtimony, and other concurrent teſtimonies, not only in paſſing Votes, but in paſſing an Act of Parliament to ſell an Eſtate.

That there was nothing objected againſt the credit of this Witneſs, ſo long as there was any other ſtone to turn, tho' there were other endeavours uſed in Parliament to prevent the ſale of the Lord *Craven*'s Eſtate; ſo that when all other reſources fail'd, they then make uſe of this Indictment of Perjury, and ſo hope to undermine the Act of Parliament. Tho' *Faulconer* might have ſome extravagance, yet you ſee what his part was to act, to diſſemble that he was not what he was, and it may be, when he was amongſt the *God-dammes*, and ſuch kind of men, it was his part to be what moſt conduced to his end [*like themſelves*]: for a man, as he was employed, muſt twine himſelf into all ſhapes, and tho' not drink a health, yet ſometimes *hold a candle to the Devil*; that they acknowledge the charge in part, and would lay it in words, not in ſubſtance, and therefore not ſtrictly in the letter true.

That it was proved that the firſt Petition was to ſerve the King, as they formerly had ſerved his Father, and they ſerved his Father againſt the Parliament: ſo their offer muſt needs be, to be entertained to ſerve the King againſt the Parliament.

That it is a ſad caſe, that this man for ſo many ſervices performed by him for the Commonwealth, and ſettlements grounded upon his information, muſt be blaſted here by an artificial Indictment a great while after.

And if he ſhall, after all this, be convicted of Perjury, it will be a diſcouragement for all men to undertake the like employment for the future.

And laſtly, the Counſel for *Faulconer* did offer, that if there be a miſtake in what he hath ſworn, yet it appears not to be malicioufly or corruptly done, and that therefore the Jury ought to find for *Faulconer*.

The Reply by the Counſel, on the behalf of the Commonwealth, againſt Faulconer *was to this purpoſe following:*

GENTLEMEN of the Jury, you have heard the defence that *Faulconer* hath made; we have charged him, that he did take the Oath that was ſet down in the Indictment. They ſay, *Firſt*, We have not proved it; *Secondly*, That he did not take it, but did take it in effect; and *Thirdly*, If he did, it was not maliciouſly, nor corruptly: but not one of them hath ſaid it is not falſe, no not one of their own Counſel. The evidence that hath been given, for the moſt part, hath been to magnify the ſervice of this man, that is now in queſtion before you: we ſhall admit his ſervices to be true; but this we ſhall be bold to ſay, that a man that is employed beyond ſea, and gives good return of his ſervice in ſome kind, that that will not give him licence to make a falſe accuſation in another kind: and it is no argument to ſay, that becauſe this man was a ſpy beyond the ſea, and did good ſervice as a ſpy, that therefore he did not give a falſe information; in this he muſt not take a liberty to ruin any man by a falſe Oath: his ſervice muſt not excuſe him, if what he hath ſaid be falſe.

As for what Mr. *Biſhop* ſaid concerning his Oath; Mr. *Biſhop* tells you, it is his fault if the words [*or to that effect*] were not put down; if it were not, whoſe fault was it? It was mended by thoſe whoſe judgments and conſciences induced them to it: the Information he took was done by the judgment of the Committee, and not by the direction of him that was a Miniſter, a Scribe to write, and not a Judge to dictate and correct. You have here two men of unqueſtionable truth and honeſty every way, (meaning Mr. *Winſlow*, and Mr. *Barners*) that ſay poſitively, he did ſwear it; and God forbid that we ſhould live to that day, that any man ſhould be ruined upon a depoſition, taken by the judgment of a Clerk, to ſuch or ſuch effect. If we ſhould come to ſuch a piece of Juſtice, that a depoſition to ſuch and ſuch effect, and that taken by a Clerk, ſhould come to caſt a man, it is beyond an Oath of *&c.* For it is the Judges that muſt ſay, what is the effect of an Oath, and not the Clerk that writes it. If a Clerk ſhall take an Oath, and he ſhall come and ſay, *it is to this effect*, never ſhall any man be free from him, that by Perjury will ruin another man. It is proved unto you, it was read over to *Faulconer*, expreſsly mended in his ſight, and ſworn by him, and let the *effect* go with the *&c.* that went before it.

They objected to our Witneſſes, that *Briſco* had ſold his companions for twelve ſtivers a-day: that information had no other foundation, than the ſaying of a *Dutchmen*, that ſaid ſo, or of an *Engliſhman* in a *Dutch* bottom; and what was teſtified, was what was ſaid, and not what was known or ſworn. They objected, that *Briſco* would ſwear as well as another; that takes not off his teſtimony. But what do they ſay, concerning their own Witneſs, *Bardſey*, whom they have produced? He hath ſworn *in terminis*, in effect with *Drury*, which you will not forget: he ſwore, that when the firſt Petition was drawing, it was moved by *Faulconer*, that the words *barbarous and inhuman Rebels* ſhould be put in; but it was rejected by them that were there as a thing uncivil: ſo their own Witneſs concurs with *Drury*.

As for the depoſition on record at *Haberdaſhers hall*, which being filed there, it is proof of itſelf, which no man may aver againſt, when it is recorded; we have ſhewed it there, traced it here, brought a copy of it endorſed with the Lord *Bradſhaw*'s hand; ſhall it be believed that a man ſhall be confiſcated and loſe his eſtate, and not ſo much as an Oath taken againſt him? It is apparent there was an Oath, and it is hoped you will believe that which the Parliament hath recorded, and expreſsly proved by the Gentlemen of *Haberdaſhers-hall* here preſent; which you will believe before any imaginations that can be made on the other ſide.

They have endeavoured to ſay ſomething touching the converſation of this man, to uphold his credit; but, Gentlemen of the Jury, you are to conſider of the man, what *damnable blaſphemy* hath come out of his mouth, you have heard it. If a man will go ſo high, as to kneel down to *drink a health to the Devil*, I hope there is no excuſe for that; his good ſervices muſt not plead for him to comply with *God-dammes*; that will not juſtify him, he was not ſent to do any ſuch thing. But we have not reſted there; have we not proved him a perſonator of other men, a decoy, and things that a man ſhould be aſhamed to name: the two-and-twenty ſhillings piece he took out, and what baſe wild words he ſpake, not fit to be repeated? That will not be palliated by any ſervice whatſoever. And for that which Mr. *Biſhop* hath ſaid, nothing ſhall be ſaid againſt him, but what appears to you; that Mr. *Biſhop* hath gone beyond a Witneſs: for when he hath done his teſtimony, he acteth and manageth the buſineſs, and in that is not equal to others that do not. For his expreſſion, that *Faulconer* is one of them by which the Commonwealth of *England* ſits ſafe at this hour; it is God we ſit ſafe by, and not by him: I blame him not for his ſervice, but when we are upon a queſtion of truth, I ſay truth and righteouſneſs is beyond all the ſervice in the world.

They ſay my Lord *Craven* furthered the Petition, and promiſed to ſecond it. Gentlemen, you muſt diſtinguiſh that which my Lord *Craven* knew, and that which he knew not: *There is not one Witneſs from beginning to ending, that can ever ſpeak one word, that my Lord* Craven *knew what the firſt Petition was.* In that Petition was the expreſſion of venturing their Lives, which was three weeks before the latter, which was ſingly to deſire they might have money for their quarters. The firſt Petition had ſome expreſſions relating to their former ſervice, and ſome expreſſions of their readineſs for the future; but that Petition my Lord *Craven* never ſaw, but was delivered to one *Long* three weeks before, and *Drury* did put it down in his depoſition, when he was examined by Mr. *Biſhop*, which agrees with that which was read in Court.

But the particular time when the latter Petition, or Memorial, was delivered, with which the Lord *Craven* is charged, was the evening before the King went from *Breda*.

They ſay that here is no corruption proved, and a man cannot be guilty without corruption: but certainly he that ſwears a thing that is falſe, it muſt of neceſſity be corrupt.

Faulconer ſwears, that thirty Officers did ſubſcribe the Petition: Doth he bring any one to confirm his teſtimony, or the leaſt colour of evidence to what he hath ſworn?

It was further preſſed by the Counſel for the Commonwealth, that the Jury would diſtinguiſh theſe two things, between the Petition framed and dictated by *Drury*, and writ by *Faulconer*; and that other Petition delivered the night before the King went from *Breda*; the firſt is produced, and proved to be *Faulconer*'s own hand: that Petition was three weeks before, which begs for maintenance, and proffers ſervice, the copy of which was brought forth before any evidence was given by them; for *Drury* upon his examination before the Council of State made the ſame known, and which agrees *verbatim* with that read in Court. So the dictating of that Petition was by *Drury*, the writing by *Faulconer*, the delivery was to Secretary *Long*, and that was the thing whereof they did expect an account; but that was not the Petition to which the teſtimony of *Faulconer* at all goes. That Petition of which this Oath is ſpoken, and to which it is apply'd, is the Petition which was drawn the evening before the *Scots* King went from *Breda*; that is the Petition talked of in the depoſition, that is the Petition upon which we pitch; and therefore if in that Petition there be none of theſe words, that which he hath ſworn unto is falſe: for in that Petition we ſay there was no ſuch words as *barbarous and inhuman Rebels*; nor ſuch words of proffer of ſervice or malignity, but a mere deſire of ſupply; and they have not offered the leaſt proof to the contrary. And *ſecondly*, that it was not promoted by the Lord *Craven*, for the Petition was delivered by them to the *Scots* King, before ſuch time as the Lord *Craven* came into the room, ſo that my Lord *Craven* was no promoter of the Petition; and had he been a promoter of it, there was no ſuch thing in it, as might give offence: no, not the leaſt mention of the Parliament, nor any thing that might offend. And whereas they object, that this Oath was not corrupt, the very words of his expreſſion are very conſiderable, for he doth remarkably fix the words in his depoſition, *To fight againſt the Commonwealth of* England by the name of *barbarous and inhuman Rebels:* Why would he fix ſuch an *emphaſis* upon it as that was? It could not be a bare miſtake: nor the words *to this effect*, as Mr. *Biſhop* would have had in, could never have ſerved the turn; for to ſay he would fight againſt *the barbarous and inhuman Rebels*, or to that effect, there is no ſuch effect in the one Petition nor in the other. Then a ſecond thing is, that this *Faulconer* being, as he depoſeth, the contriver of the Petition, it could not be a mere overſight and miſtake in him; and then when he could not have his deſire beyond ſeas to get monies, he ſaid, *He would come here, and do what miſchief he could.*

The Counſel urged further: Gentlemen of the Jury, what is become of the original depoſition, it concerns not us to know, no more than the original of depoſitions taken in the Country: it lies upon them that are for the Oath to make it out. It cannot be preſumed that the Parliament would confiſcate a Nobleman's eſtate, and order it to be ſold: would they enter it into the Journal-book, and make it a record, ſhould it come and be tranſmitted from *Haberdaſhers-Hall* (the proper Judicatory for that buſineſs) to the Council of State, and from the Council of State to the Parliament, and then not to be a true Oath, or falſe copy? That is not to be borne, that a falſe Copy ſhould ſell a Gentleman's Eſtate, that a falſe Copy ſhould be recorded to ſtand to all Eternity.

After the reply was made; every Judge in Court ſpoke what they in their judgment thought fit, for the better direction of the Jury: whereupon the Jury withdrew, and the next day brought in their Verdict, That they found the ſaid *Faulconer* guilty of the Perjury mentioned in the Indictment. The Order following was thereupon made, viz.

By the Court:

The Defendant was this Day brought into Court, under the Cuſtody of the Marſhal of this Court, upon an Indictment for Perjury, whereunto he had formerly pleaded Not Guilty; *and the Jury thereupon being impannelled, and ſworn, found him Guilty of the Perjury in the Indictment mentioned: and thereupon the ſaid* Faulconer *is committed to the Cuſtody of the ſaid Marſhal; there to remain until,* &c.

XXVI. The Trial of Mr. JOHN LILBURN, at the Seſſions of the Peace held for the City of *London*, at Juſtice-Hall in the *Old-Bailey*, upon *Wedneſday*, *Thurſday*, *Friday* and *Saturday*, the 13th, 14th, 15th, and 16th Days of *July*, 1653, for returning into *England*, being baniſhed by Act of Parliament.

[Written (the chief Part) by the ſaid *John Lilburn.*]

I Was Counſel or Proctor for my Uncle, *George Lilburn*, Eſq. and one Mr. *Joſiah Primate*, *&c.* about a Colliery taken from them in the County of *Durham*, by force and violence, by Sir *Arthur Haſlerig*; which he by his certificate computes to be worth five thouſand pounds Sterling *per Annum*. About which Colliery the ſaid Mr. *Primate* preferred a Petition to the Parliament, upon the 23d of *December*, 1651. in the delivery and management of which I appeared, as by the declared Law of *England* I might juſtifiably do.

Which Petition being by the Parliament referred to a Committee to examine it, who ſpent twelve or thirteen large hearings thereupon; and upon the 15th of *January*, 1651, new ſtile, the Chairman thereof, Mr. *Hill*, made his report to the Houſe: but what it was, we never were permitted to ſee nor to hear read. And as ſome Members of Parliament have ſince told me, he made his report quite contrary to, or ſhort of the evidence which was given in: whereupon the Parliament, the ſaid 15th day of *January*, voted the foreſaid Mr. *Primate*'s Petition to be falſe, malicious, and ſcandalous; and that Sir *Arthur Haſlerig* is not guilty either of Oppreſſion or Tyranny, in the Carriage and Proſecution of this buſineſs; and that all the Copies of the ſaid Petition (which, relating only to *Primate*, is not here inſerted) ſhould be burnt by the hands of the Common-Hangman. And voted Mr. *Primate* to pay ſeven thouſand pound, or to lie in priſon till he pay it; which is all his puniſhment. And then the ſame day they paſſed certain Votes againſt me, which as they themſelves, by ſpecial order of the 17th of *January*, have printed them, *verbatim* thus follow:

Reſolved,

That the Fine of three thouſand pounds be impoſed upon Lieutenant Colonel *John Lilburn*, to be paid to the uſe of the Commonwealth.

That he be fined two thouſand pounds more, to be paid to Sir *Arthur Haſlerig*, for his damages; and two thouſand pounds more, to be paid to *James Ruſſel*, *Edward Winſlow*, *William Molins*, and *Arthur Squib*, Eſqrs. four of the Commiſſioners for compounding; that is to ſay, to each of them five hundred pounds for their damages.

Reſolved, &c.

That Lieut. Col. *John Lilburn* be baniſhed out of *England*, *Scotland*, and *Ireland*, and the Iſlands and Territories thereunto belonging; and not to return into any of them, upon pain of being proceeded againſt as a Felon, and in caſe of ſuch return, ſhall ſuffer death accordingly.

Reſolved, &c.

That Lieut. Col. *John Lilburn* do depart out of *England*, *Scotland*, and *Ireland*, and the Iſlands and Territories thereof, within thirty days now next coming; and in caſe the ſaid *John Lilburn* ſhall, after the ſaid thirty days, be found within *England*, *Scotland*, or *Ireland*, or the Iſlands and Territories thereunto belonging, or any of them, the ſaid Lieut. Col. *John Lilburn* ſhall be proceeded againſt as a Felon, and ſhall ſuffer the pains of death accordingly.

Reſolved, &c.

That the Serjeant at Arms attending the Parliament, do apprehend the ſaid Lieut. Col. *John Lilburn*, and bring him to the bar of this Houſe, upon *Tueſday* morning next, to receive the judgment of Parliament aforeſaid, and that Mr. *Speaker* do direct a warrant to the Serjeant at Arms accordingly.

But being myſelf at the Parliament-door when theſe Votes paſt, and underſtanding what they had done, although they ſate (to my remembrance) a good while after candle-light, I ſtaid: and when the Serjeant at Arms came forth with his mace, and the *Speaker*, I ſpoke to him in theſe words, or to this effect: Mr. *Serjeant*, I underſtand the Houſe hath this day paſſed ſome Votes againſt me, in which regard I ſtaid on purpoſe, to ſee if you have any thing to ſay to me. Unto which he replied, No, Sir, I have no warrant yet to meddle with you, and

therefore you may go whither you pleaſe. Well, Sir, if you have none to-night, I will promiſe you, to wait upon you to-morrow morning, to ſee whether then you will have any or no. And being as good as my word, the next day being *Friday*, *January* the 16th, he committed me to the cuſtody of his Deputy, Mr. *Parſons*, where I remained till *Tueſday* morning next (as it was ordered in the laſt Vote) which was *January* the 20th; and coming to the Parliament-door, I was uſhered into the Bar by the *Serjeant at Arms*, having his mace upon his ſhoulder; where Mr. *Speaker*, as the mouth of the Houſe, expreſſed himſelf in theſe words, or to this effect:

Lieutenant-Colonel *Lilburn*, you are commanded by this Houſe to kneel: unto which I anſwered in theſe words, or to this effect; Sir, with all Submiſſion to this honourable Houſe, I deſire firſt a little liberty to ſpeak. No, Sir, ſaid he, you are not permitted to ſpeak at all, but commanded to kneel. Well then, Sir, ſaid I, with all ſubmiſſion, I ſtoop unto your ſentence, that you have already paſt upon me, but I cannot kneel.

Lieutenant-Colonel *Lilburn*, ſaid he, the Houſe commands you to kneel. Well then, Sir, ſaid I, to be ſhort with you, I neither can kneel, nor will I kneel. Withdraw then, ſaid he; which I did accordingly, making them two or three congées at my going out, the which alſo I did as I came in. Whereupon, as I was informed, ſeeing that I would not kneel at their Bar to receive my ſentence, they voted to draw up an Act of Parliament to baniſh me; and paſſed another Vote by way of puniſhment, to take off ten days of the time they had formerly given me to depart the land in. Altho' upon the *Friday* at night before, I with my Keeper went to the *Serjeant*'s Houſe, and ſpoke to him to this purpoſe: Mr. *Serjeant*, I underſtand the Parliament ſits to-morrow, to chuſe the Commiſſioners for regulating the Law, and I know it is their uſual manner to command all men that come to their Bar (that they look upon as delinquents or offenders) to receive their ſentence at their Bar kneeling. And truly, Sir, I have no deſire at all to affront them, or to vex them more than they are, for I believe they are vexed enough already at me. And therefore I beſeech you, oblige me ſo far unto you, as to tell the *Speaker* and ſome other Members, whom you pleaſe, from me, That when upon *Tueſday* I ſhall come to their Bar, to receive their ſentence, I ſhall not kneel, although they ſhould order you with your mace at their Bar to knock my brains out: and, Sir, if you pleaſe to give me leave, I will render you my reaſon, and it is this: I know when any kneels at your Bar to receive a ſentence, the Parliament looks upon that action or geſture of kneeling, as a demonſtration of a man's own convincement in his own conſcience that he is guilty, and thereby does deſerve ſuch a puniſhment as by that ſentence is paſt upon him; the which if I ſhould do, I were in my own underſtanding the verieſt rogue in the world, becauſe my conſcience and ſoul tells me, that I have done no evil, nor broke none of the Parliament's Laws, but followed (as by the Laws of *England* I may juſtifiably do) an honeſt, juſt and righteous buſineſs, in a juſt and honeſt way, without uſing any baſe or wicked ungodly means to effect my deſign in it. And whatever Mr. *Hill* hath reported to the Houſe, I am ſure of it, we have fully proved every clauſe and circumſtance contained in our Petition, ſave only that clauſe of Sir *Arthur Haſlerig*'s private correſponding with ſome of the Commiſſioners of *Haberdaſhers-hall*. But if we had not proved the Petition, there is no Law extant in *England* to enable the Parliament in the leaſt to paſs ſuch a ſentence upon me: and therefore for me in words, actions, or geſture, to do the leaſt circumſtance, to make the Parliament believe that I in mine own conſcience was convinced that they had paſſed a juſt ſentence upon me; I had rather, Mr. *Serjeant*, be cut in ten thouſand pieces, than be ſuch a *rogue* and *traitor* to mine own liberties and the nation's; and therefore I beg of you beforehand to tell them as much from me, that ſo they may avoid, if they pleaſe, their forcing me on *Tueſday* next to affront them. And he afterwards aſſured me, that the next day, being *Saturday*, he told twenty or thirty of the Members of Parliament of it; ſo that they put the affront upon themſelves, and not I. But upon the ſaid *Tueſday*, after that I was withdrawn out of the Houſe, and ſet at liberty to be gone as ſoon as I pleaſed, there being great ſtore of Citizens, my very good friends, at the door (who were perſons that had always faithfully adhered to the Parliament's cauſe), with a Petition for the revoking of my baniſhment; the Petition being called for in, was read and debated, but laid aſide, without giving any anſwer to the Petitioners. The Copy of which Petition, as ſince it is printed in *England*, thus followeth:

To the ſupreme Authority, the Parliament of the Commonwealth of *England*,

The Humble Petition of many well-affected People, inhabiting the City of London, Weſtminſter, Southwark, *and parts adjacent, in behalf of the juſt Liberties of the free People of* England, *highly concerned in the ſentence againſt Lieutenant-Colonel* John Lilburn *,

HUMBLY SHEWETH,

THAT if the manifold ſervices, and extreme ſufferings of Lieutenant-Col. *John Lilburn*, in oppoſition to tyranny and oppreſſion, and how inſtrumental he hath been in the removal of divers ſorts of oppreſſors, his wonderful deliverances, and clear acquitments by legal trials, from all former accuſations, without the leaſt ſtain to his reputation; if all theſe could be forgotten, and that he ſtood in our thoughts, but as the meaneſt of well-affected perſons (and ſuch at the leaſt we muſt allow him, having in all times adhered to Parliaments), yet in your late proceedings towards him, and heavy cenſure upon him, we apprehend our native rights ſo much concerned, that we never conceived a greater cauſe of ſpeedy application to you for redreſs, than upon this ſad occaſion.

For certainly it cannot be denied, but if he be really an offender, he is ſuch by the breach of ſome Law, made and publiſhed before the fact, and ought by due proceſs of Law, and verdict of twelve men, to be thereof convict, and found guilty of ſuch crime; unto which the Law alſo hath preſcribed ſuch a puniſhment agreeable to that our fundamental liberty; which enjoineth that no Freeman of *England* ſhould be adjudged of life, limb, liberty, or eſtate, but by Juries; a freedom which Parliaments in all ages contended to preſerve from violation; as the birthright and chief inheritance of the people, as may appear moſt remarkably in the Petition of Right, which you have ſtiled, that moſt excellent Law.

And therefore we truſt upon ſecond thoughts (being the Parliament of *England)* you will be ſo far from bereaving us (who have never forfeited our right) of this our native right, and way of trials by Juries (for what is done unto any one, may be done unto every one), that you will preſerve them entire to us, and to poſterity, from the encroachments of any that would innovate upon them. And if the original of the unhappy differences between Sir *Arthur Haſlerig* and Mr. *Lilburn* be duly weighed (being as we are informed), it will appear, that Sir *Arthur*'s ſtoppage of monies due to Mr. *Lilburn*, without legal proceſs, was the firſt occaſion thereof.

And it is believed, that if Mr. *Primate*'s cauſe [wherein Sir *Arthur* and Mr. *Lilburn* have been engaged] had at any time either at firſt or laſt been admitted to a trial at Law, and had paſſed any way by verdict of twelve ſworn men; all the trouble and inconveniences ariſing thereupon had been prevented: the way of determination by major votes of Committees, being neither ſo certain nor ſo ſatisfactory in any caſe as by way of Juries, the benefit of challenges and exceptions, and unanimous conſent, being all eſſential privileges in the latter: whereas Committees are tied to no ſuch rules, but are at liberty to be preſent or abſent at pleaſure. Beſides, Juries being birthright, and the other but new and temporary, men do not, nor [as we humbly conceive] ever will acquieſce in the one as in the other; from whence it is not altogether ſo much to be wondered at, if upon diſſatisfactions, there have been ſuch frequent printing of men's caſes, and dealings of Committees, as there have been; and ſuch harſh and inordinate heats and expreſſions between parties intereſted, ſuch ſudden and importunate appeals to your authority, being indeed all alike out of the true *Engliſh* road, and leading into nothing but trouble and perplexity, breeding hatred and enmities between worthy families, affronts and diſguſt between perſons of the ſame publick affection and intereſt, and to the rejoicing of none but publick adverſaries. All which, and many more inconveniences, can only be avoided, by referring all ſuch caſes to the uſual trials and final determinations of Law.

And whereas you have cenſured Mr. *Lilburn* ſeven thouſand pounds fine, and to perpetual baniſhment, and to die as a Felon if he return; we are exceedingly afflicted in our ſpirits thereby, not only becauſe he hath not had the uſual way of trial by Jury, which yet weighs very much with us; nor for that we believe he hath followed Mr. *Primate*'s cauſe, out of ſtrong perſuaſion of the juſtneſs thereof (the cauſe in itſelf, as we have been informed, being very intricate and hard to be underſtood, and ſo did not wilfully or intentionally carry it out againſt his conſcience, ſome of the Commiſſioners wiſhing to God it had therefore never came before them), nor for that we believe him innocent of any wilful breach of Parliament privilege, in delivering printed Petitions, before the original was preſented unto you [that being never before publiſhed, to be a breach], though all theſe add to our grief, yet the main of our affliction ariſeth from the deſtructiveneſs of the ſentence, as being therein contrary to that other our fundamental native right, which injoins that fines ſhould have regard to the qualities of the perſons; a plowman ſaving his wainage, and a merchant his merchandiſe. Whereas this, if relating to his eſtate, we believe, is ſo far from preſerving him in his quality, as that it leaves himſelf, his wife, and children, without ſuſtenance; if in relation to his perſon, his affection to Parliaments, and zeal to publick freedom, renders all foreign Nations ſo unſafe to him, as that in effect he is baniſhed into a wilderneſs, and expoſed naked to the fury of bears and lions.

The premiſes duly weighed, and for that (as we are informed) the parties accuſed and cenſured have had no means to ſee what report hath been made by the honourable Committee, nor have had the liberty of exceptions thereunto, in like caſes granted; and in that many well-affected people that heard the debates, and evidences on both ſides, are unſatisfied, both in point of poſſeſſion, and title to the colliery in queſtion; that the honour of Parliament may ſtand immaculate, our native, fundamental rights inviolable, and all thoſe gentlemen concerned in this cauſe left without any the leaſt grudging, or juſt complaint;

We have deemed ourſelves bound in conſcience in moſt humble manner to intreat,

I. That you will be pleaſed to recal your fore-mentioned grievous ſentence upon Lieutenant-Col. *John Lilburn*, and the reſt concerned therein.

II. To give free Liberty to Mr. *Primate* to proſecute his cauſe, both for title and poſſeſſion at the Common Law; and therein to make uſe of what Counſel he ſhall think fit.

III. That Sir *Arthur Haſlerig* be referred to take his courſe at Law, for whatſoever injuries conceived to be done unto him by Lieutenant-Colonel *John Lilburn*, or any others, as was granted in Mr. *Muſgrave*'s caſe with the ſaid Sir *Arthur*; and that Mr. *Lilburn*, or any others, may have the ſame liberty againſt Sir *Arthur*, if they conceive any cauſe.

After which, the ſaid friends of mine drew up another, as they hoped, much more effectual than that foregoing. And upon the *Tueſday* after, being *January* the ſeven-and-twentieth, went up with it to the Parliament-houſe, but could not that day get it read. Upon which I that night ſupped with about two hundred of them, at an houſe behind the *Exchange* in *London*; and the next morning went to the *Speaker* of the Parliament, and told him, that on the morrow, being *Thurſday*, I intended, by God's aſſiſtance, to take my journey for beyond ſea, and therefore intreated him to give me his Paſs; but he told me he durſt not for his hanging give me a Paſs. Unto which I replied; Sir, that is very ſtrange, that your Houſe will command me, upon pain of death, to leave *England* by ſuch a day, [which I am willing to do] and yet you will not enable me by your Paſs to be gone. For want of which, it is very probable, when I come at the ſea-ſide, your Officers of the Cuſtom-houſe will ſtop me: and yet, becauſe I am not gone out of *England* before ſuch a day, I muſt be hanged. What is this elſe, but to lay a ſnare for my life? For you

* This Petition ſhewing the eſteem and veneration *Lilburn* was in among the People, and the ſentiments thoſe times had of his Caſe, and the value they ſet on *Trials by Juries*; as the birthright of ENGLISHMEN; is the reaſon 'tis here inſerted.

command

command me upon pain of death to be gone, and yet you will not give me your Paſs to enable me to go, although it be almoſt impoſſible without it for me to get away.

Well, ſaid the *Speaker*, I dare not for my Life give it you. So I was forced to depart without it. And the next Morning, being *Thurſday*, *January* 29th, I took Horſe at *Finsbury-ſtables*, by *Moor-fields*, and rid thro' *London* and *Southwark*, being accompanied with great Store of my Friends on Horſe-back, who brought me divers Miles on my Journey. And the next day I came to *Dover*.

And being forced at *Dover* to make uſe of the Parliament's printed Votes about my Baniſhment, for my Paſs, I was by the Officers let go, and in a few Hours Time I arrived ſafe at *Oſtend*; and upon the 8th of *February* laſt arrived (by God's Bleſſing) at *Amſterdam*, the Place of my deſired Reſt and Abode, where, within a few Days after, I found a printed Act of Parliament, which thus followeth:

An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel *John Lilburn*.

'WHEREAS, upon the fifteenth Day of *January*, in the Year of our Lord 1651, a Judgment was given in Parliament againſt the ſaid Lieutenant-Colonel *John Lilburn*, for high Crimes and Miſdemeanors by him committed, relating to a falſe, malicious, and ſcandalous Petition heretofore preſented to the Parliament, by one *Joſiah Primate*, of *London*, Leatherſeller, as by the due Proceedings had upon the ſaid Petition, and the Judgment thereupon given at large appeareth: Be it therefore enacted by this preſent Parliament, and by the Authority of the ſame, That the Fine of three thouſand Pounds impoſed upon the ſaid *John Lilburn*, to the Uſe of the Commonwealth, by the Judgment aforeſaid, ſhall be forthwith levied by due Proceſs of Law, to the Uſe of the Commonwealth accordingly. And be it further enacted, That the Sum of two thouſand Pounds impoſed by the ſaid Judgment upon the ſaid *John Lilburn*, to be paid to Sir *Arthur Haſlerig* for Damages, and the Sum of two thouſand Pounds likewiſe impoſed by the ſaid Judgment upon the ſaid *John Lilburn*, to be paid to *James Ruſſel*, *Edward Winſlow*, *William Molins*, and *Arthur Squib*, in the ſaid Judgment named; that is to ſay, to each of them five hundred Pounds for their Damages, ſhall be forthwith paid accordingly: And that the ſaid Sir *Arthur Haſlerig*, *James Ruſſel*, *Edward Winſlow*, *William Molins*, and *Arthur Squib*, their Executors and Adminiſtrators, ſhall have the like Remedy and Proceedings at Law reſpectively againſt the ſaid *John Lilburn*, his Heirs, Executors, Adminiſtrators, and Aſſigns, for the Recovery of the reſpective Sums ſo given to them by the ſaid Judgment, as if the ſaid reſpective Sums had been due by ſeveral Recognizances in the Nature of a Statute Staple, acknowledged unto them ſeverally by the ſaid *John Lilburn*, upon the ſaid 15th Day of *January*, in the Year of our Lord 1651. And be it likewiſe enacted by the Authority aforeſaid, That the ſaid *John Lilburn* ſhall, within twenty Days, to be accounted from the ſaid 15th Day of *January*, 1651, depart out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories, and Dominions thereof: And in caſe the ſaid *John Lilburn*, at any time after the Expiration of the ſaid twenty Days, to be accounted as aforeſaid, ſhall be found, or ſhall be remaining within *England*, *Scotland*, *Ireland*, or within any of the Iſlands, Territories, or Dominions thereof; the ſaid *John Lilburn* ſhall be, and is hereby adjudged a Felon, and ſhall be executed as a Felon, without Benefit of Clergy. And it is laſtly enacted, by the Authority aforeſaid, That all, and every Perſon and Perſons, who ſhall, after the Expiration of the ſaid twenty Days, wittingly relieve, harbour, or conceal the ſaid *John Lilburn*, he being in *England*, *Scotland*, or *Ireland*, or any the Territories, Iſlands, or Dominions thereof, ſhall be hereby adjudged acceſſary of Felony after the Fact. And all Judges, Juſtices, Mayors, Bailiffs, Sheriffs, and all other Officers, as well Military as Civil, in their reſpective Places, are hereby required to be aiding and aſſiſting in apprehending the ſaid *John Lilburn*, and in putting this Act in due Execution.'

Friday, the 30th of *January*, 1651. Ordered by the Parliament, That this Act be forthwith printed and publiſhed.

Henry Scobell, Cleric. Parliamenti.

But the ſaid *John Lilburn* returning to his native Country in *June*, 1653, was apprehended, and committed to *Newgate*, as appears by the following *Mittimus*:

The (illegal) Mittimus *of the Lord Mayor.*

" Whereas it was enacted by a late Act of Parliament, (entitled, *An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel* John Lilburn) That the ſaid *John Lilburn* ſhould, within twenty Days, to be accounted from the 15th Day of *January*, 1651, depart out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories, and Dominions thereof: And that in caſe the ſaid *John Lilburn*, at any Time after the Expiration of the ſaid twenty Days, to be accounted as aforeſaid, ſhould be found, or ſhould be remaining within *England*, *Scotland*, *Ireland*, or within any of the Iſlands, Territories, or Dominions thereof; the ſaid *John Lilburn is hereby adjudged a Felon, and to be executed as a Felon*, as in the ſaid Act was mentioned: And whereas the ſaid *John Lilburn* hath been remaining, and found ſince the Expiration of the ſaid twenty Days, within the Liberties of the City of *London*, in the Commonwealth of *England*, contrary to the ſaid Act: Theſe are therefore, in the Name of the *Keepers of the Liberties of* England, *by Authority of Parliament*, to will and require you forthwith, upon Receipt hereof, to receive into your Cuſtody the Body of the ſaid *John Lilburn*, whom I ſend unto you herewith for the Felony aforeſaid, and him ſafely to keep, until he ſhall be delivered by due Courſe of Law; and this ſhall be your Warrant." Given under my Hand and Seal, dated this 16th Day of *June*, in the Year of our Lord 1653.

To the Keepers of the Gaol of *Newgate*. *John Fowk*, Mayor.

Before the Seſſions began, *John Lilburn* petitioned the Parliament, but they taking no Notice of his Petition, he was brought to his Trial, *July* 13th, as follows:

The Keepers of the Liberties of *England*, by Authority of Parliament, againſt *John Lilburn*, now Priſoner at the Bar.

MR. *Lilburn* was brought to the Bar upon *Wedneſday*, the 13th of *July*, where, after Silence being made in the Court, the Clerk commanded him to hold up his Hand at the Bar: Mr. *Lilburn* applying his Speech to the Lord Chief-Baron *Wylde*, deſired his Honour to explain what was meant by holding up the Hand at the Bar, that ſo by doing that Act, Ceremony, or Form, he might not run himſelf into Snares and Dangers. And after a large Diſpute betwixt the Court and him upon that Point, he ſaith, *Then, my Lord, my Name I muſt acknowledge to be* John Lilburn, *Gent. Son of* Richard Lilburn *of* Thickley-Punchardon, *in the County of* Durham, *Eſq. and I am here ready to anſwer any thing any Man hath to lay to my Charge.* And the Indictment being read, Mr. *Lee*, the Clerk of the Court, demanded of him, whether he was *Guilty, or Not Guilty?* But Mr. *Lilburn*, the Priſoner at the Bar, applied himſelf to the Court, and ſaid,

My Lord Chief-Baron Wylde,

I humbly deſire as my Right by Law, to ſpeak freely againſt the Inſufficiency and Illegality of the Indictment, before I join Iſſue to it. Which being (with a little Struggling) granted him, he ſaid, *Well then, my Lord, now is the Time, or never, for me to aſſign my Errors againſt the Indictment, before I plead to it: For if once I ſhould plead to it, it will then be too late to aſſign the Errors; but if I do it before, then of Right and Juſtice you ought to grant me a Copy of my Indictment, and aſſign me learned Counſel in the Law to conſult with, and a convenient time to return in my Anſwer unto the ſaid Indictment: All which* (ſaid the Priſoner) *is fully declared for good Law by the Lord* Coke, *in his 3d Inſtitute, fol.* 29, 34. 137, 230. *which Book was publiſhed by two ſpecial Orders of the Houſe of Commons in their Virginity and Purity, in* Anno 1641, *and* 1642, *for good Law.* The pregnant and pertinent Paſſages of which Places were diſtinctly read by the Priſoner at the Bar, and preſſed with all the Earneſtneſs and Reaſon he poſſibly could to enjoy the Benefit thereof. And to the Apprehenſion of the Priſoner, and Multitudes of the By-ſtanders, the Court expreſsly ordered, that he ſhould have Counſel aſſigned, and the Copy of the Indictment; but withal, he was ordered under his Hand to ſend in his Exceptions: Upon which the Priſoner was carried into the Garden, on the Backſide of the Court, to draw them up; where, having remained ſome Space, during the dining of the Court, he writ a Letter, the Copy of which thus followeth:

For the Right Honourable the Lord Chief-Baron *Wylde*, and the reſt of the Honourable Bench, theſe humbly preſent.

My Lord, and the Honourable Bench,

'SINCE I departed the Court, I have ſeriouſly conſidered, that I cannot legally make any Exceptions concerning the Errors in the Indictment, without a true Copy thereof, to compare with the Act againſt Lieutenant-Colonel *John Lilburn*, and therefore I humbly pray, that you would be pleaſed ſo far to do me that Right in Point of Life, that I may have a true Copy thereof, and I ſhall ſpeedily preſent my Exceptions under my Hand, and thankfully remain,

' Your Lordſhip's moſt humble Servant,

' JOHN LILBURN.'

Which Letter being delivered by one of the Officers, as the Judge was at Dinner; as ſoon as the Court ſat again, the Priſoner, contrary to his Expectation, was called to the Bar again, and Mr. *Lee*, the Clerk of the Court, preſſed very hard to him to plead to the Indictment, *Guilty, or Not Guilty:* But the Priſoner at the Bar applying himſelf to the Lord Chief-Baron *Wylde*, very much wondered why he ſhould be called to the Bar any more, before he had enjoyed the Benefit of their own Order, for a Copy of his Indictment, and the Aſſignation of learned Counſel in the Law to conſult with. Judge *Warburton* with ſome Heat falls upon the Priſoner, and undervalues the Works of that learned Man in the Law of *England*, Sir *Edward Coke*, and the Parliament's Orders, that had cauſed his ſecond, third, and fourth Part of his Inſtitutes to be printed; and highly extols the Abſoluteneſs of Parliaments. Upon which the Priſoner at the Bar replies with a great deal of Zeal, Earneſtneſs, Reaſon, Underſtanding, and Length of Time. And after a long and tedious Struggling, he could obtain no more that Night, but a lame Order to have Counſel aſſigned him only to one individual Point. And taking out the Order by his Friends the next Morning, being *Thurſday*, *July* 14, 1653, he ſent a Letter to the Court, the true Copy of which thus followeth:

For the Right Honourable the Lord Chief-Baron *Wylde*, and the reſt of the Honourable Bench, for the Gaol Delivery of the *Old Bailey*.

My Lord,

'VOUCHSAFE me Liberty to acquaint you, that immediately upon my getting to my Lodging in *Newgate*, I diſpatched away this Bearer, Mr. *Overton*, with another Friend, to the Court for their Order, which was given unto them; and by it Mr. Serjeant *Glynn*, Mr. Serjeant *Earl*, Mr. *Maynard*, Mr. *Hales*, Mr. *Twiſden*, Mr. *Wylde*, Mr. *Chute*, and Mr. *Norbury*, ſhould be aſſigned of Counſel with *John Lilburn*, Gentleman, to adviſe with him, whether he ſhall inſiſt upon his Plea in Law, or whether he be the ſame *John Lilburn* named in the Act, or not, before ten of the Clock To-morrow in the Forenoon. Sir, the Parties who took the Order, poſted away to ſeek the Counſel, and ſpent ſeveral Hours, but could find none of them but Mr. *Maynard*, who was ſick; and Mr. *Chute*, who was juſt a-going out of Town: And beſides, my Lord, give me Leave to acquaint your Honour, that in a private Way, I have got the Opinion of ſome well verſed in the Law, and really, my Lord, when they read the Order of the Court, and are told, that I cannot get a Copy of the Indictment, they ſtand amazed at it, and know not what to adviſe: Therefore, ſeeing that really and in ſeriouſneſs I have done the utmoſt to get the Advice of Counſel according to the ſaid Order, and cannot obtain it to any purpoſe; neither can thoſe that are willing privately to help me, do me any good (as they ſay) for want of the Copy of the Indictment, which they ſay in Law and Reaſon ought not to be denied to me; therefore I humbly continue my Suit to your Ho-

' nour,

'nour, and the honourable Bench, that you would not require impoſſibi-
'lities from me, that am no Lawyer, in an abſolute unprecedented caſe,
'wherein I have no footſteps at all to tread in, or any other guide to walk
'by, but only the natural reaſon of an ignorant and illiterate Man in the
'practick part of the Law of *England*. And therefore do moſt humbly pray
'and beſeech your Honour, and the honourable Bench, as you are Chriſ-
'tians, and men of honour and conſcience, to afford me a Copy of my
'Indictment, and time till the next Seſſions, to conſult with the Counſel
'that you have aſſigned me: for which favour and juſtice, I ſhall be very
'much obliged to remain,

'*Yours in ſincerity and heartineſs to ſerve you,*

Newgate,
July 14, 1653.

'JOHN LILBURN.'

But for all the aforeſaid Letter, he was called to the Bar upon *Thurſday* in the forenoon, where he again ſtruggled very earneſtly for a Copy of his Indictment, as his right by Law; and the Lord Chief-Baron *Wylde* ſitting upon the Bench, the Recorder and the Priſoner had a long and hot encounter each with other; and about two a-clock in the afternoon the Priſoner was diſmiſſed, with a promiſe of the Copy of his Indictment, being thereupon ordered to bring in his Exceptions by two a-clock the next day in the afternoon: but the Priſoner, ſeveral hours after his diſmiſſion, apprehending himſelf wronged with thoſe delays or denials (of right and juſtice) that were put upon him, writ a third Letter, the Copy of which thus followeth:

For the Right Honourable the Lord Chief-Baron *Wylde*, and the Honourable the Court of Gaol-delivery, ſitting in the *Old-Bailey*, theſe humbly with ſpeed preſent.

'My Lord,

'I STAND amazed when I am denied a Copy of my Indictment, which
'I apprehended the Court granted me at the Bar as my right; I did
'therefore ſend my father and father-in-law, with my brother-in-law, and
'my couſin-german, humbly to deſire it as my right, but they returned me
'your denial of it: in which regard, in all humility, tho' much of my
'time be expired, I have by theſe few lines once again ſent my father and
'brother to wait upon you for a Copy of it (to leave you without excuſe),
'which is my abſolute right by Law; and do therefore humbly intreat you
'it may be ſent to me preſently, without which I am not bound in Law
'to draw up a Plea, nor cannot. But if I muſt be murdered and deſtroy-
'ed without Law, my innocent blood be upon the heads of thoſe that ſhall
'be guilty of it, by will to take it from me. So humbly craving your
'Lordſhip's legal, ſpeedy, and juſt anſwer, I reſt

'*Your Lordſhip's moſt humble Servant, ſo*
'*far as you are a maintainer of the People*
'*of* England's *fundamental Laws and*
'*Liberties,*

Thurſday, *July* 14, 1653.
Paſt 5 a-clock at night.

'JOHN LILBURN.'

But receiving no benefit by the ſaid letter, the next morning, being *Friday*, his father went to the Lord Chief-Baron's Chamber; but he being preparing to go out of Town, he could not be permitted to ſpeak with him. After which, the old Gentleman came back to the *Old-Bailey*, to complain of his ſon's hard uſage; and from them with a meſſenger went back again to the Lord Chief-Baron's Chamber, and from thence to Attorney-General *Prideaux*'s Chamber, to get a Warrant from him to enjoy the Copy of the Indictment: and then coming to the Court again, about ten of the clock he received it from the hand of Mr. *Lee*; the Copy whereof thus followeth:

At the Seſſions of Peace held for the City of *London*, at Juſtice-Hall in the *Old-Bailey*, now ſitting, this preſent 16th day of *July*, 1653.

'*London*, ſſ. THE Jurors for the Keepers of the Liberty of *England*, by
'authority of Parliament, upon their Oaths do preſent, that
'in, and by a Statute made in the Parliament of this Commonwealth of
'*England*, holden at *Weſtminſter*, in the County of *Middleſex*, the 30th of
'*January*, in the year of our Lord, 1651, intitled *An Act for the execution of*
'*a judgment given in Parliament againſt Lieut. Col.* John Lilburn; it was en-
'acted by the ſaid Parliament, and by the authority of the ſame, that the
'ſaid *John Lilburn* ſhould (within twenty days, to be accounted from the
'15th day of *January*, 1651) depart out of *England*, *Scotland*, *Ireland*, and
'the Iſlands, Territories and Dominions thereof. And in caſe the ſaid
'*John Lilburn*, at any time after the expiration of the ſaid twenty days, to
'be accounted as aforeſaid, ſhould be found, or ſhould be remaining with-
'in *England*, *Scotland*, *Ireland*, or within any of the Iſlands, Territories or
'Dominions thereof; the ſaid *John Lilburn* ſhould be, and was thereby
'adjudged a Felon, and ſhould be executed as a Felon without benefit of
'Clergy. And it was alſo enacted by the authority aforeſaid, that all and
'every perſon and perſons, who ſhould, after the expiration of the ſaid
'twenty days, wittingly relieve, harbour, or conceal the ſaid *John Lil-*
'*burn*, he being in *England*, *Scotland*, or *Ireland*, or any the Territories,
'Iſlands, or Dominions thereof, ſhould be thereby adjudged acceſſary of
'Felony after the fact. And all Judges, Juſtices, Mayors, Bailiffs, She-
'riffs, and all other Officers, as well Military as Civil, in their reſpective
'places, are thereby required to be aiding and aſſiſting in apprehending
'the ſaid *John Lilburn*, and in putting the ſaid Act in due execution, as in
'and by the ſaid Act of Parliament appeareth. And that the ſaid *John*
'*Lilburn*, late of *London*, Gentleman, the Statute aforeſaid not weighing,
'nor the Puniſhments therein contained any whit fearing, after the expi-
'ration of the ſaid twenty days, to be accounted from the ſaid 15th day of
'*January*, 1651, as aforeſaid, to-wit, the 15th day of *June*, in the year of
'our Lord, 1653, was found, and was felonioufly remaining within *Eng-*
'*land* aforeſaid; that is to ſay, at *London*, to-wit, in the Pariſh of *Giles*
'without *Cripplegate*, in the Ward of *Cripplegate*, *London* aforeſaid, againſt
'the form of the Statute aforeſaid, and againſt the public peace, *&c.*'

SADLER.

And bringing it to his ſon, who, with the beſt Counſel that he had, reading it, his work was all of-new to begin again; ſo that he was forced firſt to poſt away his own father and others, to let the Court know, that although it was their order in Court, that he ſhould have had the Copy of his Indictment the day before, being *Thurſday*, about two a-clock in the afternoon; yet it was ten a-clock upon *Friday* forenoon, before he could get it. And at two a-clock in the afternoon upon the ſaid *Friday*, he was to appear at the Bar; and all his work, upon the ſerious viewing the Indictment, was to begin a-new, ſo that it was impoſſible that in three or four hours time he could be ready. And therefore his father and Mr. *Overton* preſs'd the Court to give him time till the next morning, being *Saturday* the 16th of *July*, to make his Exceptions ready, and put them in; but it would no ways be granted, nor no longer time than two hours to be added to the former. At the underſtanding of which, he intreated his father-in-law, and Mr. *Thomas Prince*, to go down to the Court again, and tell them that it was altogether impoſſible that the Priſoner could make his Exceptions ready by four a-clock in the afternoon of the ſaid *Friday*, it being ten in the forenoon, before he could get the Copy of the Indictment; although it was their order, that he ſhould have had it by two a-clock in the afternoon the day before: and therefore they preſſed hard at the Bar to the Court, to have till the next morning, being *Saturday*, for the Priſoner to bring in his Exceptions; but they alſo returned with a Negative. The Priſoner and ſuch as he had at work, followed his papers as for their lives; and about ſix or ſeven at night, came the meſſengers from the Court for Mr. *Lilburn* the Priſoner, who being come to the Bar, Mr. *Lee*, the Clerk, preſſed him again to plead *guilty or not guilty* to the ſaid Indictment; but the Priſoner little regarding him, addreſſed himſelf to the Lord-Mayor, as the then Preſident of the Court, and gave him an exact Narrative of what delays he had had about the getting of the Copy of the Indictment; being delayed from two a-clock in the afternoon upon *Thurſday*, till ten a-clock in the forenoon that preſent *Friday*: and that as ſoon as he had got it, he had taken all the pains, and uſed all the induſtry, that it was poſſible to be expected from an ignorant man in the formalities and niceties of the Law of *England*. That he had ſent ſeveral meſſengers truly to acquaint the Court, that he could not poſſibly get the ſaid Exceptions deliberately perfected before the morrow morning, being *Saturday*. That they were weighty things, and the failing in one word, might coſt him his life. That he was (when Mr. *Briſco* came for him) but newly begun to read, examine, and compare the ingroſſed copy with the original, to ſee whether there was any fault in it or no; that he nothing nigh had read over one quarter of it, when he was called away to come to the Court. That he hoped they would not compel him to put in uncorrected Exceptions for his life, eſpecially ſeeing the miſtake of one word might deſtroy him, and eſpecially ſeeing procraſtination of time was no part of his fault, but the Court's only and ſolely, who had cauſeleſsly ſpent ſo much time, before they would give him that, the Copy of his Indictment, which was in Law (he having already made his verbal Exceptions) ſo eſſentially and legally his right, and without which he neither was bound, nor could make legally and formally in Law his Exceptions againſt the Indictment read unto him in Court. And therefore humbly prayed, that he might enjoy the honourable Court's favour till to-morrow morning, to make them ready, and put them in: which being granted, he the Priſoner departed to his lodging, and poſted away to ſeveral of his Counſel, ſome of which coming to him that night, he had a large diſcourſe with them, and they read much of his papers, and very highly approved of his Exceptions; but withal told him, he had fallen far ſhort in demanding his right and due.

So upon *Saturday*, about eight a-clock in the forenoon, he was brought to the Bar again, and he was preſſed again by Mr. *Lee*, to plead, *guilty*, or *not guilty*, to the Indictment.

But Mr. *Lilburn*, the Priſoner at the Bar, regarded not him, but addreſſed himſelf to the Lord-Mayor and the Court, acquainting them where they left off the laſt night; and that in obedience to their commands, he had brought in his Exceptions againſt the ſufficiency of the Indictment read unto him in the Court, fairly ingroſſed in Parchment according to Law, and humbly prayed that it might be accepted, recorded and read: ſo handing it into the Court, the Recorder, Mr. *Steele*, took it in his hand, looked upon it, and ſaid, Mr. *Lilburn*, this is not under your Counſel's hands.

Mr. *Lilburn*. No, Sir, it is not, I am ſure ſome of them tell me it needs not; but it is under my own hand, and I muſt and will juſtify, and make good thoſe Exceptions with my life.

Recorder. Wherefore did we aſſign Counſel? One cauſe was, that they might ſign your Exceptions.

Lilburn. My Lord, with your favour thus; be pleaſed to take notice, that in your aſſigning me Counſel, you have only done it to one individual point; which is not only a ſnare to me, but alſo to my Counſel. *Firſt*, To me, in cooping me up to one plea for my life; whereas the inſufficiency of the Indictment, and the illegal, contradictory things upon which it is grounded, and my right in Law, leaves me ſufficiently at elbow-room to have plurality of Pleas or Exceptions: and therefore in your aſſigning me Counſel in one point only; if they ſhould ſet their hands to any more but that one point alone, they tell me, they run themſelves into ſnares and dangers. But, my Lord, they likewiſe tell me, if you, and this honourable Court, pleaſe to aſſign them of my Counſel at large, they will not only ſign my Exceptions, but will venture their All at the Bar of Juſtice to maintain them to be good Law. And not only ſo, but they tell me, and bid me tell the Court, if I pleaſed, that if they have any underſtanding in the Law, and that their Law-books ſpeak truth, they are very confident that all the Judges and Lawyers in *England*, put together in one, ſhall never be able, while they breathe, to draw up a legal Indictment upon the Act of Baniſhment of the 30th of *January*, 1651, and the Votes or Judgment (as 'tis call'd) of the 15th of *January*, 1651, upon which it is grounded, if theſe printed copies of them be true copies; becauſe, my Lord, they ſay, a judgment, and the execution of a judgment, ought to be like a pair of Indentures exactly even in all things, the one neither to be above nor below the other, but even with it in all circumſtances; but in the pretended judgment, and the Act for execution thereof, there are theſe three eſſential differences:

Firſt, The judgment (as it's called) ſaith, Lieutenant-Colonel *John Lilburn* ſhall be baniſhed and depart out of *England*, within thirty days next after the ſaid 15th day of *January*, 1651; but the Act for executing the ſaid Judgment, expreſsly ſaith, he ſhall not ſtay in *England* above twenty days next after the ſaid 15th day of *January*, 1651: So that, my Lord, here is ten days difference betwixt the

Judgment

Judgment itſelf, and the Act for the pretended execution thereof; which makes an eſſential nullity in it, and all proceedings that are founded upon it.

Secondly, The pretended Judgment baniſheth one Lieutenant-Colonel *John Lilburn* out of *England*, *Scotland*, and *Ireland*, and the Iſlands and Territories thereunto belonging, but baniſheth him not in the leaſt out of their Dominions; ſo that *Wales* being ſtiled, diſtinguiſhed, and denominated in Law to be a Dominion, the ſaid baniſhed Lieutenant-Colonel *John Lilburn*, by any words contained in the ſaid baniſhing Votes or Judgment, might legally and ſecurely have lived in *Wales* all his days. But then comes the ſaid Act of *January* 30th, 1651, which is called An Act for the execution of the ſaid Judgment of the 15th of *January*, 1651, given in Parliament againſt Lieutenant-Colonel *John Lilburn*, and it baniſheth the ſaid Lieutenant-Colonel out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories and Dominions thereof: ſo that here is a main eſſential difference betwixt the pretended Judgment, and the Act for the execution thereof.

The third difference betwixt them is this; the pretended Judgment of the 15th of *January*, 1651, ſaith, That if the ſaid baniſhed Lieutenant-Colonel *John Lilburn* ſhall return into *England*, &c. at any time after the expiration of the ſaid thirty days, he ſhall be proceeded againſt as a Felon, and ſhall ſuffer death accordingly.

But the ſaid pretended Act of the 30th of *January*, 1651, made on pretence for the execution thereof, expreſsly ſaith, by way of addition, that if the ſaid Lieut. Col. *John Lilburn* ſhall return into *England*, &c. after his baniſhment, he ſhall be, and is hereby adjudged a Felon, and ſhall be executed as a Felon, without benefit of Clergy; ſo that, my Lord, they ſay it is impoſſible to draw up a legal Indictment upon the fore-mentioned contradicting Act, Votes, or pretended Judgment.

Mr. *Recorder*. Well then, Mr. *Lilburn*, ſeeing your Counſel are ſo willing, as you ſay they are, to ſign your Exceptions for good Law, the Court will give you time till ſix of the clock at night, to get their hands to it, and will aſſign you Counſel at large. Unto which Mr. *Lilburn* replied, My Lord, I am put upon a great ſtreight.

Firſt, In that the Seſſions are holden a week after they ſhould uſually have been held; by means of which length of time, moſt of the great and chiefeſt, able, and moſt learned Counſel of *England* are gone out of Town.

Secondly, Your Honour and the Court hath exhauſted and ſpent from *Wedneſday* morning till this hour, before you would fully grant me that which is my abſolute right by Law; by means of which delay of time, I am afraid, I have by this loſt all my Counſel, that you have aſſigned me, that I can fully reſt upon, that were in Town, when I named them for my Counſel, and whom, if you pleaſed to have ordered it ſo, I could have often conferred with ſince, though now truly, I am afraid they are all gone out of Town upon the Circuit; and if they be, is it poſſible that I ſhould get their hands to my Exceptions by ſix-a-clock? And therefore that we may delay no longer time in this Trial, I beſeech you, without any more ado, accept of my own Exceptions under my own hand: I am ſure I am the moſt concerned in them, and my life muſt pay for the faults in them, if there be any. And therefore I pray accept of them without any more ado, under my own hand alone: I am ſure my Counſel tell me, you ought in Law to do it.

Recorder. Well, Mr. *Lilburn*, in ſhort, the Court tells you they cannot in Law, nor will not accept them, without your Counſel ſign them.

Lilburn. Really, Mr. *Recorder*, you drive me to very great ſtreights, in delaying me ſo long my right by Law, before you will fully grant it me; it is an apparent hazard, and a very great probability my Counſel are already gone out of Town: and then after you have ſo delayed me, to tie me up to an unneceſſary and unrequired in Law Punctilio, for me to get my Counſels hands to my Exceptions in ſo ſhort a time, when in probability it is impoſſible it ſhall or can be done.

Beſides, my Lord-Mayor, conſider of the inconveniency that Mr. *Recorder* would tie me to, which is this; I ſtand here to plead for my life, and I am commanded to put in my Exceptions againſt the illegality of an Indictment read unto me, and it may be, it is evidently ſeen, known, or at leaſt believed, that I have ſeveral of the now-preſent greateſt men in *England* for my grand and chiefeſt adverſaries; and therefore to tie me up in my caſe at all, to bring in any thing under my Counſels hands, is a ſnare and danger to me: for we all know by experience, my Lord, how eaſy it is for the great men in power, right or wrong, to cruſh and deſtroy any man that they in good earneſt ſet themſelves againſt; and it is apparent their Indignation is heated ſeven-fold againſt me (but I muſt avow it, without any the leaſt juſt ground or cauſe), and it cannot chuſe but burn in a very great degree againſt my Counſellors, that ſhall help me in Law to preſerve my life, againſt their inraged and big-ſwollen malice. And, my Lord, I am ſure, almoſt all thoſe Counſellors that you have aſſigned me, are not only men of great eſtates, but alſo men of great practice, which is their livelihood; and 'tis poſſible my condition, before my Trial is done, will compel and neceſſitate me to ſpeak that high, and yet legal language, that may ruin and deſtroy my Counſel, either to plead it, or ſet their hands to it: and for me to expect or deſire that from them, that ſhall apparently tend to the ruin and deſtruction of them and their families, when I am in ſuch a mean, low, and poor condition, as that I am able in no meaſure in the leaſt to make them any part of amends for that ruin or loſs they ſhall or may ſuſtain, by too deep ingaging for my preſervation, I were an irrational, unjuſt, beaſtly man to do it. My Lord, it is my perſon at preſent now at the Bar, that is in hazard and jeopardy, and none elſe. And, my Lord, I am long ſince robbed of all my eſtate, by the tyrannical will and arbitrary pleaſure of Sir *Arthur Haſlerig*; and have long ſince nothing left to buy me bread, but what I borrow. And, my Lord, I have now nothing to loſe but my Wife and tender Babes, and my ſkin; and to die to me is gain, ſo I be not *felo de ſe*, a murderer of myſelf: and, therefore, I beſeech you, my Lord, let me put in my Exceptions under my own hand.

Mr. *Recorder*. Mr. *Lilburn*, if you be ſo earneſt thus to do, wherefore do you ſo much preſs for Counſel learned in the Law to be aſſigned you?

Mr. *Lilburn*. I will tell you preſently, my Lord: In the *Italian Hiſtory* of a Nobleman of *Italy*, and otherwiſe, I have read and heard of *Guſtavus Adolphus*, that valiant and wiſe late King of *Sweden*; that although he was a moſt expert Soldier, yet in all difficult and knotty enterprizes that he did endeavour to undertake, he would call all his able, diſcreet and underſtanding Officers together. And becauſe, as *Solomon* ſaith, two is better than one, and a three-fold cord is not eaſily broken; he would adviſe and conſult with them all: but yet, being he was, and did apprehend himſelf moſt concerned, and had the far greateſt ſtock to adventure in the affair he went about, he would not abſolutely be tied up in every punctilio to their advice; but being a very wiſe, righteous, juſt, and withal valiant man, it is therefore ſaid of him, when he had heard with mature deliberation all their advices, he would after that, with a ſerious conſultation with his own reaſon and underſtanding, draw his own inferences and concluſions, and with mettle and gallantry put them only in execution. Even ſo, my Lord, my Life being at ſtake, although I have a little competency of underſtanding, and mettle enough to execute a thing; yet being I am ignorant of the punctilios, formalities or practick part of the Law; and being that the Scripture ſaith, *Woe to him that is alone*, for two is better than one, and a three-fold cord is not eaſily broken; on thoſe conſiderations I am deſirous to conſult with learned Counſel in the Law, eſpecially ſince it is my right by Law ſo to do. But I do aſſure you, my Lord, ſeeing God hath endowed me with a good proportion of judgment and underſtanding to diſcern of things, and ſeeing my adventure is abundantly the greateſt, I will not abſolutely be tied up to follow my Counſels advice in all things, neither will I do it, unleſs I like it very well; but in moſt knotty, difficult and high caſes, that is not ſafe for them too deeply to engage in, for fear of their own ruin, and my abſolute inability in any proportionable meaſure to requite them; I will therefore draw my inference and concluſions from their advice and counſel, and manage them myſelf in my own way, for the ſafety and preſervation of my own life. And therefore, my Lord, I pray you again to accept of my Exceptions under my own hand, without any more ado, that ſo we may ſpeedily come to ſome iſſue of this tedious, jangling buſineſs.

Recorder. Mr. *Lilburn*, I tell you again, the Court will not, nor cannot receive your Exceptions without being ſigned by your Counſel; and therefore to enable you to procure their hands, we will give you an order at large, that ſo you may fully be ready by ſix a-clock.

Mr. *Lilburn*. My Lord, I pray deliver the order ſpeedily to my father there in Court, leſt if it be never ſo little delayed, my Counſel be all gone out of Town: which being by the Court aſſented unto, the Copy of the order thus followeth:

"*London*. AT the Gaol-delivery of *Newgate*, *July* 16, 1653. Mr. Serjeant *Glynne*, Mr. Serjeant *Earle*, Mr. *Maynard*, Mr. *Hale*, Mr. *Twiſden*, Mr. *Wilde*, Mr. *Chute*, Mr. *Norbury*, and Mr. *Webb*, are by this Court aſſigned of Counſel, with *John Lilburn*, Gent. to perfect his Plea in Law, and deliver the ſame under the hands of them, or one of them, before ſix of the clock this day in the afternoon." SADLER.

Whereupon the Priſoner withdrew to his lodging, and being brought to the Bar about ſix a-clock at night, Mr. *Lee*, the Clerk of the Court, preſſed very hard to him, to anſwer and plead to the Indictment, *guilty or not guilty*; beſides whom, ſtept up another Gentleman in the Court, and he in a mumbling manner preſt ſomething, as hard as his ſlender abilities would enable him. Whereupon Mr. *Lilburn* demanded to know of the Lord-Mayor, what that newly-come Gentleman was, that was ſo far afraid to ſpeak out his mind, that he could not underſtand what he ſaid. Whereupon anſwer was returned, it was Mr. *Hall*, the Attorney of the Dutchy, who was come thither to be a Proſecutor for the State or Commonwealth.

But Mr. *Lilburn*'s chiefeſt buſineſs being with the Court, he accordingly applied himſelf to the Lord-Mayor:

My Lord, I deſire to give your Honour a true and real account of all my tranſactions, ſince I was laſt before you, which is this: You may remember at my being laſt at the Bar, I told you, I did verily believe my Counſel were all upon the point of going out of Town; in which regard I earneſtly intreated you without more delay to deliver your order to my father, that ſo he might not fall ſhort of getting to my Counſel before they were gone; but, my Lord, at my departure from the Bar, as ſoon as I came to my lodging, I all on poſt-haſte diſpatched my couſin-germans, *George* and *William Lilburn*, to Mr. *Norbury*, who they found juſt ready to mount on horſeback, to be gone out of Town, and acquaint him by word of mouth, with the order the Court had made, to aſſign him my Counſel at large: and he was pleaſed, without any delay, in his riding habit, to haſten to me, and ſeriouſly read over my Exceptions, and ſign them, and ſo bid me farewel, and is gone out of Town. But, my Lord, that which I deſire your Honour to take notice of, is, That if I had ſtay'd till my father came forth of the Court with your order, I had totally loſt Mr. *Norbury*, and he had abſolutely been gone out of Town a good while before he could have got to him.

In the ſecond place, having ſent my ſaid kinſmen poſt-haſte before to my Counſel, as ſoon as my father came with your order, I poſted him and my brother-in-law away to Mr. *Maynard*; with whom ſpeaking at his own chamber, they found him ſickly and ill, and altogether unfit and unable to come to me, by reaſon of that little time he had to ſtay in Town, thoſe ſeveral things he had to do at his chamber during his ſtaying, and the weakneſs of his body, and the abſolute neceſſity of his being at a place by a fix'd hour, or to run the hazard of loſing ſix hundred pound upon his own ſcore: and if you doubt any thing of this relation, they are here in Court to declare the truth of it upon their Oaths themſelves. But, my Lord, though Mr. *Maynard* could not well come to me, yet he was pleaſed to ſtay at his chamber, till my father fetch'd my Papers and Exceptions from me; which, with ſeriouſneſs reading, he hath alſo ſigned them, which I have now in my hand. But, my Lords, from both my Counſellors, eſpecially Mr. *Maynard*, I perceive I am very much blamed for my ignorance and folly, in not, when I demanded the *Copy of my Indictment*, as my right by Law, demanding *Oyer, or hearing in open Court, of the Act of Parliament, the Judgment upon which it is grounded, and the Crimes upon which the Judgment is grounded*; which, I underſtand from them, ſhould be exemplified under the Great Seal of *England*, and ought ſo to be here remaining in Court.

Mr. Recorder replied, Mr. *Lilburn*, we know of no ſuch thing, the Records of the Acts of Parliament are at *Weſtminſter*, in the Clerk of the Parliament's hands, and there you may have them.

Mr. *Lilburn*. Good Mr. Recorder, interrupt me not, but let me go on; I ſay, my Counſel tells me, I ought, as my right by Law, to have demanded *Oyer of the ſaid Act, Judgment and Crimes*, and after I had ſeen them under the Broad Seal of *England*, and heard them read in open Court, I ought, as my right by Law, to have demanded copies of them all three, and they ought not to have been denied me; that ſo I might have been fully enabled all at once to have returned Exceptions at large to the Indictment, the Act upon which it is grounded, the Judgment upon which the Act is grounded, and the Crimes, which is the original of all. And if no legal Act can be produced, they tell me the Indictment, and all proceedings upon it, are void and null. And they alſo ſay, if no legal Judgment can be produced, they tell me the Act for the execution of it is null, and falls to the ground. And they alſo ſay, if no Crimes in Law can be produced upon which the Judgment is legally founded, all is at an end, becauſe what is not good nor ſound in its original in Law, can never be made ſo by tract of time; and what is not ſound and ſubſtantial in its foundation, can never be made ſo in its fabrick or building. But yet, my Lord, they ſay it is not too late for me yet to inſiſt upon the *Oyer* as my right by Law: I confeſs, my Lord, their time would not permit either of them to ſtay in the Town, to draw me up the formal draught of ſuch a claim, much leſs would it permit them to ſtay in Town till it was engroſſed in parchment, that ſo they might ſet their hands unto it. But, my Lord, according to thoſe legal inſtructions that I have largely received from my Counſel, I have got ſuch a Paper formally in Law drawn up, and it is here ingroſſed in Parchment, and ſigned with my own hand. And, my Lord, I here tender it unto the Court, with two ſhillings as the Clerk's fee, to enter it upon Record at his peril. The Copy of which Parchment thus followeth:

At the Seſſions of Peace held for the City of *London*, at Juſtice-Hall in the *Old-Bailey*, now ſitting this preſent 16th day of *July*, 1653.

The Keepers of the Liberties of England, *by Authority of Parliament, againſt* John Lilburn, *now Priſoner at the Bar.*

THE ſaid *John Lilburn*, Gent. the now Priſoner at the Bar, ſuppoſed to be indicted by that name, brought to the Bar, and now appearing in perſon, having heard the ſaid Indictment read in theſe words, to wit:

London ſſ. The Jurors for the Keepers of the Liberties of *England*, by authority of Parliament upon their oaths do preſent, that in and by a Statute made in the Parliament of this Commonwealth of *England*, holden at *Weſtminſter* in the County of *Middleſex*, the 30th day of *January*, in the year of our Lord 1651, intitled, *An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel* John Lilburn; and it was enacted by the ſaid Parliament, and by the authority of the ſame, That the ſaid *John Lilburn* ſhould (within twenty days, to be accounted from the 15th day of *January*, 1651), depart out of *England*, *Scotland*, *Ireland*, and the Iſlands, Territories, and Dominions thereof. And in caſe the ſaid *John Lilburn*, at any time after the expiration of the ſaid twenty days, to be accounted as aforeſaid, ſhould be found, or ſhould be remaining within *England*, *Scotland*, *Ireland*, or within any of the Iſlands, Territories, or Dominions thereof; the ſaid *John Lilburn* ſhould be, and was thereby adjudged a Felon, and ſhould be executed as a Felon, without benefit of Clergy.

And it was alſo enacted by the authority aforeſaid, That all and every perſon and perſons, who ſhould, after the expiration of the ſaid twenty days, wittingly relieve, harbour, or conceal the ſaid *John Lilburn*, he being in *England*, *Scotland*, *Ireland*, or any the Territories, Iſlands, or Dominions thereof, ſhould be thereby adjudged acceſſary of Felony after the fact. And all Judges, Juſtices, Mayors, Bayliffs, Sheriffs, and all other Officers, as well military as civil, in their reſpective places, are thereby required to be aiding and aſſiſting in apprehending the ſaid *John Lilburn*, and in putting the ſaid Act in due execution, as in and by the ſaid Act of Parliament appeareth. And that the ſaid *John Lilburn*, late of *London*, Gentleman, the Statute aforeſaid not weighing, nor the puniſhments therein contained any whit fearing, after the expiration of the ſaid twenty days, to be accounted from the ſaid 15th day of *January*, 1651, as aforeſaid; to wit, the 15th day of *June*, in the year of our Lord 1653, was found, and was feloniouſly remaining within *England* aforeſaid; that is to ſay, at *London*, to wit, in the Pariſh of *Giles* without *Cripplegate*, in the Ward of *Cripplegate*, *London* aforeſaid, againſt the form of the Statute aforeſaid, and againſt the publick Peace, *&c.*

SADLER.

Which being heard and read, he ſaith, that it appears by the ſaid Indictment, that he ſtands indicted by the name of *John Lilburn* of *London*, Gentleman, by virtue of an Act of Parliament made the 30th day of *January*, 1651; grounded upon a ſuppoſed Judgment given in Parliament againſt him the ſaid *John*, or one Lieutenant-Colonel *John Lilburn*, for ſeveral crimes and miſdemeanors therein contained. And therefore he the now Priſoner at the Bar, doth humbly pray *Oyer*, or hearing of the ſaid Act, Judgment, and ſuppoſed Crimes mentioned in the ſaid Act, according to Law, and under the Great Seal of *England*, to enable him to plead thereunto. And he will ever pray for your Honours and Bench.

JOHN LILBURN.

Which being handed into the Court, Mr. Recorder looked upon it, and ſaid, Mr. *Lilburn*, this is not ſigned under your Counſel's hand; the thing that we expect is, your Exceptions ſign'd by your Counſel: what call you this Parchment?

Mr. *Lilburn*. I know not, Sir, what more properly to call it, than my legal demand of *Oyer*, or hearing in open Court the Act of Parliament upon which the Indictment is grounded, and the Judgment upon which the Act is grounded, and the Crimes which is the foundation of all. And, Sir, let me tell you, my Counſel commands me to inſiſt, and dwell upon the demand of *Oyer* as my right, and as the chiefeſt ſhield and buckler I have to defend my life: for they ſay, if no legal crimes can be produced upon which the Judgment was grounded, all is at an end, and there can be no more proceedings againſt me. And I am ſure, there can be no felonious crimes in Law produced againſt me, for I never committed any in all my days, never was any legally ſo much as pretended to be laid unto my charge: therefore, my Lord, as my Birthright, and Inheritance, I demand the benefit of the Law, which is *Oyer*, or hearing of the Act, Judgment, and Crimes. But the Recorder, the Lord Mayor, and ſeveral others endeavoured to interrupt him.

Whereupon he cried out again and again, My Lord, Rob me not of my Birthright, the benefit of the Law, but let me have *Oyer*; which again and again I demand as my right, and inheritance. But four or five in the Court again interrupting him, *viz.* the Lord-Mayor, Mr. Recorder, Mr. Attorney-General *Prideaux*, and mumbling Mr. *Hall*; My Lord, Rob me not of my Birthright, the benefit of the Law, nor interrupt me not, but give me free liberty to ſpeak for my life. And, my Lord, if you will be ſo audacious and unjuſt in the face of this great auditory of People, to deny me, and rob me of all the rules of Juſtice and Right, and will forcibly ſtop my mouth, and not ſuffer me freely to ſpeak for my life according to Law, I will cry out and appeal to the People, and do cry out, and appeal to all the People that hear me this day, how that my Lord-Mayor, and this Court, by violence rob me of my Birthright by Law, and will not ſuffer me to ſpeak for my life. At which the Court being in a great heat and rage, Mr. Recorder ſent the Priſoner his parchment, and money out of the Court again; but he would have none of it, but commanded the Clerk again to receive it, and enter it upon Record at his Peril.

Mr. Attorney-General *Prideaux* being very buſy to hold the Priſoner to queſtions to inſnare himſelf, as whether he was that *John Lilburn* meant, and intended in the Indictment and Act, or no, and to ſtave him off from purſuing his juſt demand of *Oyer*; which the Priſoner perceiving, falls upon the ſaid Mr. *Prideaux* to this effect:

My Lord,

I had thought the other day I had ſaid enough to have ſilenced that Gentleman at this place; but, my Lord, ſeeing he will needs be doing, and ſpeaking, I beſeech you, my Lord, let me deſire to be ſatisfied, and to know in what capacity that Gentleman is here at this place; for I am ſure, my Lord, he is no Judge of the Law, nor no Citizen, and therefore cannot, as a Juſtice of Peace, ſit upon the Bench as one of my Judges. And, my Lord, if he be my proſecutor, as he is Attorney-General, he can be no more; and if ſo, my Lord, it is an amazement to me, that your Lordſhip and the Court will ſo diſhonour yourſelves, as to ſuffer a bare Proſecutor to ſit amongſt you upon the Bench, as one of the chiefeſt of you, with his hat on his head. My Lord, do that which becomes you, and thruſt him down to the Bar, and there let him (as I do) ſtand with his hat in his hand, and know his office and duty, and prate there. But, my Lord, whether he ſits as my Judge, or my Proſecutor, he is no competent man to be in either place; becauſe, my Lord, he is legally an impeached Traitor, by one Eſquire *Elliot*, now Priſoner in *Newgate*; who, my Lord, avows to me, that he hath long ſince, before the Lord Chief-Juſtice *Rolls*, and the reſt of the Judges of the Upper-Bench, legally and formally in Law exhibited a charge of High-Treaſon againſt him; which he avows the Court hath accepted of, and recorded as formal in Law, and required of him to enter into great bonds to proſecute it, and make it good: and, my Lord, here is a duplicate of the ſaid charge of High-Treaſon, which the Eſquire's own hand gave unto me as a true copy. And beſides, my Lord, he further vows to me, that the Attorney-General, by reaſon of his late power and greatneſs in Parliament, the ſaid Attorney-General ſtands out in contempt, and ſcorn of the law, and neither will, nor dare anſwer his ſaid charge of High-Treaſon; in which regard of his contempt of the Law of *England*, through his own acknowledged guilt thereby, he hath almoſt brought him at Law to be outlawed as a Traitor: which he avows, as ſoon as it is perfected, whenever he can meet the ſaid Attorney-General, and apprehend him, he will without any more ado execute him as a Traitor.

In all which regards, my Lord, I do avow Mr. Attorney-General, in Law, to be altogether uncompetent, either for my Judge, or Proſecutor, or any man's elſe whatſoever; or ſo much as to be at liberty, to converſe with the honeſt and untainted People of *England* till he hath yielded conformity to the Law, and anſwered to his ſaid charge of High-Treaſon. Unto which Mr. Recorder ſeemed to make ſome anſwer in the Attorney-General's behalf (which the penman hereof not well hearing, cannot ſet down).

But Mr. Recorder fell upon the Priſoner, and told him how he had trifled away the time of that Court, and had had more favour than any Priſoner ever had.

Mr. *Lilburn* endeavouring to reply, the Court over and over again and again interrupted him; but he would go on, and crying out ſaid to this effect: Mr. Recorder, I wonder you are not aſhamed to tax me with trifling away time, when it is only yourſelf and the Court that are truly guilty of it, in making me ſpend my lungs and my ſpirits for two or three days together, to plead and conteſt with you, before you would grant me that which is ſo abſolutely my right by Law, as a Copy of my Indictment is: ſo that, Sir, with your favour, it is you that trifle away time, and not I. And whereas you ſay, I have had more favour than ever Priſoner had; I wonder, Mr. Recorder, you are not aſhamed ſo to ſay: for what favour at all have I had, when I have not yet enjoyed ſo much as the Law allows me? Sir, let me tell you, the learned men of the Law, the Lord Chief-Juſtice *Rolls*, and the Judges of the King's or Upper-Bench, allowed the Lord *Macguire*, that arch bloody *Iriſh* Rebel and Traitor, who was indicted before them for his life, a thouſand times more favour than you do me: for although his crimes were notoriouſly wicked, even in the eye of the common or known Law of *England*, and obvious and perſpicuous almoſt to the ſight of every eye; yet when he made, as my information hath often told me, but one ſingle exception in a punctilio, or formality about his Peerage, againſt his Indictment, the Judges aſſigned him learned Counſel in the Law to plead it, and time enough for him and them to ſtudy and frame their Arguments in Law upon it.

Mr. *Recorder*. Mr. *Lilburn*, you tell us much of the advice your Counſel has given you about the *Oyer*, can you ſhew us their advice under their hands?——*Lilburn*. Yes, Sir, that I can.

Recorder

Recorder. Well, produce it.

Lilburn. Sir, do ye mean to the point of the *Oyer?*

Recorder. Yes.

Lilburn. Well then, Sir, it may be as to the punctilio of a word I have miſtaken you; but I am ſure I have it under one of their hands, and two Witneſſes at the Bar to depoſe it upon Oath, that the other expreſly adviſed it, as the main eſſential thing to my life and well-being.

Recorder. Mr. *Lilburn*, for all your pretence of integrity, the auditors may take notice, that you aver a falſhood in the open Court that you are not able to make good.

Mr. *Lilburn.* In the midſt of thoſe many and eager interruptions that I meet with from three or four of you at a time, it is eaſy for a ſtronger memory than mine, to let a ſlip fall in the punctilio of a word; but, Sir, to the utmoſt of my diſparagement, and diſadvantage, make the worſt of it you can; and ſee what it can amount unto. For in the firſt place, I do avow with my life, that I ſaw Mr. *Norbury*, with his own hand, write theſe very words upon the back of the Copy of the Indictment, which is here in my hands, and are as followeth:

Mr. Lilburn *ought to ſee the* Certiorari, *and the Return of the* Certiorari; *and if the Act be certified without the Judgment, which is recited therein, all is invalid for the Commonwealth.*

Mr. *Steele* was pleaſed to ſpend ſome time upon cavilling at Mr. *Lilburn*'s miſpronouncing the word *Certiorari*; although he had formerly told the Recorder, he neither underſtood *Latin*, nor *French*, nor could well read either of them. And then he told them, that moſt Lawyers hands were very ill to read by perſons that were not well acquainted with them; but, Sir, ſaith he, here is Mr. *Norbury*'s own hand, and I do avow it upon my life for a truth, that my eyes ſaw his own hand and pen write it.

Secondly, If my memory miſtake not, I have Mr. *Maynard*'s hand to the ſame thing alſo: in thoſe inſtructions that Mr. *Maynard* under his hand ſent me, by my father and brother this day, both of whom are here preſent in Court, upon their Oaths to juſtify, that if it be not plainly expreſſed under his hand, that by word of mouth, it was the principal inſtruction he gave unto them, to give unto me to inſiſt upon, as my right, to demand the *Oyer*, *&c.* But, Sir, as for the paper itſelf, there it is, read it; which paper followeth in theſe words:

It ſaid, that John Lilburn *the 15 h of* June 1653, *was found, and was feloniouſly remaining in* England. *This is inſufficient, for it is not ſaid that he was feloniouſly found; ſo that the being found in* England *is not laid within the Indictment.* Secondly, *And was feloniouſly remaining; it ſhould be ſaid, was then and there feloniouſly remaining. So there is no Felony charged in his being found. There is no time charged of that which is laid as a Felony.* John Maynard, *the 16th of* July 1653.

And by way of poſtſcript in the ſame hand, there are theſe words, *That the Priſoner at the Bar is to deſire, that he may have Counſel to plead his Exceptions.* And in the ſame paper, in ſomewhat a different hand, there are theſe very words, *I pray the Oyer of the Act of Parliament the Indictment is grounded upon; pray enter it upon Record, accept of no Copy but the ſight of the Record under the Broad Seal.* Which paper the Recorder reading, and ſeriouſly viewing, ſaid, Mr. *Lilburn*, this paper will not reach your purpoſe; for thoſe lines that ſeem to be Mr. *Maynard*'s, are not home to the thing in hand, and thoſe lines that are for your purpoſe are in a quite different hand.

Mr. *Lilburn.* Well, Mr. *Recorder*, it matters not much, for I am ſure the paper is not in the leaſt of my writing; for I had it as it is from my brother, that I ſent to Mr. *Maynard* with my father about my buſineſs, and I am ſure it either all is Mr. *Maynard*'s hand, or my brother's; who writ down from the words of Mr. *Maynard*'s own mouth, thoſe inſtructions that he gave unto him and my father for me to dwell and inſiſt upon, and to venture and caſt my life upon. There they both are, I pray adminiſter unto them both their Oaths, that they may freely ſpeak before the Court, what Mr. *Maynard* ſaid unto them in this particular point about the *Oyer*, &c.

Whereupon old Mr. *Richard Lilburn*, the Priſoner's father, with his ſon-in-law Mr. *Thomas Gore*, began to ſpeak, and to juſtify what the Priſoner had alledged; but the Court interrupted them, and commanded them to be ſilent, and would not let them go on. But Mr. *Recorder*, taking liberty to ſpeak as long and as often as he pleaſed, took the liberty ſeveral times to calumniate, and render odious the Priſoner at the Bar, for averring a falſhood in the open Court; and ſo ſometimes did the Lord-Mayor alſo, although his Honour was pleaſed to ſhew Mr. *Lilburn* a printed Petition a day or two before, and did ſolemnly in the face of all the Court aver, that the Woman, pointing to Mrs. *Dormer*, then a Priſoner at the Bar, had avowed that ſhe had the ſaid printed Petition, and others of the ſame kind, from Mr. *Lilburn*. Upon which the ſaid Mrs. *Dormer* openly cried out, That's falſe, my Lord, I never ſaid any ſuch thing in my life.

Upon theſe furious hurley-burleys, that happened betwixt the Lord-Mayor, Mr. Recorder, the Attorney-General, and mumbling Mr. *Hall* the Attorney of the Dutchy, and Mr. *Lilburn* Priſoner at the Bar; Mr. *Lilburn*'s father, and his brother-in-law Mr. *Gore*, and one Mr. *Thomas Haws*, but eſpecially Mr. *Thomas Prince*, preſſed to ſpeak; but could not be permitted, but were again and again interrupted and ſilenced.

But Mr. *Prince* preſſed hard on, and told the Lord-Mayor to this purpoſe; That it was the known Law of *England*, that any by-ſtander whatſoever might ſpeak for the Priſoner's benefit at the Bar, eſpecially when they apprehended the Priſoner was like to be wronged, and denied his birthright, the benefit of the Law; and this privilege, my Lord, by order of the Court, you have granted me, and other of Mr. *Lilburn*'s friends as our right by Law, to ſpeak in his behalf, when we ſee things urged againſt him againſt reaſon and right; and therefore, my Lord, the thing that Mr. *Lilburn* demands about his *Oyer*, or hearing read the Act of Parliament, upon which the Indictment is grounded, and the Judgment upon which the Act is grounded, and the crimes that ought to be the original of all, is ſo eſſentially his right, that it is an amazement to me to ſee it diſputed: and alſo it is a wonder to me, that any man that pretends ſo much as to know the very firſt Rudiments, or the very firſt footſteps of the Law, as Mr. Recorder doth, ſhould endeavour to deny ſuch a thing ſo commonly practiſed in every ordinary Court of Juſtice, in the caſe of every ordinary Bond and Bill that a ſuit is commenced upon.

The Court with violence and fury interrupting him, and ſilencing him; and Mr. Recorder commanding the Priſoner at the Bar at his peril to deliver in his Exceptions before it was too late to receive them, and Mr. *Hall* mumblingly preſſing again and again to paſs ſentence of condemnation upon him; and the Attorney-General upon the Bench cloſely preſſing to hold him to the point, and not let the Priſoner have any elbow-room to go from it; and Mr. *Lee* the Clerk of the Court, (like a moſt deteſtable Tyrant) preſſing to gagg the Priſoner at the Bar, that ſo he ſhould ſpeak no more, and immediately paſs ſentence of condemnation upon him, and take him away: the Priſoner clearly perceiving the violence and fury of the Court, with an extreme, earneſt, ardent and fierce, and ſhrill, loud voice, cried out;

My Lord, will you murder me without right of Law, by robbing me of my Birthright, and denying me of *Oyer*, which is as much my right by Law, as the blood that runs in my veins? My Lord, are you afraid, and aſhamed to produce that *Act of Parliament* upon which you pretend to ground your Indictment, upon which you would take away my life? My Lord, if you thus proceed, you will give me and the people cauſe to believe, that there never was ſuch an Act of Parliament as you pretend, nor ſuch a Judgment as it pretends to be the executor of; nor no ſuch crime ever committed or acted, as any Judgment of Felony can be imagined to be grounded upon; but that rather all your proceedings againſt me, from firſt to laſt, is a malicious pack'd conſpiracy againſt me to murder me, and without ground or cauſe to take away my life. For whoſe life have I felonioufly taken away, or endanger'd? And if none of all theſe things in the leaſt can be laid unto my charge, or never were, where is the act of Felony that I have committed, upon which I am endeavoured to be hanged?

But the Officers crying out, *Hear the Court*; and the ſaid mumbling Mr. *Hall* ſtill ſinging his pitiful ill-tuned ſong of preſſing for Judgment againſt the Priſoner; and ſo many of the Court fell upon him at once, to deliver in his Exceptions before it was too late, as made the proceedings of the Court full of confuſion.

Mr. *Lilburn.* My Lord, I may not part with my Exceptions till my demand of *Oyer* be read. My Lord, my able and honeſt Counſel, both of them, in both of whom I have found a great deal of faithfulneſs and truth to me, have commanded me to dwell upon my demand of *Oyer*, as upon my life, and as upon a thing that is my undoubted right by Law, that cannot, nor ought not to be denied me. My Lord, the ſecurity of my life lies in it; and if it be granted me, I am for ever out of all danger of gunſhot, becauſe it is poſſible you cannot produce one line of a legal Act of Parliament, nor one ſyllable of a legal Judgment, nor, I am ſure of it, ſo much as any ſhadow of pretence of a legal crime of Felony to be the foundation of all: and if ſo, they tell me abſolutely all your proceedings againſt me are at an end, and I am ſafe and ſecure. Therefore, my Lord, I again and again preſs, to leave the Court without excuſe, and do demand before all theſe people *Oyer*, or hearing of the Act, Judgment and Crimes, upon which your Indictment is grounded, as a thing that is as much my right by Law, as the blood that runs in my veins: therefore, my Lord, deny it me not.

Mr. *Lilburn*, ſaith the Recorder, *it is late*, and *we cannot ſpend much more time about your buſineſs; and the Court hath already told you, they neither will nor can receive in your parchment for* Oyer, *without your Counſel ſign it.*

Mr. *Lilburn.* Alas, Sir, I have dealt faithfully and truly with you, and told you, that it is drawn up by their inſtructions: but really and truly they were both gone out of *London*, before pen could be put to paper to draw the rough draught of it; and therefore it was impoſſible to get their hands to the ingroſſed copy. Wherefore I beſeech the Court to give me time but till *Monday* morning, and I will ſend after them for their hands; and engage not only to get their hands to the parchment, but to bring one or both of them to this Bar, to juſtify their inſtructions to me, and that their inſtructions are Law. Therefore, my Lord, be pleaſed to grant me but till *Monday* morning, and I will have them here, although I borrow money to ſend two Coaches with ſix horſes a-piece to fetch them back.

Lord-Mayor. *No, the Court breaks up to-night, and therefore we cannot give you till* Monday.

Recorder. *Mr.* Lilburn, *ſeeing you inſiſt ſo ſtiffly upon it for your* Oyer, *I will tell you what we will do with you: put in your Exceptions to-night, which you have under your Counſel's hands, and the Court will aſſure you that in caſe your Counſel at our next meeting about your buſineſs, will avow that your parchment for the demand of* Oyer *is Law, we will grant it you; and your putting in your Exceptions now, ſhall be no prejudice to you in any kind.*

Mr. *Lilburn* endeavouring to ſpeak, to cloſe with him, ſeveral of his honeſt and true friends that ſtood by him, cried out, there was a ſnare laid for him, and bid him rather die than go an inch from his Counſel's honeſt, juſt, and ſafe inſtructions. At which the Court grew very angry, and judgment again began to be preſſed againſt the Priſoner at the Bar: and the Court required the Exceptions, without any more ado, to be delivered in.

Mr. *Lilburn.* Well then, my Lord, ſeeing I have done my utmoſt to obtain my right by Law, which is to have the *Oyer* of the Act, Judgment, and Crimes, upon which the Indictment is grounded, and it will not be granted me, but the Court hath over-ruled me; therefore, my Lord, to let all the world know that I am no baffler, nor procraſtinator of time, nor have any thing of guilt, fear, or dread within me, although it be never ſo much to my wrong, and tend never ſo much to my apparent diſadvantage or my ruin, I will cloſe with Mr. Recorder, and immediately deliver in the Exceptions that I have in my hand already, ſigned by my Counſel, as a part of my Exceptions; provided he will diſtinctly repeat over the promiſe of the Court, and enter it upon record in the Court's Books, and order the Clerk immediately to draw up an order upon it, as large as it is in itſelf, and give it me legally ſigned before I ſtir from the Bar.

No, ſaith Mr. Recorder Steele, *Mr.* Lilburn, *the doing of that that you require, would take up too much time, and therefore the Court cannot do it: but they will make good what I have ſaid unto you.*

Whereupon, Mr. *Lilburn* repeated what Mr. Recorder (in the name of the Court) had promiſed, and ſaid, Sir, is not this that the Court will ſtand to? Yes, ſaith the Recorder. Then, Sir, I beſeech you, in the audience of all theſe people, (that they may bear witneſs) repeat it over again yourſelf.

yourſelf. Which he did: and Mr. *Lilburn* cloſed with him, and accordingly delivered in his Exceptions.

And at his coming to his Lodging, ſome of his friends drew up the promiſe of the Court in writing, and ſet their hands to it; which thus followeth:

That if Mr. Lilburn *would deliver in the copy of his Exceptions, the not granting at this time his* Oyer *ſhould be no prejudice to him.* And further, *That the Court was to conſider of a time to have the Exceptions debated by Counſel: and if the Counſel of* John Lilburn, *Gentleman, when they came to plead to the Exceptions, conceived it neceſſary and right to have the* Oyer, *that then it ſhould be granted him, before any proceeding upon the Exceptions ſhould be, as if the Exceptions were not delivered into the Court.*

Witneſs, Richard Lilburn, George Wade, Thomas Webbe, George Lilburn, *jun.* William Lilburn.

Mr. *Lilburn*. My Lord, I here deliver your Lordſhip and this honourable Court, part of my Exceptions under my own and my Counſellors hands: but, my Lord, I have many more to make, when I ſhall hear the *Oyer*, and have copies of the Act, Judgment, and Crimes, according to my right, that your Indictment is grounded upon. And then ſpoke as follows:

My Lord,

I Have given into the Court my demand for *Oyer*, fairly ingroſſed in parchment under my hand, and part of my Exceptions againſt the Indictment, which are very difficult points in Law, and beyond my reading and ſkill fully to argue, and therefore I muſt depend upon my learned Counſel for that.

It was never denied the worſt of Traitors to have copies of their Indictments, and Counſel to argue the points of Law for them. The Lord *Macguire*, the great bloody Rebel of *Ireland*, indicted for Treaſon lately at the Upper Bench, had his Counſel to argue before the learned Judges thereof, when he was indicted for High-Treaſon, and ſpent much time only about his title of Baron. Duke *Hamilton*, Lord *Capel* of late, and the Lord *Caſtlehaven* formerly, were never denied it, nor the Earl of *Straffford:* yet all theſe perſons were tried for facts that were crimes in the Common Law, for treachery, and bloodſhed, and foul offences, ſuch as the Law of Nature forbids and abhors (and had Laws made before their facts to be their guide). But my only crimes are, that my name is *John Lilburn*, and that I am in *England*, my native country: and the matter of Law that roſe in their caſes, was only upon the formality of the Indictment of charges againſt them, and conſequently leſs need of ſerious arguments in Law; yet the Law is ſo tender of blood and life, that it takes away no advantage from any man whoſe life is in queſtion or danger.

But, my Lord, I beſeech you conſider the difficulty of my caſe; the very crimes whereof I am accuſed, have no foundation in the Common Law, I am only accuſed for being in my native country; and the pretended Law againſt me lays no crime to my charge: I have wronged no man in his property; I have deſigned no evil againſt my country; I have hurt no man in his liberty, nor life, nor member.

The very crime laid to my charge, may be called a point of Law: it is ſuppoſed to ariſe upon the breach of a pretended Act of Parliament, ſo that it is not in matter of form, or in the formality, or nicety of proceedings againſt me, that the point in Law ariſes in my caſe: it is about the nature of the crime itſelf whereof I am accuſed, and therefore Counſel learned in the Law is more neceſſary in my caſe, deliberately and maturely to argue it before all the learned Judges of the Law in *England*, than in any caſe that hath been tried in *England* this five hundred years: here is no light to lead my Judges in their judgment, but the very light of the Law itſelf, being a ſtrange kind of ſingle Act made in a ſtrange kind, or unknown and unheard-of manner. Here is no precedent, no example to help them: the like caſe, I dare avow it, was never tried in *England* before, and all *England*, and their poſterities, yea the babes in their mothers wombs, are concerned in the event of my Trial. Whatſoever is the iſſue of my Trial, will hereafter be drawn into a precedent, either for the good or evil of all the people of *England*. Beſides, the ſhedding of my blood without cauſe or reaſon, muſt needs bring guilt, puniſhment, and miſery upon the cauſers and permitters thereof. Remember righteous *Abel*'s caſe, *Naboth* and *Uriah:* therefore I hope much caution will be uſed in determining the difficult points of Law in my caſe. My Lord, not for my own ſake, for the ſparing of my blood, though I am bound to preſerve it, if I can, by the great Law of Nature; yet, my Lord, if my life were only at the ſtake, I could contemn it, if I ſaw my contempt of it might ſerve my Country, and reſtore it to its liberty and freedom. But when the liberties of millions of perſons already in being, and yet unborn, which conſiſt and ſubſiſt in being ruled by written Laws and Rules; when theſe are at the ſtake, I hope the difficulties of the Law in this caſe, ſhall be ſeriouſly weighed, and ſolemnly debated by the moſt experienced men in the Law in the whole Nation.

The Copy of the fore-recited Exceptions thus followeth:

The Exceptions of *John Lilburn*, Gent. Priſoner at the Bar, to a Bill of Indictment preferred againſt him, grounded upon a pretended Act, intitled, *An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel* John Lilburn; which Judgment is by the ſaid Act ſuppoſed to be given the 15th day of *January*, 1651.

THE ſaid *John Lilburn*, Priſoner at the Bar, ſaith, That the ſaid Indictment is inſufficient, in the Law, in matter, ſubſtance and form. And he humbly offereth theſe Exceptions following againſt the ſame.

Exception 1. For that the ſaid Indictment is grounded only upon an Act intitled, *An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel* John Lilburn. And it doth not appear, either by the title of the ſaid Act recited in the Indictment, or by any thing contained in the ſaid Act, that either the ſaid Act itſelf is an Act of the Parliament of the Commonwealth of *England*, or of the Parliament ſitting at *Weſtminſter*; or that the ſaid ſuppoſed Judgment, for the execution whereof the ſaid Act is ſuppoſed to provide, was given in the Parliament of the Commonwealth of *England*, or in the Parliament ſitting at *Weſtminſter*; nor yet when the ſaid Parliament did commence or end, or whether the ſame was held by prorogation or otherwiſe. And it is evident in Law, that no Law could at that time be made, but by the Parliament of the Commonwealth of *England*; for by the Law then in being, the power of making Laws was only in thoſe perſons which were known and diſtinguiſhed by that title of the Parliament of the Commonwealth of *England:* and in that name only Addreſſes were made to them, both by the people of *England*, and by all foreign States and Princes, and all Addreſſes refuſed that wanted that title. Now for aught that appears in the ſaid Act, whereupon the ſaid Indictment is grounded, it may be as well an Act of Parliament in *France*, or *Scotland*, or *Naples*, as an Act of the Parliament of the Commonwealth of *England*; ſo that it doth not appear, that the ſaid Indictment is grounded upon any Law of *England*; or that *John Lilburn*, Priſoner at the Bar, is indicted for any fact that is a Crime by any Law of *England*, and then the ſame is void in Law.

Exception 2. The ſaid Indictment is grounded upon the fore-recited Act, intitled, *An Act for the Execution of a Judgment given in Parliament againſt Lieutenant-Colonel* John Lilburn; and ſo relates only to ſome Judgment ſuppoſed to be given in Parliament againſt the ſaid Lieutenant-Colonel *John Lilburn*; and if no ſuch Judgment were given, the Act were void, and the Judgment alſo. Now it doth not appear that any Judgment, for any Crime whatſoever, was given in Parliament againſt the ſaid Lieutenant-Colonel *John Lilburn*. 1. Before any Judgment can be given in Law againſt any *Engliſhman*, for any Crime, there muſt be either an Indictment, Preſentment, or ſome Information or Accuſation againſt him, to that Court that judgeth him, for ſome Crime ſuppoſed to be committed by him. 2. The party accuſed muſt either appear before that Court, or be out-lawed for not appearing. 3. If the party appears, he muſt either confeſs the Crimes or Miſdemeanors whereof he is accuſed, or elſe plead to the Indictment, Preſentment, or Information, or Accuſation againſt him, and come to Trial thereupon. And as ſome of theſe ought in Law to precede a Judgment againſt any *Engliſhman*, ſo alſo ſome of theſe afore-mentioned proceedings, in order to a lawful Judgment, ought to be entered upon ſuch Record, wherein any ſuch Judgment is entered; and unleſs it doth appear upon the Record, wherein any Judgment is entered againſt any *Engliſhman* for any Crime, that ſome ſuch proceeding as aboveſaid, hath been made before the Judgment paſſed againſt him, the Judgment is to be holden for erroneous and void, and ought ſo to be reputed. Now it doth not appear either by the ſaid pretended Act, as it is recited in the Indictment, nor by any Record of the ſuppoſed Judgment produced, nor any otherwiſe, that there was any Indictment, Preſentment, or Information to the Parliament of the Commonwealth of *England* againſt the ſaid Lieutenant-Colonel *John Lilburn*; or if there were, it doth not appear, that he ever appeared to the ſame, nor that he was ever outlawed for not appearing: neither doth any pleading by the ſaid Lieutenant-Colonel *John Lilburn* to any ſuch Indictment or Information appear, nor any Trial of him for the ſame. And therefore if any ſuch pretended Judgment be entered, as the ſaid ſuppoſed Act, and the Indictment of *John Lilburn*, Priſoner at the Bar, thereupon doth relate unto, the ſame is erroneous and void in Law; and by conſequence the ſaid Indictment is void.

Exception 3. The ſaid Indictment is erroneous and inſufficient in Law, for that it is only grounded upon, and recites an Act, which Act is declared to be made for the execution of a Judgment paſſed in Parliament againſt Lieutenant-Colonel *John Lilburn*, the 15th day of *January*, 1651; when in truth there was no ſuch Judgment, either in matter or form, paſſed in Parliament on the ſaid 15th day of *January*, 1651; as is enacted by the ſaid ſuppoſed Act, to be executed againſt the ſaid Lieutenant-Colonel *John Lilburn*; and as is alſo recited in the ſaid Indictment, to be enacted by the ſaid Act, to be put in execution againſt him. *Firſt*, There was no Judgment paſſed in Parliament upon the ſaid 15th of *January*, 1651, that the ſaid Lieutenant-Colonel *John Lilburn* ſhould depart out of *England* within twenty days, after the ſaid 15th day of *January*, 1651, as is mentioned in the ſaid Indictment. *Secondly*, There was no Judgment paſſed in Parliament, upon the ſaid 15th day of *January*, 1651, that the ſaid Lieutenant-Colonel *John Lilburn* ſhould depart out of *England*, *Scotland* and *Ireland*, or the Iſlands, Territories, or Dominions thereof, within any limited time whatſoever, or under any penalty whatſoever, as is mentioned in the ſaid Indictment. *Thirdly*, There never was any Judgment paſſed in Parliament, the ſaid 15th day of *January*, 1651, that the ſaid Lieutenant-Colonel *John Lilburn* ſhould be executed as a Felon, without benefit of Clergy, in caſe the ſaid Lieutenant-Colonel *John Lilburn* ſhould be found, or be remaining in *England*, *Scotland*, or *Ireland*, after the expiration of twenty days, or any other time whatſoever, to be accounted from the ſaid 15th day of *January*, 1651. And if no ſuch Judgment doth appear to have been paſſed againſt the ſaid Lieutenant-Colonel *John Lilburn*, as is aforeſaid, and as is recited by the ſaid Indictment, to be enacted to be put in execution againſt him; then the original ground of the ſaid Indictment is null and void: Which is a Judgment ſuppoſed to be paſſed in Parliament againſt the ſaid Lieutenant-Colonel *John Lilburn*, in matter, ſubſtance, and form, as aforeſaid, upon the 15th day of *January*, 1651, which is enacted by the ſaid Act recited in the ſaid Indictment to be put in execution: whereas no ſuch Judgment ever paſſed; and therefore cannot be ſuppoſed or admitted by the Law to be enacted to be put in execution: And upon theſe reaſons and cauſes the Priſoner at the Bar conceives the ſaid Indictment to be inſufficient in the Law.

Exception 4. The ſaid *John Lilburn* further excepts againſt the ſaid Indictment, as inſufficient in the Law, in regard of the uncertainty of the ſame; the Law requiring all allegations againſt any man to be certain; for that the ſaid Indictment doth recite and ground itſelf upon an Act, made for the execution of a Judgment paſſed in Parliament againſt Lieutenant-Colonel *John Lilburn*; and then chargeth *John Lilburn*, late of *London*, Gentleman, to have been found in *England*; that is to ſay, in *London*, contrary to the ſaid Act: but averreth not that the ſaid *John Lilburn*, now Priſoner at the Bar, indicted by the name of *John Lilburn*, late of *London*, Gentleman, is one and the ſelf-ſame perſon, with the ſaid Lieutenant-Colonel *John Lilburn*, meant and intended by the ſaid Act; and not other or divers: by reaſon whereof, and for that there

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are ſeveral perſons known and diſtinguiſhed by the name of *John Lilburn*, of *London*, Gentleman. And for that the ſaid *John Lilburn*, Priſoner at the Bar, doth not acknowledge that he now is, or at the making of the ſaid Act, or paſſing the ſaid ſuppoſed Judgment, was a Lieutenant-Colonel, or that he could be notified and diſtinguiſhed by that title; he, the ſaid *John Lilburn*, Priſoner at the Bar, cannot join any certain iſſue with the Keepers of the Liberties of *England* upon the ſaid Indictment. For the ſaid Indictment not averring the ſaid *John Lilburn*, now Priſoner at the Bar, to be the ſame Perſon, and not other, or diverſe from that *John Lilburn*, intended and meant in the ſaid Act, and diſtinguiſhed from all others of the ſame name, by the title of a Lieutenant-Colonel; if the Priſoner at the Bar ſhould plead the general iſſue of *Not guilty*, he ſhould confeſs himſelf to be the ſame *John Lilburn*, intended by the ſaid Act; elſe he is not concerned to plead to the ſaid Indictment. And by conſequence, if the Priſoner at the Bar ſhould plead Not guilty to the ſaid Indictment; the only iſſue to be tried in point of fact between the Keepers of the Liberties of *England* and the Priſoner would be, whether *John Lilburn*, Priſoner at the Bar, was found in *England*, upon the 15th day of *June*, 1653? and by conſequence, the Priſoner at the Bar, though he be not the perſon intended by the ſaid Act, might be enſnared and condemned as a Felon, only becauſe his name is *John Lilburn:* and if any other *John Lilburn* ſhould in like manner plead to the ſaid Indictment, he ſhould ſuffer, becauſe he is called *John Lilburn*.

For all which errors and inſufficiencies in the Law, in the ſaid Indictment, Act, and ſuppoſed Judgment, appearing, the ſaid *John Lilburn*, Priſoner at the Bar, humbly prayeth, that the ſaid Indictment may be quaſhed; and in caſe the honourable Court be not fully ſatisfied in the ſaid errors and inſufficiencies of the ſaid Indictment, he prayeth that Counſel learned in the Law may be aſſigned him, and a competent time given for him to adviſe with them, and for them to prepare their arguments upon all the ſaid matters of Law. And that the caſe being of very great difficulty, and much concernment to the liberty of all the people of *England*; and being a caſe without any precedent; and the ſhedding or ſparing of innocent blood, depending upon a reſolution thereof: he humbly prayeth, that the ſaid difficult points of Law, ariſing upon the caſe, may be argued before the reverend Judges of the Law, as hath been accuſtomed in ſuch caſes, that their opinions may be had thereupon.

Signed *John Norbury*, *John Maynard*; and preſented to, and accepted by the Lord-Mayor, and the honourable Bench, *July* 16, 1653.

JOHN LILBURN.

But the Court being eager to ſee the Exceptions, the Cryer commanded ſilence, and to hear the Court, who had commanded their Clerk with a low voice to read them the title of the Exceptions amongſt themſelves. Whereupon, as ſoon as the Priſoner at the Bar perceived the Court had heard the title, he deſired them to read them all over with an audible voice. But withal, my Lord, ſaid he, I beſeech you and the Court to take notice, that they are but part of my Exceptions, which the Court hath forced, and compelled me to deliver in.

At which the Lord-Mayor was very angry, and ſaid, Mr. *Lilburn*, you are very much to blame, thus to abuſe and ſcandalize the Court, in ſaying we have compelled you: you may take your Exceptions again, if you are not free to deliver them in. Give him them again.

Lilburn. No, my Lord, I will have none of them; for ſeeing they are in, they are in; and I will ſtand to them, and maintain them with my life: and I hope, and doubt not but my honeſt and learned Counſel will back them with ſtrong and unreſiſtible arguments of Law. But, my Lord, hereafter I ſhall endeavour to keep the Court cloſe to their promiſe, made unto me by their mouth, Mr. Recorder, about the *Oyer:* for, my Lord, here are witneſſes enough of it. But, my Lord, whereas you ſay I have abuſed the Court, in declaring that they forced and compelled me to deliver in my Exceptions; my Lord, I abſolutely deny it, that that averment is any abuſe at all to the Court. You know, my Lord, you have over-ruled me in point of reading my Parchment about the *Oyer*, and you have ordered me to deliver in my Exceptions to the Indictment, which you know I have averred by Law, I ought not to be compelled to, till I have legally the *Oyer:* ſo that, my Lord, I muſt yet aver, that in the eye of the Law you have committed a force and compulſion upon me. But, my Lord, I have done with it.

They ſpent ſome time in reading the beginning of the Exceptions; which (an obſervant man might eaſily ſee) did very much trouble both the Lord-Mayor and the Recorder. But the Priſoner withdrew; and by ſeveral of thoſe that ſat nigher the Lord-Mayor and Recorder than he ſtood, he was certainly informed that the Attorney-General *Prideaux*, who ſat upon the Bench, although he would not ſpeak much openly and publickly, yet he conſtantly, in a whiſpering or clandeſtine way, preſs'd the Court to keep the Priſoner cloſe to the queſtion; *Whether he was the* John Lilburn *meant in the Act or no?* and to give him no elbow-room to let him get off it: And that Mr. Alderman *Atkins* was in a pitiful frighted condition, when the Priſoner appealed to the people againſt their injuſtice. And that the pitiful Alderman moſt lamentably cried out to Colonel *Okey*, preſently to ſend for ſome troops of horſe, to ſecure his worſhipful perſon. And that Mr. *Lee*, the Clerk, was extreme earneſt to have the Priſoner gagged at the Bar, that he ſhould ſpeak no more; and privately preſs'd very hard, immediately to have him condemned and taken away. And that the Lord-Mayor, at the reading of the title, in which the Act is called, *A pretended Act of Parliament*, ſaid unto the Recorder, We are undone, if we receive in this; for we ſhall be adjudged betrayers of our truſt. And at their reading the firſt Exception, the Recorder was amazed, and ſaid, he wondered how Mr. *Lilburn* could get learned men in the Law to ſign ſuch Exceptions. And the Lord-Mayor aſking him, what that Mr. *Norbury* was, whoſe hand was firſt to the Exceptions; the Recorder told him, he had lately been a Judge in *Wales*. My Lord, I do not ſo much wonder at his ſetting his hand to the Exceptions (for I have known him for many years to be a man of principles ſomething in affinity to Mr. *Lilburn*); but for Mr. *John Maynard*, one of the greateſt Lawyers of *England*, and one of the greateſt practitioners of the Nation, for him to ſet his hand to ſuch Exceptions, is that (my Lord) amazeth me. For if this very firſt Exception of Mr. *Lilburn*'s be good in Law, then all the late Acts of Parliament are totally invalidated, as well as that which he ſpeaks againſt.

Then the Court broke up.

Notwithſtanding the ſtricteſt enquiry, we can't find that *Lilburn*, or his friends, or any one elſe, ever publiſhed the remainder of his Trial, Mr. *Whitlock*, in his Memorials of the *Engliſh* affairs, *p.* 560, ſays no more than this:

July 13, 1653, Lieut. Col. *Lilburn* was arraigned at the Seſſions in the *Old-Bailey*, upon the late Act for his Baniſhment.

July 14. Lieut. Col. *Lilburn* was brought again to his Trial, but he urg'd for further time in regard the Counſel aſſigned him refus'd to appear for him; only Serjeant *Maynard*, who was ſick; and he had an order for a Copy of his Indictment.

July 17, (16) *Lilburn* was brought to his Trial, but nothing done in his buſineſs; and *page* 563. ſays, *Aug.* 11. *Lilburn*'s Trial proceeded at the Seſſions-houſe.

16. Mr. *Lilburn*'s Trial at the Seſſions-Houſe proceeded.

20. The Jury found *Lilburn* not guilty; he pleaded long for himſelf.

Nothing of theſe three laſt days Proceedings are printed.

In a Book, entitled *Lieut. Col.* John Lilburn *Tried and Caſt, or his Caſe and Craft diſcovered*, 4*to*, 1653. is recited ſome of his ſpeeches at his Trial, and Animadverſions on them; which ſhews that the Colonel made a notable Defence. His Speeches, as mentioned in that Book, *page* 125, *&c.* are as follow:

Concerning the Act whereupon he was indicted, this he ſaid; It was a lye and a falſhood: an Act that hath no reaſon in it, no Law for it; it was done as *Pharaoh* did; reſolved upon the queſtion, that all the male children ſhould be murdered. That if he died upon this Act, he died upon the ſame ſcore that *Abel* did, being murdered by *Cain*. That the Act was a void Act, a printed thing, there being no one punctilio or clauſe in it, grounded on the Law of *England*, and that it was an unjuſt, unrighteous, and treacherous Act, and that he doubted not to ſhatter that Act in pieces. That they could not make an Act of Parliament, ſince the King's Head was cut off.

By the ſame Law they voted him to death, they might vote his honeſt twelve Jurymen.

He ſaid, The Parliament before the King's head was cut off, and the Members taken out, were, in their purity, a gallant Parliament, who were tender of the liberties and welfare of the Nation, and walked in the ſteps of their anceſtors and fore-fathers; then were the days of their virginity, they made good and righteous Laws, and then they had no force upon them. But ſince 1640, and 1641, there have been no good Laws made.

He affirms, that it was no lawful Parliament, that made that Act. Again, the Parliament that made this Act of Baniſhment was no Parliament, I will prove it: And the Parliament was rather tranſgreſſors than I. Again, admit the Parliament legal, *they had no power to ſend for me.* If there were any Judicatory in Parliament, it was the Lords Houſe, not the Commons.

As for all Parliaments in general, he ſaid Parliaments were a delegated Power, and ought to give a reaſon of all they do; and that it was not in their power, (as he had proved in his Plea at large, before the Lord Chief Juſtice *Rolls* and Mr. Juſtice *Bacon*, *May* 18, 1647;) nor had they the leaſt juriſdiction, to ſentence him, or any of the leaſt free-born *Engliſhmen*; unleſs it be their own Members. That all crimes whatever were to be heard, determined, and judg'd at the Common-Law, and no where elſe. Acts of Attainder were not lawful.

Speaking to the Lord-Mayor; This is the ſtrangeſt thing (ſaith he) that ever I ſaw, that a man muſt be cheated of his life. Good my Lord-Mayor, you have made yourſelf a party in my caſe, and taken a wrong *John Lilburn*; and if you do not make me hang, you are afraid of yourſelf. You make the land groan under your burthens and oppreſſions; I deſire you will not deny me my right, that I may not loſe my life in the reſolve of a queſtion, That *John Lilburn* ſhall be hanged; which in time may come to murder your poſterity, and the poſterity of thoſe that hear me this day.

He told the Lord *Keeble*, that he had nothing to do to judge him, being a party, and had a ſalary of a thouſand pounds *per annum* from the State.

To Mr. *Prideaux*, Attorney-General, he ſaid, You are a blood-thirſty man, and you come here to juſtify your unrighteous Act; and I hope the Jury will take notice of all your violence. It is the admiration of my ſoul, that he ſhould be a Judge in his own caſe; to have a Man ſit as my Judge that thirſteth after my blood.

He ſaid, that the army (many of them) have been very good inſtruments for the good of the Nation, to deliver us from Tyranny: I wiſh there is not a greater than they delivered us from.

For the Jury, he called them his honourable Jury, and ſaid they were the Keepers of the Liberties of *England*; and will make it appear that the Jury are the Judges of the Law, as well as of the Fact.

Moreover, he charged them to conſider, whether if I die on the *Monday*, the Parliament on *Tueſday* may not paſs ſuch a ſentence againſt every one of you Twelve; and upon your wives and children, and all your relations; and then upon the reſt of this City, and then upon the whole County of *Middleſex*, and then upon *Hertfordſhire*, and ſo by degrees there be no people to inhabit *England*, but themſelves?

I call *Jehovah* to witneſs (ſaith he), and do here proteſt before God, Angels and Men, I am not the perſon intended to be baniſhed by that Act; ſpeaking of the Act whereupon he was indicted.

The Jury having acquitted him, were ſummoned before the Council of State, on the 23d of *Auguſt*, 1653; in purſuance of an order of Parliament, of the 21ſt, to anſwer for their conduct.

The examination of which Jury is printed in *State-Trials*, Vol. I. *page* 81, 82. *Edit.* 1730, after his Trial at *Guildhall* in 1649, for High-Treaſon; to which the Reader is referr'd. But for what reaſon the examination of his Jury in 1653 is there inſerted (having no relation to that Trial) would be difficult to tell.

XXVII. The Trial of MILES SINDERCOME, *alias* FISH, at the Upper-Bench, *Weſtminſter*, *Feb.* 9, 1656. for High-Treaſon.

Before the Lord Chief-Juſtice *Glynn*, and Mr. Juſtice *Warburton*.

JANUARY 1656, *Miles Sindercome* was committed cloſe Priſoner to the *Tower* of *London*, for High-Treaſon; and Sir *John Barkſtead*, Knight, Lieutenant of the *Tower*, gave order to Mr. *David Steer*, one of the Warders of the *Tower*, to be his Keeper; with ſtrict orders from the Lieutenant to be moſt careful of him. But Mr. *Steer* perceiving the deſperateneſs of his diſpoſition, by many violent and threatening ſpeeches, which he often uſed, acquainted Sir *John Barkſtead* therewith, and deſired more aſſiſtance, as well for the ſecurity of his own Perſon, as of the ſaid Priſoner. Wherefore, from that time forward, a guard of a Commiſſion Officer and Soldiers, were ordered to aſſiſt the ſaid Keeper, and ſecure the Priſoner; ſo that *Sindercome* finding no means poſſible for him to make an eſcape by force, endeavoured afterwards to corrupt his Keeper, offering him two hundred pounds, or ſo much as his place ſhould be worth, to aſſiſt him in making his eſcape; and deſired him, if he would undertake the matter, to furniſh him with a black ſuit of clothes, a peruke, and a ſhort dagger, to paſs him through the Water-gate, within the *Tower*, and ſaid, that then he would trouble him no further, but kill any man that ſhould oppoſe him in going. But his Keeper faithfully diſcharging his truſt, not only refuſed this proffer, but acquainted the Lieutenant therewith; who was therefore more vigilant and careful for his ſecurity. The Officers and Soldiers that daily attended in his chamber with him, would often adviſe him to make his peace with God, and to look after the eternal concernments of his Soul; which diſcourſe he would always divert by the ſpeaking of his own valour and courage, and how many he had ſlain while he was a Soldier, boaſting greatly therein, and of his knowledge in the Law of this Nation: And would often ſay, That he doubted not to make a very good defence, if he might be tried by a Jury, according to the ancient Law of *England*, and to come off as well as *John Lilburn*.

February 6, 1656, *Miles Sindercome* had notice of his Trial to be the next *Monday* following, and had liberty given to prepare himſelf for it; and for that purpoſe to ſend for, and converſe with, what perſons he would; and to have the uſe of pen, ink, and paper, and to write as he pleaſed; which he had, and did uſe accordingly.

February 9, 1656, *Sindercome* was brought to his Trial at the Upper-Bench Bar in *Weſtminſter-hall*, the particulars whereof are as follow.

The Indictment was for High-Treaſon, to this effect, *viz.*

THAT Miles Sindercome, *alias* Fiſh *, *and one* William Boyes, *with divers other Rebels and Traitors, againſt the Lord Protector, and Government of the Commonwealth; not having the fear of God in their hearts, but moved and ſeduced by the inſtigation of the Devil; on the* 17th *of* September, 1656, *and divers other days and times, as well before as after, at* Weſtminſter, *and divers other places in the County of* Middleſex, *falſely, maliciouſly and traitorouſly did conſpire, compaſs, and imagine the death of the ſaid Lord Protector; and to ſubvert and alter the Government of the Commonwealth, and to raiſe War within the ſame.*

For effecting whereof,

1. *They took a room in the Houſe of one* Edward Hilton, *and divers rooms in the houſe of one* James Midhope, *in* Weſtminſter; *whither they brought Guns, Harquebuſſes and Piſtols, charged with leaden Bullets, and iron Slugs, to ſhoot, kill and murder him.*

2. January 1, 1656. *They provided Horſes and Weapons of War; and,*

3. *Took a houſe and banqueting-houſe at* Hammerſmith, *of one* Henry Buſby, *for the ſame purpoſe.*

4. January 9, 1656. *They conſpired to burn* Whitehall, *where his Highneſs was in his own perſon; and to that end brought a basket filled with Match, Brimſtone, Gunpowder, and other combuſtible Stuff and Materials, and ſet the ſame on fire in the Chapel there; to the great danger and diſquietment of his Highneſs, and ill example of others, in contempt of the Law, againſt their due obedience to his Highneſs and Government, againſt the Peace, and form of the Statute*, &c.

Thus far the Indictment.

Whereupon being arraigned, he pleaded *Not Guilty*, and for his Trial put himſelf upon his Country; and the iſſue being joined, there was immediately impannell'd a Jury of Gentlemen of worth and quality to paſs upon his Life and Death: he challenged ſeveral of them; and twelve being ſworn (with his own conſent), his Highneſs's Attorney-General (the Indictment being opened) proceeded to the Evidence, which was very full and clear, and two Witneſſes at the leaſt to all the points of the Indictment, with many aggravating circumſtances: the particulars whereof are herein after mentioned.

The Evidence to prove the Indictment.

THERE was one *Toope* of his Highneſs's Lifeguard, who was drawn into the buſineſs; and he proved fully, 1. What perſon *Sindercome* is; how he inveigled him, the ſaid *Toope*, with money in hand, and promiſes of more, and great preferment, to join with him to murder his Highneſs; ſaying, *Spain* could never obtain a peace with us, till he were taken out of the way. 2. The circumſtances of time, place, means and manner deſigned for this murder. 3. That he, the ſaid *Toope*, was to give notice when his Highneſs went forth; and at what end of the Coach he ſat. 4. Their buying and keeping of fleet horſes. 5. Their intent to fire *Whitehall*, the fire-work placed in the Chapel, and other circumſtances. 6. *Sindercome*'s reſolution, if the fire did not take, to kill the Protector, whatever came of it.

Alſo one *John Cecil* proved the whole deſign of *Sindercome* and *Boyes*, how long it was in hand; that *Sindercome* engaged him, the ſaid *Cecil*, in it; what words were uſed, how it ſhould be done; what the conſequence of the murder would be; the money provided, and that when it ſhould have been done, he, the ſaid *Cecil*, was deſigned to go to Col. *Sexby*, and to ſhare with *Sindercome* in his honour and profit. That the firſt thing agreed on, was to provide good horſes. What moneys were paid by *Sindercome*; *Sindercome*'s reſolution to aſſaſſinate his Highneſs when he went abroad; and the manner how. That they were upon the road five or ſix times on purpoſe; and in *Hyde-park* with ſwords, and piſtols charged, and had notice given them by *Toope* of his Highneſs's coming. That the hinges of *Hyde-park* Gate were filed off, in order to their eſcape. That they took an houſe with a banqueting-houſe at *Hammerſmith*, to ſhoot him with Guns, made on purpoſe to carry ten or twelve bullets at a time. That *Toope* was to give notice of his Highneſs's paſſing that way, and at which end of the Coach he ſat. That he, the ſaid *Cecil*, ſaw one of the Guns provided, which would carry twelve carbine bullets and a ſlug. He ſpake fully to the deſign of firing *Whitehall*; deſcribed the fire-work prepared, and the nature and intention it, and other circumſtances. Moreover, that *Boyes* aſſur'd them, that when the Protector ſhould be diſpatched, forces would come from *Spain* and *Flanders*; and a great part of the Fleet would fall off. And that he believed *Sexby* to be the main agent herein at *Bruſſels* †. He proved alſo the diſcourſe *Boyes* had about ſeizing *Portſmouth*, or ſome other port in the *Weſt*, and of a great ſum for that purpoſe. That thirty or forty are engaged in this deſign to kill the Protector, and it was ſo ordered, that not above two ſhould know each other, until the matter ſhould be ripe for execution; and that *Boyes* knew the whole number.

He ſpoke fully to that deſign to kill his Highneſs the firſt day of the Parliament; and their taking houſes for that purpoſe at *Weſtminſter*; and bringing arms thither, and other circumſtances ‡.

That *Boyes* goes by ſeveral names, and in ſeveral habits; ſometimes as a poor Prieſt in ragged clothes; ſometimes well clad as a Gentleman.

It was further proved by the ſaid *John Cecil*, and Col. *James Midhope*, that in order to the deſtroying of his Highneſs, he, the ſaid *Cecil*, *Sindercome*, and *Boyes*, took the ſaid *Midhope*'s houſe near the Abbey at *Weſtminſter*; and when they took it, *Sindercome* called himſelf *John Fiſh*, Clerk to one Mr. *Havers*, a pretended Gentleman of *Norfolk*; and *Cecil* went by the name of Mr. *Havers*'s Coachman.

It was proved likewiſe, that the firſt day of the Parliament, after they had taken *Midhope*'s houſe, he being there; *Sindercome* and *Cecil* went thither to him, from one *Edward Hilton*, a Sempſter's houſe in *King-ſtreet*, *Weſtminſter*, where they left a great trunk full of arms, brought from *Flanders*; and carried with them in a viol-caſe, one harquebuſs, and ſome piſtols, charged with leaden bullets, and ſlugs, about Sermon-time, to *Midhope*'s houſe; which they found very convenient for their purpoſe, and reſolved to buy it, and to build a room in the yard next the ſtreet; there being ſeveral back-yards and doors: and reſolved alſo to ſecure *Midhope*, or otherwiſe to deal with him that he might not diſcover them, nor hinder their deſign §.

It was proved, moreover, by *Cecil* and *Midhope*, that Sermon being ended, all three of them, *viz.* he, the ſaid *Cecil*, *Sindercome*, and *Boyes*, went into the yard of the houſe next the Abbey, to ſhoot his Highneſs, as he paſſed from the Abbey to meet the Parliament in the painted Chamber;

* The principal Perſon employ'd in the traitorous deſign, for the deſtruction of his Highneſs's Perſon, was a notable deſperate Fellow, named *Sindercome*, one who heretofore had been a Quarter-Maſter under Sir *John Reynolds* in the Army, and was about two years ago caſhier'd by General *Monk*, among others in *Scotland*. He aſſociated to himſelf one *Cecil*, and many others were engag'd in the Buſineſs. For the carrying on their work, they held correſpondence with ſome in *Flanders*, received directions thence from time to time, and for their encouragement, *Don Alonſo*, the late Ambaſſador of *Spain* in *England*, return'd them over Sums of Money, with which they were enabled to proceed. See a *Brief Relation of the late dangerous Plot*. Printed in a *further Narrative of the Paſſages of theſe Times in the Commonwealth of* England, pag. 7.

† In Col. *Edward Sexby*'s Narrative, which he delivered to Sir *John Barkſtead*, Lieutenant of the *Tower*, *Oct.* 12, 1657. printed in *A further Narrative of the Paſſages of theſe Times in the Commonwealth of* England, *pag.* 21. he ſays, "Sir *John*, I ſent to you to tell you, that I am guilty of the whole buſineſs of *Sindercome*, as to the deſign of "killing the Lord Protector, *&c.* and to that purpoſe I furniſh'd *Sindercome* with about 500*l.* in Money, and alſo with Arms, and tied him to an Engagement, that he ſhould "not reveal the deſign." *And further he ſaid*, "The Letters they have of mine, they could not prove them to be mine; but by my own Confeſſion, which I now confeſs, "and acknowledge that they are mine. And that I was with *Charles Stuart*, and acquainted him, that I was an enemy to the Lord Protector; and I alſo declare that I re"ceived a large ſum of Money from the *Spaniard* to carry on my ſaid deſign, and to make what Confuſion I could in *England*, by endeavouring the killing of the Lord "Protector, and by what other ways I had in deſign; and to that end, the better to effect it, I came into *England* in a diſguiſed Habit; and was the principal in putting on "others in the ſaid deſign." And *Page* 22. he ſays, "That he was the only man, that ſet on *Sindercome* to kill the Lord Protector; and that Book, called *Killing no Mur*"*der*, he owned: and ſaid he was ſtill of that Judgment; yet ſaid, it was both fooliſhly and knaviſhly done in that Book to charge the Lieutenant of the *Tower* touching "*Sindercome*'s Death." This Col. *Sexby* died a Priſoner in the *Tower*, *Jan.* 13, 1657.

‡ This *Sindercome* had engaged to kill General *Monk* in *Scotland*, and would have engaged the ſaid Mr. *Cecil* therein alſo.

§ *Hilton* depoſed fully concerning the Viol-caſe and Trunk of Arms.

and

and to that end, he, the said *Cecil* stood on the wall with his pistol charged, and *Sindercome* walked in the yard; but other company coming in thither, they were prevented, and *Boyes* went out of the yard into the throng of people.

It was further proved by *Cecil*, that this enterprize not succeeding, they resolved to murder his Highness some other way, to wit, to furnish themselves with fleet horses, to kill him as he rode forth. That *Sindercome* engaged *Toope*, who constantly gave him notice of the Life-guards going abroad, or of the saddling of the Pad Nags.

That the first time they rode forth to kill him, was the latter end of *September* last *(viz.)* the *Saturday* after he had left going to *Hampton-court*.

That the second time was when he rode to *Kensington*, and thence, the back way to *London*.

The third time, when he went to *Hyde-park* in his Coach.

The fourth time, when he went to *Turnham-Green*, and so by *Acton* home; at which time they rode forth to kill him, and resolved to break through all difficulties to effect it.

The fifth time, when he rode into *Hyde-park*, where his Highness alighting, asked him, the said *Cecil*, whose horse that was he rode on, *Sindercome* being then on the out-side of the *Park*; and then *Cecil* was ready to have done it, but doubted his horse, having at that time got a cold.

That *Sindercome* rode forth once himself to kill his Highness, and told *Cecil* of it.

That all proving ineffectual, they resolved to desist till the Spring, and in the mean time to fire *Whitehall*.

That the said *Cecil* put on a thin holland shirt, and thin clothes, for his better escape, when he rode forth to kill his Highness; and prepared his horse as if he had been to run a race.

To prove the taking of the house and banqueting-house at *Hammersmith*, of *Henry Busby*, Coachman to the Earl of *Salisbury*, there was beside *Cecil*, the testimony of *Henry Busby* himself, *William Page*, and *William Neal*, *Sindercome*'s servant.

To prove the basket of stuff for firing the Chapel, there was the testimony of *Cecil* and *Toope*, and others who were persons of quality.

To prove the buying and keeping of the horses, there was the testimony of *Henry Busby*, who sold them one horse for fourscore pounds; also of *William Page*, and *William Neal*, *Sindercome*'s servant.

To prove the hinges of *Hyde-park* gate being filed off, and the pales cut, there was the testimony of *John Cecil*, and *Thomas Shell*.

The Prisoner seeing the Evidence so clear against him, had nothing material to say for himself by way of defence, yet carried himself very insolent at the bar; and when the Court asked him touching any of the matters proved against him, he would confidently deny what was laid to his charge. And after all the Evidence given, and the Prisoner heard what he had to say for himself; the Court summed up the whole to the Jury of Life and Death, and declared, that by the Common-Law, to compass or imagine the death of the chief Magistrate of the Land, by what name soever he was called, whether Lord-Protector or otherwise, is High-Treason; he being the chief Magistrate, and the Spring of Justice, in whose name all Writs run, all Commissions and Grants are made: and that the Statutes of Treason made 25 *Ed.* III. as to this, did only declare what the Common Law was before the making of that Statute, and was not introductive of a new Law*: and more to that effect; and then proceeded to Judgment against the Prisoner in this manner.

The SENTENCE.

IT is considered by the Court, that the said Miles Sindercome, *alias* Fish, *be sent from hence to the Prison in the* Tower *of* London, *from whence he came, and from thence be drawn upon a hurdle through the streets of* London *to* Tyburn; *there to be hanged on the Gallows until he be half dead, and then to be cut down, and his intrails and bowels taken out, and burnt in his own sight, and his body divided into four quarters, and be disposed of as his Highness the Lord Protector shall think fit.*

The same day, after he was brought back again to the *Tower*, he was much inraged, and in a great passion; his Keeper, and *Elizabeth Herring*, one of his Sisters, being in the chamber with him, he did swear, *That they should never have his life*; and then desired his Keeper to help him to some poison, that he might make away himself: which he refusing, *Sindercome* then desired his Sister to buy him some for the same purpose. But she crying at that present, gave him no answer; but taking her opportunity (when the Keeper did not so much mind them) had some private discourse with him (which cannot be known what it was about). Presently after, his said Sister left him, and before her going, spake to his Keeper, saying, *Lord, what shall I do? Did you hear what my Brother said of the Poison?* Thereupon, the Keeper charged her not to bring him any, telling her, if her Brother were poisoned in his house, he would accuse her for assisting him in it.

The Lieutenant of the *Tower* then being fully acquainted with the desperateness of *Sindercome*, commanded a file of Soldiers to watch in the room below his chamber, and a Guard of Officers to be with him in his chamber, that all means for the making his escape might be prevented.

Sindercome the same day endeavoured to corrupt his Keeper, as formerly, and with much earnestness prest him to be helpful to him in his greatest distress; and asked, if it were not possible for him to make an escape, telling him, if he would assist him in it, he would make good to him two hundred pounds that night: and if he would go along with him, he would make that two hundred pounds, seven hundred pounds, or what more he should desire; farther requesting him to furnish him with a black suit, peruque, and dagger, for that purpose. But by reason that the Officers aforesaid were in the chamber with him, he had not liberty so freely to discourse with his Keeper about this business as he desired, and therefore earnestly desired the said Guard of Officers, and all in the chamber with him, to withdraw; in which time he wrote and delivered privately to his Keeper a note, whereof the next following words is a copy:

Mr. Steer,

YOU see my condition, it is no time to dally with it; I have already provided two hundred pounds for you; and if you will let me make my escape, and that you will go with me, or set me forth, I shall give you, were it five hundred pounds more, I do not care: if you will do any thing, let me know your mind; I hope God will work my deliverance by your means; let me hear your judgment, that we may conclude; for if you and I do conclude, I will have other clothes brought into the room below, with a peruque, and I will take up a board (meaning, as is conceived, one of the boards of his chamber, to go down into the room below it, where his black clothes should lie; though therein he would have been frustrated, by reason of the file of Soldiers, which the Lieutenant had commanded to watch there), *and I do judge that must be the way. For God's sake do what you can, and do not distrust my not performing to give you the money; for I can this night order you two hundred pounds to any body that you shall appoint: but if you should—*

You may observe, that the reason of his breaking off so abruptly, was, that the Guard of Officers, whom he had for that time desired to withdraw, finding that he made them stay somewhat longer than ordinary, prest in upon him, so that he had not time to write further. His Keeper for answer, endeavoured to take him off from those thoughts, telling him the impossibility of it, and desired him to consider his present condition, and prepare himself for another world; whereupon *Sindercome* finding he could no ways prevail, moved these things no more afterwards.

From which time, several pious and able Divines, some of which were appointed by his Highness, and others that were desired by the Lieutenant of the *Tower*, daily came to him; as Mr. *George Griffith*, Mr. *Thomas Brooks*, Mr. *John Hodges*, Mr. *Slater*, Mr. *Barker*, and others. But before they or any others entered into discourse with him, he would wave all questioning of him about the business for which he was condemned: they laboured much with him for his soul's good, but with no satisfaction to the greatest part, and with very little to others of them; he having before declared his judgment, or rather opinion, by reason of his inconstancy and unsettledness in them, sometimes owning the *universal point of redemption*; at other times, *that the soul died with the body, or slept with the body till the Resurrection, and then it may be it should rise*; *that by the grave Hell was meant*; with several other detestable tenets. And indeed there is scarce any erroneous opinion known in our times, that he had not a general notion of, and would pretend unto. In several of his discourses with those Ministers, he would not hear but that *Judas* was in as good a condition as *Peter*; and of that in the xviith of *John*, *v.* 12. where Christ saith, *While I was with them in the world, I kept them in thy name; those that thou gavest me I have kept, and none of them is lost but the Son of Perdition, that the Scripture might be fulfilled:* he would say, it was meant to all men, who as they were sinners, were Sons of destruction and perdition. And as to that Text, speaking of the disciples, which saith, *one of them was a Devil*; he would startle and say, it was a rugged and harsh saying. He would often put it as a case to them, whether for any person to contrive the death of another, and not to act it, were punishable by man? And being as often resolved, and told of the Laws made in that case; he would answer, that which they alledged was but the Law of man, and that Thoughts were not to be punished by man, but God who alone knew them.

Friday 13*th of February.*

Afterwards he had notice given him, that the next day was appointed for his Execution; and about eight o'clock that night, the Guard of Officers in his chamber, were Captain *Henry Sharp*, Captain-Lieutenant *William Foster*, Ensign *Philip Brown*, Serjeant *Nicholas Stock*, and his said Keeper. And presently after they came into the chamber, three Women came to him, two whereof were *Sindercome*'s Sisters, and the other one said to be his Sweetheart, who expressed trouble and sorrow, lamenting his condition. And one of his said Sisters, named *Elizabeth Herring*, told him, *She had rather see him die before she went from him, than he should die so barbarous a death as was intended him*, or to that effect: whereupon the Officers minding her expressions, took what care they could to prevent her in giving him any thing; and as soon as the said women were gone carefully searched the room. Then *Sindercome* desired the Officers and his Keeper to withdraw, that he might be private; in which privacy, he continued about a quarter of an hour, then came to the chamber-door, saying to the said Officers that stood without, *They might come in, for he had now done*; which words being not usual with him, were observed by most of them. The first that went in, found him rubbing his hands with his handkerchief, and wiping his nose and mouth therewith; and he walked a turn or two about the room, and then took the Bible, and sat down reading therein. A while after, he started up suddenly, saying, *He must go to bed:* and therewithal he undrest himself, and went into his bed. The said Guard of Officers in his chamber, being then discoursing together, *Sindercome* (a quarter of an hour after he had lain still) discoursed very freely with them of what they were talking. About which instant of time, orders were sent from Sir *John Barkstead*, to the said Officers, to be careful that he should not make away himself † by poison, in regard it was the last night he was to be there; and they should diligently search all places of his chamber, and about his bed to prevent it. But presently after, *Sindercome* fell asleep (as was thought), and snorting somewhat unusually, one of the Officers desired his Keeper to take a candle and look upon him; which he did, and found him almost dead there, which prevented their further search. Whereupon a Surgeon was immediately sent for, who applied medicines to him; notwithstanding which, after he had continued in that condition speechless about two hours, he died §.

February

* Mr. *Whitlock*, in his Memorials, *Page* 654. *Feb.* 9, 1656. *Sindercome* was tried at the Upper-Bench Bar, found guilty, and condemned to be hanged, drawn, and quartered: The Court declared, *That by the Common Law, to compass or imagine the Death of the Chief Magistrate, by what name soever he was called, whether Lord Protector, or otherwise, is High-Treason, and that the Statute* 25 Edw. III. *was only declaratory of the Common Law.*

† *Sindercome* had been an Apprentice to a Chirurgeon, near St. *Catherine*'s at the *Tower*, and so it was probable had more than ordinary knowledge of Poisons.

§ Lord *Clarendon*, in his History of the Rebellion, Vol. III. Part 2. (8vo. *Edition*) *Page* 646, 647. says, *Sindercome* was a very stout Man, and one who had been much in his (*Cromwell*'s) favour, and who had twice or thrice, by wonderful and unexpected Accidents, been disappointed in the minute he made sure to kill him, and (that *Cromwell*) had caused him to be apprehended; his behaviour was so resolute in his Examination and Trial, as if he thought he should still be able to do it; and it was manifest that he

February 14, 1656.

The Coroner's Inqueſt, conſiſting of Merchants, and other ſubſtantial Houſekeepers of the *Tower* Liberty, had in charge to inquire of the manner of *Sindercome*'s death, which they diligently attended; and all ſuch witneſſes as could ſpeak materially thereunto were examined by the Coroner. And although there were then very ſtrong preſumptions that he had poiſoned himſelf; yet in regard the Surgeons, who had then only opened his body, and finding no uſual ſymptoms accompanying the taking of ſharp poiſons, could not poſitively deliver their opinions, otherwiſe than hereafter is expreſſed, the Jury deferred the giving up their verdict till *Monday* following.

The ſame day afterwards, at the deſire of the Lieutenant of the *Tower*, Sir *Richard Napier*, Doctor of Phyſick, and Doctor *Fern*, Reader of Anatomy at *Greſham* College, opened *Sindercome*'s head, and gave their opinions thereof alſo. Which was likewiſe afterward viewed by Mr. *Charles Stamford*, Mr. *Nicholas Brethers*, Wardens to the Company of Surgeons; and Mr. *Laurence Loe*; all able and knowing perſons in their profeſſion, which remain with the ſaid Coroner under their hands.

February 14, 1656.

Being then deſired by Sir *John Barkſtead*, Knt. Lieutenant of the *Tower*, to ſee the head of *Miles Sindercome* opened, his body having been opened before our coming by the Surgeons, and to give him our obſervations and ſenſe thereof:

WE found the Brain much inflamed, red, and diſtended with Blood, ſwollen as full as the Skull could well hold; beſides much grumous and clodded Blood out of the Veins, which muſt be the effect of ſome very violent and preternatural cauſe. Yet are we not able poſitively to determine what that is, or whence it did proceed, the motion being much more ſudden and violent than that of Apoplexies, and other known diſeaſes of the Brain, except when cauſed by contuſion, and other the like extraordinary violences.

Richard Napier,
Chriſtopher Fern.

WE, whoſe names are here ſubſcribed, being ordered to open the body of Mils Sindercome, *Priſoner in the* Tower *of* London, *do hereby declare, according to the beſt of our judgments and experiences, That we could not find out or diſcover any, the uſual or common ſymptoms or effects, accompanying the taking of known and ſharp poiſons cauſing ſudden death; but by the diſtention and ſwelling of the Brain, and Veſſels in the Head, with much coagulated blood which we found there, more than in ordinary diſeaſes, our opinions are, that the ſaid Priſoner hath cauſed the ſame by ſome extraordinary means, for the haſtening of his death.*

Charles Stamford, } *Wardens.*
Nicholas Brethers, }
Laurence Loe.

February 15, 1656.

Being Sabbath-day, *Sindercome*'s Keeper, with others, having removed the body out of the chamber where he died, into a more airy place, and taken ſeveral things out of that chamber, removed the Cloſe-ſtool, and under it was found a Paper ſubſcribed with his own hand as followeth:

GOD knoweth my heart, I do take this courſe, becauſe I would not have all the open ſhame of the World executed upon my body: I deſire all good people not to judge amiſs of me; for I do not fear my Life, but do truſt God with my Soul. I did this thing without the privity of any perſon in the world: I do, before God and the world, clear my Keeper, my Siſters, Mother, or Brother, or any other of my Relations, but it was done alone by myſelf. I ſay by me,

The 13th day, 1656.

Miles Sindercome.

February 16, 1656.

The Jury ſate again according to adjournment, to whom the aforeſaid teſtimonies of the Phyſicians and Surgeons, and alſo *Sindercome*'s own note were apparent; ſo that they did then unanimouſly reſolve and agree, that he, by ſome extraordinary means, had cauſed his own death, and that they verily believed the ſame to be by poiſon. But for their further direction, as to the formal part of their verdict, they at that time deferred the giving of it, and adjourned till ſeven o'clock the next morning, at the Lord Chief-Juſtice's houſe, where they accordingly met; and having received his Lordſhip's direction touching matter of form, did all unanimouſly agree on, and give up their verdict, to the effect following:

February 17, 1656.

Middleſex ſſ. WE find that upon the 13th day of *February*, in the year of our Lord, 1656, about the hour of nine in the night, *Miles Sindercome*, otherwiſe *Fiſh*, late of the Pariſh of *Peter* in *Bonds*, in the County of *Middleſex*; God not having before his eyes, but by the inſtigation of the Devil being moved and ſeduced, at the *Tower* of *London*, in the Pariſh and County aforeſaid, feloniouſly, wilfully, and of his malice towards himſelf aforethought, as a Felon againſt himſelf, then and there feloniouſly upon himſelf did make an aſſault. And that the ſaid *Miles Sindercome*, otherwiſe *Fiſh*, then and there, certain poiſoned powder, hrough the noſe of him the ſaid *Miles*, into the head of him the ſaid *Miles*, feloniouſly, wilfully, and of his malice towards himſelf aforethought, as a Felon of himſelf, feloniouſly did ſnuff and draw. By reaſon of which ſnuffing and drawing of the poiſon aforeſaid, ſo as aforeſaid, into the head of him the ſaid *Miles Sindercome*; he the ſaid *Miles Sindercome*, by the ſtrength and operation of the poiſon aforeſaid, himſelf did mortally poiſon; of which ſaid mortal poiſoning, he the ſaid *Miles Sindercome*, otherwiſe *Fiſh*, within three hours after died. And ſo we find that the aforeſaid *Miles Sindercome*, otherwiſe *Fiſh*, the ſaid 13th day of *February*, in the year aforeſaid, at the *Tower* of *London* aforeſaid, in the Pariſh and County aforeſaid, in manner and form aforeſaid, feloniouſly, wilfully, and of his malice towards himſelf aforethought, as a Felon againſt himſelf, feloniouſly himſelf did kill and murder. We find no Goods or Chattels, that the ſaid *Miles Sindercome*, otherwiſe *Fiſh* had, at the time of the felony and murder aforeſaid, in manner and form aforeſaid, upon himſelf done and committed. In witneſs hereof, we have hereunto ſet our hand, this 17th day of *February*, 1656, *&c.*

And thereupon the ſaid Coroner iſſued forth his Warrant for the burial of *Sindercome*, the Copy whereof followeth:

Middleſex ſſ. WHereas the Jury impannel'd and ſworn to inquire of the death of *Miles Sindercome*, otherwiſe *Fiſh*, did preſent upon their Oaths, that the ſaid *Miles*, the 13th of this inſtant *February*, did feloniouſly poiſon himſelf: Theſe are therefore in the name of his Highneſs, the Lord Protector of the Commonwealth of *England*, *Scotland*, and *Ireland*, to require you to bury the corpſe of the ſaid *Miles Sindercome*, according to Law, in the next common Highway. Hereof you are not to fail, as you will anſwer the contrary at your perils, dated the 17th day of *February*, 1656.

Thomas Evans, Coroner.

To the Conſtables and Headboroughs within the Liberty of the Tower of London.

On the ſame day, *February* 17, *Miles Sindercome* aforeſaid, being found to have murdered himſelf, his body was according to Law drawn to the open place upon *Tower-hill*, at a horſe's tail, with his head forward, and there under the Scaffold of common execution a hole being digged, he was turned in ſtark naked, and a ſtake ſpiked with Iron, was driven through him into the earth; that part of the ſtake which remained above ground being all plated with iron.

The Examination of Elizabeth Herring, *the Wife of* William Herring, *of the Precinct of St.* Katherine's, *Mariner; taken upon Oath, the* 14*th of* February, 1656.

SHE ſaith, that *Miles Sindercome* now dead was her brother, and that he was a Priſoner in the *Tower* of *London* the ſpace of three weeks laſt paſt, or thereabouts, to her knowledge; and that for the ſpace of a fortnight ſhe was at the *Tower* ſeveral times to ſee the ſaid *Miles*, and could be admitted but once to ſee him, until the 5th day of *February*, ſhe this Informant was ſent for to come to the ſaid *Miles*. When ſhe came to the ſaid *Miles*, ſhe found two Gentlemen in the room with him; who, as ſoon as this Informant came in, did ſay unto the ſaid *Miles Sindercome*, that he was not to ſpeak any thing in private to this Informant; then this Informant came away. And that ſhe came ſeveral times after to the ſaid *Miles*; that on *Monday* the 9th of this inſtant *February*, ſhe came to the ſaid *Miles* after he had received ſentence to die; and lamenting his condition, ſhe ſaid, that he would bring his Mother's gray hairs with ſorrow to the grave, and what an open ſhame it would be to him and all his friends. The ſaid *Miles Sindercome* then did anſwer, ſaying, that before they ſhould have his life ſo ſhamefully (meaning his Highneſs the Lord Protector, as this Informant believeth) he would poiſon himſelf firſt, and deſired her, this Informant, to buy him ſome poiſon, which ſhe refuſed. And that at times when this Informant hath been with the ſaid *Miles*, ſhe did ſee ſome ſtrange faces which ſhe did not know, and that ſhe came every day ſince *Monday*, once a day or more to the ſaid *Miles*: and ſaith, that he the ſaid *Miles* did not ſpeak any more words to her of any poiſon, or any other words of diſcontent, as if he intended to deſtroy himſelf; and that he never did complain to this Informant of any ſickneſs or diſeaſes that he was troubled withal. And that on *Friday*, the 13th of this inſtant *February*, ſhe being alone with the ſaid *Miles Sindercome*, did perſuade him to confeſs who had a hand with him in the plot againſt his Highneſs the Lord Protector; that if he would confeſs, his Highneſs would grant him his life, and wiſhed him to truſt to God and man; and the ſaid *Miles* anſwered, he would have it under black and white, and that he would truſt no man. And that about eight of the clock at night ſhe parted from the ſaid *Miles*, and left him in good health, being prepared to die, as ſhe thought; and that he found in his own conſcience he had made his peace with the Lord: and this Informant denieth that ſhe ever brought him any poiſon, or did buy any other thing to deſtroy him; yet confeſſeth that on *Friday* night ſhe did ſay unto the ſaid *Miles*, that ſhe deſired with all her heart, to ſee him die a natural death in that chamber. And further ſaith not.

The Mark of 2 *Elizabeth Herring.*

The Information of Martha Wickham, *Spinſter, taken upon Oath, as aforeſaid.*

SHE ſaith, that ſhe hath known *Miles Sindercome* for the ſpace of four years laſt paſt, and that he lodged at the houſe of *Daniel Stockwel*, Haberdaſher of Hats on *London-Bridge*, where this Informant lived; and that the night before he was taken into cuſtody, and impriſoned, he lay at his lodging in the ſaid houſe. And this Informant denieth, and ſaith, that ſhe doth not know any of the company that uſed to come to the ſaid *Miles*, while he lodged there; and ſaith, that ſhe hath been ſeveral times to ſee the ſaid *Miles* at the *Tower* of *London*, while he remained there; and ſaith, that ſhe doth not know of any poiſon, or any other violent thing, which was brought or ſent to the ſaid *Miles Sindercome*, to deſtroy himſelf; and further ſaith not.

Martha Wickham.

had more Aſſociates, who were undiſcovered and as reſolute as himſelf; and though he *(Cromwell)* had got him condemned to die, the Fellow's carriage and words were ſuch, as if he knew well how to avoid the Judgment; which made *Cromwell* believe that a Party in the Army would attempt his reſcue. Whereupon he gave ſtrict charge that he ſhould be carefully looked to in the *Tower*, and three or four of the Guard always with him day and night. At the day appointed for his Execution, thoſe troops *Cromwell* was moſt confident of, were placed upon the *Tower-hill*, where the Gallows was erected. But when the Guard called *Sindercome* to ariſe in the Morning, they found him dead in his bed, which gave trouble exceedingly to *Cromwell:* for beſides that he hoped that, at his Death, to avoid the utmoſt rigour of it, he would have confeſſed many of his Confederates; he now found himſelf under the reproach of having cauſed him to be poiſoned, as not daring to bring him to public Juſtice; nor could he ſuppreſs that ſcandal. It appeared upon Examination, that the night before, when he was going to bed in the preſence of his Guard, his Siſter came to take her leave of him; and upon her going away, he put off his clothes, and leaped into his bed, and ſaid, "This was the laſt bed he ſhould ever go into." His body was drawn by a horſe to the gallows where he ſhould have been hanged, and buried under it, with a ſtake driven through him, as is uſual in the caſe of Self-murther: yet this accident perplexed *Cromwell* very much, and though he was without the particular diſcovery which he expected, he made a general diſcovery by it, that he himſelf was more odious in his army than he believed he had been.

The Information of Anne Pierce, *Wife of* Stephen Pierce, *of* Deptford, *in the County of* Kent, *Mariner, taken upon Oath, as aforeſaid.*

SHE ſaith, That ſhe was ſeveral times to ſee *Miles Sindercome*, the time he was in the *Tower*: Saith, That ſhe doth not know of any Poiſon, or any other violent Thing that was brought to the ſaid *Miles* to deſtroy himſelf; and ſhe did never hear the ſaid *Miles* ſpeak any Words, as if he intended to deſtroy himſelf by Poiſon, or any other way: And further ſaith not.

The Mark of A *Anne Pierce.*

Middleſex ſſ. *The Information of* William Foſter, *taken upon Oath, the* 14*th Day of* February, 1656, *before* Thomas Evans, *Gent. one of the Coroners of the County of* Middleſex.

HE ſaith, That on *Friday*, the 13th of *February*, about nine of the Clock at Night, he was in the Chamber where *Miles Sindercome*, otherwiſe *Fiſh*, lodged, within the *Tower* of *London*; ſaith, That the ſaid *Miles Sindercome* did deſire this Informant, and four more that were with him, that they would withdraw out of the Chamber whilſt he went to Prayers; and within leſs than a Quarter of an Hour after, he called in this Informant, and thoſe that were with him, into the Chamber again; and a Quarter of an Hour after that, the ſaid *Miles* did take a Book into his Hands to read, and ſaid, that he would go to bed, and that that was the laſt Night he ſhould go into a Bed, and the laſt Bed he ſhould go into. And then he lay down in his Bed, and, to this Informant's thinking, fell aſleep, and ſnored. And this Informant deſired *Daniel Steer*, *Miles Sindercome*'s Keeper, to take a Candle, and to ſee how the ſaid *Miles* did lie in his Bed; and the ſaid *Daniel Steer* did tell this Informant, that the ſaid *Miles Sindercome*, alias *Fiſh*, was almoſt dead as he lay in the Bed; but the ſaid *Miles Sindercome* did lie in that Condition ſpeechleſs the Space of two Hours, and then died.

The Mark of F *William Foſter.*

The Information of Philip Brown, *taken upon Oath, as aforeſaid.*

HE ſaith, That on *Friday*, the 13th Day of *February*, about ten of the Clock in the Forenoon, he was with *Miles Sindercome*, otherwiſe *Fiſh*, in his Chamber, and ſtaid there at Dinner; and in the ſame time, while that they were at Dinner, the ſaid *Miles Sindercome* did ſay theſe Words, That that was the laſt Meal's Meat that ever he ſhould eat, as he thought. And after, two of the ſaid *Miles*'s Siſters, a Couſin, and another Gentlewoman with them, came to ſee the ſaid *Miles*, and did then perſuade him, the ſaid *Miles*, to confeſs to them, and to declare whom they were, who had brought him into thoſe Troubles and Sorrows that he was like to undergo. And he anſwered them, ſaying, To whom ſhould he confeſs? He could not expect Mercy from him, who was reſolved to give him none; ſaying, that *Cromwell* ſaid to him, when he was taken and brought before him, *Sindercome*, have I caught you? you that have ſought many Ways to take away my Life, I will have no Conſideration at all of thy Life. And when he had uttered theſe Words, he was in a great Paſſion, and ſaid, That he might go and declare againſt the Lord *Fleetwood*, the Lord *Lambert*, Sir *John Barkſtead*, Sir *Thomas Pride*, or any other Member of the Army, if he were minded to deſtroy innocent Blood. And about ſeven of the Clock that Day, Orders were brought to this Informant from the Major, that the ſaid *Miles Sindercome* might have ſome time allowed him apart, to prepare himſelf, if he deſired it. And this Informant went out of the Chamber, and left the ſaid *Miles* alone; and a Quarter of an Hour after, this Informant ſtanding at the Chamber Door, did ſee the ſaid *Miles* kneeling on his Knees on the Ground by the Bed-ſide, and preſently after one of the Centinels that ſtood at his Chamber-door, did tell this Informant, that the ſaid *Miles* did cough and kick, as if he was a-vomiting; and this Informant opened the Chamber-door, and went in, and found the ſaid *Miles* walking about the Chamber. And Capt. *Foſter*, and Capt. *Sharp*, who were ordered to be there that Night, then came into the Room; and about nine of the Clock at Night, the ſaid *Miles* did deſire this Informant, and the other Company that were there, to withdraw out of the Room, and about a Quarter of an Hour after, he called them in again; and the ſaid *Miles* did then take a Book into his Hand to read, and ſaid, that he would go to Bed, and that that was the laſt Night he ſhould ever go to Bed, and the laſt Bed he ſhould lie in; and then laid him down in his Bed. And then Capt. *Sharp* did deſire *Daniel Steer*, the ſaid *Miles*'s Keeper, to ſee how he did lie in his Bed; and the ſaid *Daniel Steer* looking upon the ſaid *Miles*, did ſay unto this Informant, and the reſt there, that the ſaid *Miles* was almoſt dead: And yet the ſaid *Miles Sindercome* did lie in that Condition the Space of two Hours, and then died.

The Mark of B *Philip Brown.*

Middleſex ſſ. *The Information of* Daniel Steer, *Gent. taken upon Oath, as aforeſaid.*

SAITH, That about the End of *January*, *Miles Sindercome*, alias *Fiſh*, being a Priſoner in the *Tower* of *London*, under the Cuſtody of Sir *John Barkſtead*, Knight, having ſome Diſcourſe with this Informant, who was his Keeper, did then ſay unto this Informant, that if he would be faithful to him, the ſaid *Miles*, he would give him to the Value of his Place, what it was worth, were it a hundred or two of Pounds; and deſired him, this Informant, if he would undertake the Buſineſs, and accept of his Proffer, to provide him the ſaid *Miles* a black Suit of Clothes, a Peruque, and alſo a ſhort Dagger, and to paſs him out of the Water-gate, and he would kill any Man that ſhould oppoſe him; and the ſame Day that he was at his Trial, being the 9th of this inſtant *February*, after he came back again to the *Tower*, the ſaid *Miles* was in a great Paſſion, his Siſter *Elizabeth Herring* being then in his Company; he the ſaid *Miles* then did ſwear, that they ſhould not have their Ends (meaning, as this Informant believeth, that the Sentence pronounced againſt him that Day ſhould not be executed). And then the ſaid *Miles Sindercome* did deſire this Informant to help him to ſome Poiſon, that he might make away with himſelf; and this Informant refuſing to do any of thoſe Things which he deſired, the ſaid *Miles* then did ſpeak to the ſaid *Elizabeth Herring*, his Siſter, who was there, to bring him ſome Poiſon; but ſhe the ſaid *Elizabeth* crying, gave him no Anſwer. And afterwards the ſaid *Miles*, and the ſaid *Elizabeth*, had ſome private Diſcourſe together in the Room, which this Informant did not hear. And the ſaid *Elizabeth* parting from the ſaid *Miles*, came down Stairs, and did ſpeak to this Informant, ſaying, Lord, what ſhall I do, did you hear him what he ſaid of the Poiſon? And this Informant anſwered, That he did hear what he ſaid, and wiſhed her not to bring him any; and further ſaid to the ſaid *Elizabeth Herring*, that if the ſaid *Miles* was poiſoned while he continued in this Informant's Houſe, that he this Informant anſwered, he would charge her the ſaid *Elizabeth* with helping the ſaid *Miles* to Poiſon. And then the ſaid *Elizabeth* went away from this Informant; and this Informant went up into the Chamber to the ſaid *Miles Sindercome*; who aſked this Informant, if it was not poſſible for him to help the ſaid *Miles* to make an Eſcape now in his great Diſtreſs: and further ſaid, that if this Informant would do it, he would make good to him 200 *l.* this Night: And then ſaid, that if he this Informant would go along with the ſaid *Miles*, when he eſcaped, he would make that 200 *l.* 700 *l.* or what more he ſhould deſire; further requiring earneſtly, this Informant to help him to a black Suit, and a Peruque. This Informant then ſaid to the ſaid *Miles Sindercome*, that it was impoſſible for him to make an Eſcape, there being ſuch ſtrict Guard kept about him; and had no further Diſcourſe at that time. And that on *Friday*, the 13th Day of *February*, about ten of the Clock at Night, this Informant then was with the ſaid *Miles* in his Chamber, together with Captain *Henry Sharp*, Captain-Lieutenant *William Foſter*, Enſign *Philip Browne*, Serjeant *Nicholas Stock*: And the ſaid *Miles* did deſire this Informant, and the reſt of the Company, to withdraw out of the Room, which they did; and about a Quarter of an Hour after, he the ſaid *Miles* did deſire them to come again into his Chamber; he walking a Turn or two about the Room, did take into his Hand a Bible to read in; and a while after, he ſtarted up ſuddenly from the Place where he ſat, ſaying, He would go to Bed, that that was the laſt Time he ſhould go to Bed, and the laſt Bed he ſhould lie in. And when the ſaid *Miles* had lain a while in his Bed, he fell aſleep, and ſnorted, and after that he had a rattling in his Throat; and this Informant was bid to take a Candle, and ſee the ſaid *Miles* as he lay in his Bed; and when this Informant had looked upon the ſaid *Miles*, he found him almoſt dead as he lay in his Bed. And this Informant being further aſked, if he knew of any Poiſon, or other Means, which the ſaid *Miles* did uſe to take away his Life, ſaith, That he did not ſee any, neither doth he know any more touching the ſaid *Miles*'s Death, but what he hath already declared in this Information.

Daniel Steer.

The Information of Henry Sharp, *Gent. taken upon Oath, as aforeſaid.*

SAITH, That between ſeven and eight of the Clock on *Friday* Night, being the 13th Day of *February*, being in the Chamber with *Miles Sindercome*, otherwiſe *Fiſh*, three Women, whoſe Names this Informant doth not know, came crying into the Chamber to the ſaid *Miles*, lamenting his Condition; the ſaid *Sindercome* then reading in a Bible, did ſo continue reading about Half an Hour, while the ſaid three Women were there. One of the ſaid Women ſaid to him, the ſaid *Miles*, that ſhe would be glad to ſee him dead in the Room before ſhe went from thence, rather than to have him die ſuch a barbarous Death as was appointed for him to die. And after they were gone out of the Room, this Informant cauſed *Daniel Steer*, the ſaid *Miles*'s Keeper, to ſearch the Bed and the Room, leſt any thing might be left there for the ſaid *Miles* to hurt himſelf withal; and the Room being ſearched, nothing was found. And alſo upon Enquiry of the ſaid *Steer*, this Informant found that all Inſtruments were taken from him; only the ſaid *Steer* brought him up a Knife to cut his Meat withal, and carried it away when he had done. And that about Half an Hour after, he the ſaid *Miles* deſired this Informant, and the reſt of the Company that were with him, to withdraw out of the Room; and about a Quarter of an Hour after, he called them into the Chamber again, and took a Book into his Hand to read in it, and after a little Time, he ſaid he would go to Bed, and lie down in his Bed; and he hearing this Informant and Capt. *Foſter* talking together, the ſaid *Miles* talked very freely with him; and in the Time of their Diſcourſe together, there came a Meſſenger to this Informant from Sir *John Barkſtead*, requiring this Informant to have a ſpecial Care of the ſaid *Miles Sindercome*, otherwiſe *Fiſh*, that he did not poiſon himſelf. This Informant did declare unto the other that were there, what Order he had received for the ſaid *Miles*; and about a Quarter of an Hour after, this Informant hearing him the ſaid *Miles* ſnore, deſired *Daniel Steer*, the ſaid *Miles*'s Keeper, to ſee how the ſaid *Miles* did then. The ſaid *Daniel* taking a Candle to look on the ſaid *Miles Sindercome*, did tell this Informant that he was almoſt dead; yet the ſaid *Miles* did live in that Condition, ſpeechleſs, the Space of two Hours after, and then died.

Henry Sharp.

The Information of Elizabeth Sindercome, *of* Deptford, *in the County of* Kent, *Widow, taken upon Oath, the* 14*th of* February, 1656.

SHE ſaith, That ſhe was three ſeveral Times to ſee *Miles Sindercome*, her Son, while he was Priſoner in the *Tower* of *London*; and ſaith, ſhe doth not know of any violent Means or Ways uſed by the ſaid *Miles Sindercome*, or any other, to haſten his Death; neither did ſhe ever hear him ſpeak any Words to that purpoſe: And that the laſt time ſhe was with the ſaid *Miles*, he did then tell her, this Informant, that he was prepared to die. And that two Miniſters being then in the Chamber with him, ſhe had no further Diſcourſe with him, or did ſee him any more, until on *Friday* Night, about twelve of the Clock, ſhe did hear ſhe was ſent for; and did hear that he was very ſick and weak, of which Sickneſs he died preſently after; and further ſaith not.

The Mark of 2 *Elizabeth Sindercome.*

XXVIII. Proceedings againſt ARCHIBALD, Marquis of *Argyle*, 13 *Car.* II. 1661, for High-Treaſon.

The Grand Indictment * of High-Treaſon, exhibited againſt the Marquis of *Argyle*, by his Majeſty's Advocate, to the Parliament of *Scotland*.

ARCHIBALD, Marquis of *Argyle*, you are indicted and accuſed, and are to anſwer at the inſtance of Sir *John Fletcher*, Knight, his Majeſty's Advocate for his Majeſty's Intereſt, That whereas by the Laws of God, expreſſed in holy Writ, by the Laws of Nations, by the Common Law, and by the municipal Laws and Practice of this Kingdom; eſpecially by the third Act of the fifth Parliament of King *James* I. and by the firſt Act of King *James* VI. of bleſſed memory, and by ſeveral other Acts of Parliament, all good and loyal Subjects of this Kingdom are bound and obliged perpetually to acknowlege, obey, maintain, defend and advance the Life, Honour, Safety, Dignity, Sovereign Authority, and Prerogative Royal of their Sovereign Lord and King, their Heirs and Succeſſors, and Privilege of their Crown, with their lives, lands and goods, to the utmoſt of their power, conſtantly and faithfully to withſtand all, and whatſoever perſons or eſtates, who ſhall preſume, preſs, or intend any ways to impugn, prejudice, or impair the ſame; and ſhall no way intend, attempt, engage, act or do any thing to the violation, hurt, derogation, impairing or prejudice of his Highneſs's ſovereignty, prerogative, and privilege of his Crown, or any point or part thereof: and whoſoever doth the contrary, to be puniſhed as Traitors, and to forfeit their lives, lands and goods. Likewiſe by the 25th Act of the 6th Parliament of King *James* II. and by the 75th Act of the 9th Parliament of Queen *Mary*; all riſing in fear of war againſt the King's Perſon or Majeſty; all attempting to raiſe any band of men of war, horſe or foot, in warlike poſture, without ſpecial licence of the King's Majeſty, and all ſuppliers of them, in help, redreſs or counſel, are puniſhable as Traitors. Likewiſe by the 43d Act of the 3d Parliament of King *James* I. and by the 134th Act of the 8th Parliament; and by Act the 10th, of the 10th Parliament; and by the 205th Act of the 14th Parliament of King *James* VI. it is ſtatute and ordained, that no Subject, of whatſoever function, degree or quality, ſhall preſume to take upon him publickly or privately to declaim, ſpeak or write any purpoſe of reproach, ſlander, diſdain or contempt of his Majeſty's Perſon, Eſtate or Government, or tending to the diſhonour, hurt or prejudice of his Highneſs, his Parents or Progenitors; or to meddle in the affairs of his Highneſs, and his Eſtate preſent, by-gone, or in time coming; nor to deprave his Laws and Acts of Parliaments, nor miſconſtrue his proceedings, whereby any miſliking may be moved betwixt the King's Majeſty, his Nobility and loving Subjects, under the pain of loſing their lives, lands and goods, and others therein contained. As alſo all hearers of any ſuch leaſings, ſlanderous ſpeeches or words, and concealers thereof, without apprehending of the Authors (if it lie in their power), and reveal not the ſame to his Majeſty, or ſome of his Judges or Officers, and are mentioned in the ſaid Acts, are liable to the like puniſhment, as the principal offenders.

Likewiſe by the 130th Act of the 8th Parliament of King *James* VI. it is ſtatute and ordained, that none of his Majeſty's Lieges and Subjects do preſume or take upon him to impugn the Dignity and Authority of the Eſtates of Parliament; or to ſpeak or procure the innovation or diminution of the power and authority of the ſame, under the pain of Treaſon.

Likewiſe by the laſt Act of the 3d Parliament of King *James* V. and by the 33d Act of the firſt Parliament of King *James* VI. all burning of houſes or corn, and wilful fire-riſing, is declared Treaſon, and the committers thereof are to be puniſhed.

Likewiſe by the 51ſt Act of the 11th Parliament of King *James* VI. it is ſtatute and ordained, that the murder and ſlaughter of whatſoever his Majeſty's Lieges, where the party ſlain is under the truſt, credit, aſſurance and power of the ſlayer, all ſuch murder and ſlaughter ſhall be Treaſon, and the perſons found culpable ſhall forfeit life, lands and goods.

Likewiſe by the 37th Act of the 3d Parliament of King *James* I. and by the 144th Act of the 12th Parliament of King *James* VI. all receivers, ſuppliers, or inter-commoners with any Traitors, are puniſhable by forfeiture, as the Traitors themſelves.

Likewiſe by Common Laws and Practice of this Kingdom, all concealers and not revealers of any malicious purpoſe, of putting any violent hands on the ſacred perſon of your dread Sovereign the King's Majeſty, or purpoſe of killing or putting him to death; and all adviſers, counſellors, ſiders, abettors or havers of any acceſſion thereto, are puniſhable as Traitors.

Nevertheleſs, 'tis of verity, that you the ſaid Marquis of *Argyle*, having laid aſide all fear of God, loyalty to his Majeſty, and to his royal Father, of ever bleſſed memory, natural duty and affection to your native Country and Country-men, and reſpect and obedience to the Laws of all well-governed Realms, the Common-Law, and the Laws, Statutes, Acts of Parliament, and Practices of this Kingdom, and having traitorouſly intended and purpoſed the eradicating and ſubverting the fundamental Government of this Kingdom; at leaſt the enervating, violating, derogating, or impairing the ſovereign Authority, royal Prerogative of his Majeſty, and Privilege of the Crown: You, for carrying on of your ſaid wicked purpoſe, having gathered and convocated together, in a hoſtile manner, a great many of your Friends, Servants, Vaſſals, Followers and other of his Majeſty's Lieges, without any warrant, licence or command from his Majeſty; and therewith, under pretence of oppoſing ſuch as by you were then nick-named *Anti-Covenanters*, and oppoſing the work of Reformation (but who indeed were faithful aſſertors of his Majeſty's lawful Authority), having marched to the ford of *Lyon* in *Athol*, in the month of 1640, there did in your tent, and in preſence of a great many Gentlemen and others publickly declare, *That it was the opinion and judgment of many Divines and Lawyers, that a King may be depoſed for deſertions, uenditions and invaſions:* And that howbeit that your words were *in abſtracto* from any King, yet that the ſenſe and meaning thereof might appear to be of the then King's Majeſty, your dread Sovereign, you did ſubjoin and ſay to the late Mr. *John Stuart*, of *Ladiwel*; *And, Mr.* John, *you underſtand Latin.*

Likewiſe conſidering the condition of the Kingdom, and the oppoſitions that a great many of the people were in to his Majeſty; particularly you the ſaid Marquis, and your three Complices and Followers; it is clear that the ſaid words did not only treaſonably reflect upon kingly Government, as being ſubject to the people, who might in the cauſe aforeſaid depoſe a King; but alſo it is clear, that your meaning alſo and intention thereby was, that the King's Majeſty, your dread Sovereign, might be ſo deſtroyed: And the ſaid treaſonable ſpeeches were ſo vented by you, of deſign to uſher in your many treaſonable actions and practices done by you unto his ſacred Perſon, Dignity, and Authority; which, doubtleſs, did occaſion, and was mainly inſtrumental both in his depoſition and cruel murder: Which wicked and treaſonable ſpeeches the ſaid Mr. *John* having thereafter reported, you moſt cruelly and tyrannouſly did proſecute him to death, as a Leaſing-maker betwixt the King's Majeſty and his good Subjects, howbeit you could not but be conſcious of the truth of what he had reported.

Secondly, In proſecution of your aforeſaid wicked and treaſonable purpoſes, you having marched with the ſaid forces to the houſe of *Airlie*, belonging to his Majeſty's right truſty and well beloved Couſin and chief Councillor *James* Earl of *Airlie*, which was then kept for his Majeſty's ſervice and authority; after you had forced the rendition of the ſaid houſe, and deſtroyed the woods and plantings of the ſame, and wearied and deſtroyed the ſaid Earl's friends and tenants, his Majeſty's good Subjects, you did ſlight and demoliſh the ſaid houſe; and to expreſs your hatred to the ſaid Earl, merely for his loyalty to his Majeſty, did ſeize, or by thoſe under you did ſeize upon the houſe of *Forther* in *Glenyla* belonging alſo to the ſaid Earl; and without any colour or pretence of offence did wilfully, moſt treaſonably, and contrary to the aforeſaid Acts of Parliament, raiſe fire in the ſaid houſe, and thereby burnt and deſtroyed the ſame, and all furniture therein.

Thirdly, In further proſecution of your treaſonable plots and machinations againſt his Majeſty's Perſon and Authority, contrary to the aforeſaid Laws and Acts of Parliament *in Anno* 1640; you in an hoſtile manner, did moſt treaſonably lay ſiege to his Majeſty's Fort and Caſtle of *Dunbarton*, then fortified and kept for his Majeſty's ſervice by Col. *Henderſon*, having his Majeſty's command and commiſſion for that effect, and forced the ſaid Colonel to render the ſaid Caſtle to you; out of which moſt treaſonably you cauſed to be tranſported and carried away a great many of his Majeſty's cannon and other ammunition, appointed for defence and ſecurity of the ſaid Caſtle.

Fourthly, Notwithſtanding that his then Majeſty had *in Anno* 1641 come himſelf in perſon to this Kingdom, and moſt graciouſly condeſcended to all ſuch Acts as were required of him (how unjuſt ſoever) for ſecuring and pleaſing the people, and ſettling a peace; and that he had paſt one Act of Oblivion, to indemnify all ſuch as had formerly been in oppoſition to his Majeſty within this Kingdom, and that he had conferred upon you the title and dignity of Marquis, as a mark of his royal favour, and put you in places of greateſt truſt in the Kingdom; and that you had ſworn and promiſed, in the Abbey of *Holyroodhouſe*, that in caſe any trouble or commotions ſhould happen to be raiſed in *England*, by any of his diſcontented Subjects againſt him, you would aſſiſt and defend him againſt all ſuch, to the hazard of your life and fortunes: and that his Majeſty had parted from this his ancient Kingdom, as was ſaid and acknowledged by all, a contented Prince from a contented People: yet nevertheleſs his Majeſty being forced and neceſſitated *in anno* 1642, to leave his Parliament in *England* then ſitting at *Weſtminſter*, and his royal Palace of *Whitehall*, and betake himſelf to defenſive arms, for maintenance of his royal perſon, dignity and authority, and to protect the ſame againſt an army of Sectaries, who maliciouſly, traitorouſly, cruelly and treaſonably did invade the ſame; you, contrary to your allegiance, obligations and recent Promiſe aforeſaid, did by yourſelf and complices, to fortify and ſtrengthen the ſaid Rebels and Sectaries, and in direct oppoſition to his Majeſty's perſon and dignity, call, or cauſe to be called a pretended convention of Eſtates *in Anno* 1643, without any ſhadow or colour of lawful authority; and you and they ſo convocated did take upon you the ſupreme authority of the Kingdom, enter in league with his Majeſty's enemies, impoſe ſubſidies and exciſe upon the people, and raiſe an army of his Majeſty's own ſubjects, and therewith entered his Majeſty's Kingdom of *England*, ſeized upon his Majeſty's Towns and Forts there; and killed, murdered, plundered and deſtroyed his good ſubjects, and in open and pitched fields fought for, with and in behalf of the

* This is called *The Grand Indictment of High-Treaſon*, becauſe there was another Charge exhibited againſt the Marquis, at the inſtance of Sir *James Lamond*; and there were alſo printed ſome ſhort imperfect Anſwers of the Marquis's to this Grand Indictment, which imperfect Proceedings are inſerted in *State-Trials*, Vol. II. from *page* 413. to *page* 418. and *page* 428, and 429, is inſerted Biſhop *Burnet*'s Account of his Trial, which is meant of this Trial here inſerted; not of that Indictment againſt the Marquis at the inſtance of Sir *John Lamond*. And in *page* 430, is inſerted the Marquis's Speech on the Scaffold, for which reaſon it is here omitted.

ſaid Rebels, againſt his Majeſty's forces, which in effect was the riſe and cauſe of all our ſubſequent ruins and diſaſters that befel his Majeſty or his loyal and good ſubjects thereafter.

Fifthly, *In Anno* 1645, after your return from *England*, to ſhew your implacable malice and hatred to all ſuch as had any dependence upon, or affection to his Majeſty, you by yourſelf, and others under your command, or at your direction, did moſt treaſonably raiſe wilful fire, and burn the houſe of Miſtreſs *Lyfvented*, inhabited by the Counteſs of *Sterling*, and in her poſſeſſion, and all the moveables and furniture, they extending to a great value; notwithſtanding that the ſaid Counteſs was an honourable aged woman; and who, and her deareſt huſband, the Earl of *Sterling*, by all obſervances and dutiful reſpects obliged you, ſo far as in them lay; thereby adding to the ſaid Act of Treaſon, the height of oppreſſion and ingratitude.

Sixthly, In the year 1646, you by yourſelf, or thoſe under your command, or for whom you were anſwerable, or whom you might have ſtopped or impeded, did take in the houſe of *Taward*, belonging to the Laird of *Salmond*, and the houſe of *Oſcoge*, belonging to *Lamond* of *Oſcoge*, and after articles of capitulation drawn and ſubſcribed by the Laird of *Ardkinglaſs*, and other Officers under your command, did moſt treaſonably, in manner aforeſaid, under truſt and aſſurance, as is ſaid, burn the ſaid houſe of *Oſcoge*, cruelly hang, kill and murther a great many of the ſaid Lairds of *Salmond* and *Oſcoge*'s friends and followers; as is more fully expreſt in the Summons raiſed at their inſtance and mine, for his Majeſty's intereſt againſt you, and which is repeated in a part of this article.

Seventhly, You having traitorouſly intended the utter ruin and extirpation of all faithful and loyal ſubjects, who had given teſtimony of their faithfulneſs to his Majeſty's deareſt Father, of ever-bleſſed memory; and having with an army of your complices, aſſociates, vaſſals, ſervants, tenants and followers *in Anno* 1646, marched to *Kentire*, where a great many of his Majeſty's well-affected ſubjects of the name of *Mac-Donald*, *Mac-Cow*, and others, whoſe names are not particularly known, to the number of 3 or 400, had fortified themſelves for their ſecurity, and againſt your oppreſſion and violence, in the houſe of *Lochehead* and *Donavertie*: And you with the ſaid forces having marched to the ſaid houſe of *Lochehead*; the Gentlemen and others therein, without making the leaſt oppoſition, and declaring that they had refuged themſelves to the ſaid place for ſhelter and protection, did render up the ſaid houſe and themſelves, upon aſſurance, that they might really and quietly return and live at their own homes; according thereto, they were diſmiſſed and ſent home, where they remained in peaceable manner by the ſpace of days. Notwithſtanding, thereafter, you and the forces aforeſaid having beſieged the Caſtle of *Donavertie*, during the ſaid ſiege, there were ſeveral rendezvouzes appointed for the ſaid Gentlemen to make their appearance; which frequently they did, and were ſtill diſmiſſed, until ſuch time as thoſe who were within the ſaid houſe of *Donavertie* had rendered up the ſaid houſe and themſelves, to be diſpoſed of at the mercy of the Kingdom, or pretended Committee of Eſtates: And that notwithſtanding thereof, you and your ſaid complices had moſt perfidiouſly, treacherouſly and treaſonably (and for which alſo you are here indicted) ſlaughtered and murdered, or cauſed to be ſlaughtered and murdered, the number of 260 of them or 300, they being under your truſt, aſſurance, credit, or power; and did diſpoſe of the reſt of them at your own hand, without any lawful warrant, to Captains *William Hay*, and *Archibald Campbell*, to ſerve in the *French* wars. Then and hereafter you cauſed, and appointed a new rendezvous of the ſaid Gentlemen, who were in the houſe of *Lochehead*, and their followers; who having appeared in frequent manner, you cauſed to be ſingled out fifteen or ſixteen of the ſaid Gentlemen, who were that night ſent to the ſaid houſe of *Lochehead*, and the next morning brought forth by you, or ſuch as were under your command; and moſt perfidiouſly, cruelly and inhumanly, without any order of Law, or form of Proceſs civil or military, hanged and murdered. And to aggravate the ſaid cruel and barbarous crime, 'tis of verity, That one of the ſaid Perſons being an old man, and having one ſon, of age not above ſixteen or ſeventeen years; the father immediately before his death did depone, that his ſaid ſon had never done any crimes offenſive all his life-time, but that he had ſtill been at Schools; and that ſome few days before, he had come from *Glaſcow*, the place of his education, to viſit his Parents; and therefore did earneſtly ſupplicate, in regard of his innocency, his life might be ſpared: Notwithſtanding you, and the bloody actors of your purpoſes, were ſo unmerciful, as not to hearken to the ſaid ſo juſt deſire of the ſaid dying old man, but forthwith the ſaid young innocent boy was cruelly alſo hanged to death. Likewiſe not content with the aforeſaid unheard-of horrid Acts of cruelty, you in the month of 1640, or one or other of the months thereof, by yourſelf and followers, or ſuch whom you might have ſtopt or left, cauſed to be tranſported from the Iſle of *Ila*, to the Iſle of *Inwa*, to the number of two hundred perſons of all ſexes and ages; where all means of livelihood and ſubſiſtence being withdrawn from them, they in a moſt miſerable manner were pined and ſtarved to death by famine, except ſome very few, who had out-lived the reſt, and were relieved and carried out of the ſaid Iſle by boats accidentally coming by: Likewiſe the perſon of *Macdonald*, alias *Coalmac Gilleſpy*, or *Coawkittoche*, being *in Anno* ordained by the Parliament, or Committee of Eſtates thereof, to have been brought from priſon out of the houſe of where he then was, and there had been kept by you and others in your time, many years before, to *Edinburgh*, that the cauſes for which he had been kept, and ſo detained in priſon, might have been known; and he having for that end been brought in a ſhip the length of the road of *Leith*; you, for preventing ſuch Information of your cruelty and oppreſſion exerciſed towards him, and many of his friends and relations, which he was able to have given and made out; you in manifeſt contempt and ſcorn of that Committee of Parliament, under which you yourſelf acted, cauſed to take the perſon of the ſaid *Coawkittoche* forth of the ſaid ſhip, and after you had carried him to your own lands and bounds, cruelly cauſed to hang him to death.

Eighthly, Notwithſtanding of the manifold acts of mercy and favour, dignity, honour and truſt conferred upon you by your then dread Sovereign, for reclaiming of you from your diſloyal and treaſonable practices, plots and machinations, againſt his ſacred perſon, dignity and authority; he being ſore preſſed and reduced to great ſtraits and extremities by that army of Sectaries before-mentioned, with whom you had formerly joined, as is ſaid; and having in that exigence and difficulty rather choſen, from an innate principle of affection of his Countrymen, to caſt himſelf over in the hands of the army of his Majeſty's ſubjects of his ancient Kingdom of *Scotland*, for ſhelter and preſervation of his Royal Perſon; nevertheleſs, you, the ſaid Marquis, being the chief ring-leader of that factious party, who then ſwayed the eſtate and affairs both in Council and Armies in the ſaid Kingdom, did ſo contrive and complot, and by your influence ſo prevail, that after all fair offers made by his Majeſty, and his earneſt deſire to have come and lived in *Scotland*, until ſuch time as all differences in both Kingdoms had been ſettled: That a pretended Act of Parliament was made for abandoning and leaving his Majeſty in the diſpoſal and mercy of the inveterate enemies of his Majeſty and Government, the ſaid armies of Sectaries. And that your acting in, and acceſſions to, the ſaid affair might be the more evident and clear, and to aggravate your eminent and ſingular guilt therein, you yourſelf went to *London*, where you baſely, under pretext of ſatisfaction for the arrears of the ſaid army, raiſed by the pretended authority of the pretended Convention of Eſtates, *in Anno* 1643, as is ſaid, treacherouſly and treaſonably gave up, at leaſt condeſcended to the upgiving of your dread Sovereign and Maſter, and that as being impowered ſo to do by the Kingdom of *Scotland*; and thereby did rub an indelible mark of reproach and infamy upon the whole nation to all generations, ſo far as in you lay. And further, to clear your aforeſaid treaſonable dealings, acceſſions to, and correſpondency with that infamous party of the ſaid army, who carried on the ſaid abominable and deteſtable act, you being at the ſame time in a pretended joint Committee of both Kingdoms, whileas the *Engliſh* therein did call in queſtion whether the *Scots* army would ſincerely concur with them in their ſaid treaſon and treachery; you, after many arguments uſed in their favours, earneſtly deſired them to have patience for a little time, and it would appear by ſomewhat of the officers of the army, how far they intended to concur and go along with them. Likewiſe within few days after there was a vindication and declaration emitted in name of the ſaid armies, whereby it was held forth, that in caſe his Majeſty would not condeſcend to all the deſires of both Kingdoms, which was no leſs than the diveſting himſelf of all regal power, civil, eccleſiaſtical, or military in ſtate, church, or armies, they would deliver him up; which immediately after the payment of 200,000*l.* baſely and treaſonably was done by you and them.

Ninthly, *In Anno* 1648, his Majeſty's Royal Father being, contrary to all Laws, divine and human, moſt unchriſtianly, barbarouſly and treaſonably detained and kept priſoner within the Caſtle of *Carisbrook*, in the Iſle of *Wight*, by a party of factious, diſloyal and rebellious Sectaries; the Eſtates of Parliament then convened by his Majeſty's authority, having taken the ſaid inhuman, treaſonable and cruel uſage into ſerious conſideration, they found this Kingdom engaged in honour and duty to reſent ſo horrid and unheard-of cruelty and leſe-majeſty, and obliged to uſe their utmoſt endeavours to relieve him out of the hands of ſuch wicked Uſurpers, and to reſtore him to the exerciſe of his Royal authority in freedom, honour and ſafety; for effecting thereof, after all other fair ways eſſayed, upon mature conſultation had, they found that the only probable means was the raiſing of an army of his Majeſty's good ſubjects, which was accordingly ſtatute and ordained by Act of the ſaid Parliament. Againſt the carrying on of which, ſo juſt, laudable and neceſſary a duty, you did moſt violently and eminently oppoſe yourſelf, not only by arguing, voting againſt, and uſing all other means in your power to obſtruct the ſame; but alſo, after the ſame was paſt into an Act of Parliament, you did moſt contemptuouſly and treaſonably publickly diſſent from, and enter a Proteſtation againſt the ſame; and not being therewith content, after the ſaid army in purſuance of their duty and allegiance had marched into the ſaid Kingdom, you ſhortly after in the month of in contempt of the aforeſaid authority, and againſt the preſervation of his Majeſty's perſon and authority, did moſt treaſonably convocate an army of factious, ſeditious and rebellious ſubjects, in oppoſition to the ſaid army, and therewith committed divers and ſundry outrages, murders, ſlaughters, plunders and vaſtations upon the perſons and eſtates of divers of his Majeſty's good ſubjects, and therewith invaded ſeveral of the cities and caſtles, ſeized thereupon, and upon the magazine with arms and ammunition therein: And at that time the ſaid rebellious army of Sectaries of *England*, being upon the borders, you fearing and apprehending that the force and power raiſed by you ſhould not be able to withſtand his Majeſty's good and loyal ſubjects who were then riſen and ready to riſe in arms for aſſerting and vindicating his Majeſty's juſt authority, you did moſt baſely, treacherouſly and treaſonably call in to your aid and aſſiſtance the ſaid armies of Sectaries. Likewiſe you yourſelf went in perſon to the houſe of *Mordington*, within a mile of the *Engliſh* borders, to the end aforeſaid; and you did meet with the vile Uſurper *Oliver Cromwell*, commander of the ſaid army, with whom you had ſeveral private meetings and conſultations, and thereby perſuaded, and ſo prevailed with the ſaid Traitor, that he thereafter marched with the ſaid army to *Edinburgh* and the places thereabout; and which march and incoming of the ſaid *Oliver* you might have undoubtedly hindered; in ſo far as it can be made appear by clear proof and teſtimonies of famous perſons, That it having been complained upon to him at the ſaid houſe of *Mordington*, that by reaſon of his being there with ſuch a great number of Soldiers, the Lord *Mordington*'s tenants would undoubtedly be ruined; he the ſaid *Oliver* made anſwer, That he could not help the ſame, for his ſtaying and going did depend upon you, and that he was ready, if you deſired, to march back to *England*. At leaſt, you did contrive, adviſe or conſent to the raiſing and convocating of the ſaid ſeditious, factious, and rebellious armies; at leaſt was one of the number yourſelf, and with, and aſſiſting to them in arms; at leaſt, did vote, counſel or perſuade the in-calling of the ſaid army of Sectaries: And they being ſo brought in, you did countenance, aſſiſt, concur and conſult with them, or their Commanders, or ſome of them, in publick or in private at *Edinburgh*, and in the *Canongate*, in the houſe called *Lady Home's Lodgings*, and in divers other places. As alſo, you did moſt villainouſly and traitorouſly contrive, counſel or vote for the drawing up of a Letter directed to the Traitor and abominable Uſurper, wherein you and your complices did engage yourſelves, in the name

of

of the Kingdom of *Scotland*, to employ your utmoſt endeavours, that none who have been active in, or conſenting to the engagement againſt the ſaid Sectaries, or had been in arms at *Sterling*, or elſewhere, in maintenance or purſuance of that engagement, ſhould be employed in any publick place or truſt within this Kingdom whatſoever, without advice or conſent of the Kingdom of *England*; as the ſaid Letter, dated the 6th day of *October*, 1648, more fully bears. As alſo, you did draw up, at leaſt did counſel, adviſe or vote, to the up-drawing of certain Inſtructions given to Sir *John Chieſly*, who was ſent by you and your complices, as Commiſſioner to the pretended Houſe of Parliament of *England*, dated *October* 17, the year aforeſaid; wherein you deſire, that the noblemen, gentlemen of quality, and conſiderable officers of the army, that went into *England*, under the command of Duke *Hamilton*, and who were then priſoners, might be kept as pledges for the peace of that Kingdom; by which not only have you endeavoured moſt unnaturally to enſlave your fellow-ſubjects and countrymen to the power of ſtrangers, but moſt treacherouſly and treaſonably, as an unworthy, ungrate Patriot, done what in you lay to deſtroy the life of your own dread Sovereign, and the Royal Authority in him and his ſucceſſion, and to ſubject the honour, liberty, power and government of this his Majeſty's ancient and free Kingdom, to the command, luſt and tyranny of foreign traitors and uſurpers. As alſo, you, upon the 4th day of *May* thereafter, having taken upon you moſt treaſonably the ſupreme authority of this Kingdom, gave warrant under your hand for iſſuing out a Proclamation, declaring that the wives, children and families of *James* Lord *Ogilvy*, Lord *Rea*, *Lewis* Marquis of *Huntley* therein deſignant, *Lewis Gordon*, ſon to the Marquis of *Huntley*, *John* now Earl of *Middleton*, therein deſignant, *John Middleton* of ſometime deſignant General-Major, ſhould be no longer under the protection of this Kingdom, and that ſuch courſe ſhould be taken for tranſporting them out of their country to foreign parts, as the Eſtates of Parliament, or their Committee, ſhould think fit.

Tenthly, After his Majeſty's deareſt and moſt royal father, of eternal and moſt bleſſed memory, had been moſt unchriſtianly, inhumanly, horridly and barbarouſly murdered, by the ſaid abominable traitor and uſurper *Oliver Cromwel*, and his wicked complices, the deviliſh and treaſonable courſes, plots, contrivings and actings of yours did not yet terminate: For there being ſome motions for addreſs to be made to his Majeſty, by ſome of his good ſubjects of this his ancient Kingdom, as undoubted and rightful Succeſſor to his deceaſed royal father in the imperial crown thereof, that his Majeſty might come to his ſaid antient Kingdom, for exerciſing his royal power and authority; the ſaid motion and purpoſe being ſo juſt and lawful, you, notwithſtanding of your great impudence and daring, always fearing, that a direct oppoſing thereof would prove altogether ineffectual; you, in a moſt indirect way, procured the application made for inviting his Majeſty, to be ſo clogged with limitations, reſtrictions and conditions, to have been condeſcended to by his Majeſty, before his admiſſion to the exerciſe of his royal Government, as were moſt deſtructive to his Majeſty's dignity and authority, and moſt derogatory to monarchical Government; as are more fully expreſſed in the ſeveral commiſſions, inſtructions and addreſſes ſent and made to his Majeſty to that effect, and publick proclamation of his Majeſty at the mercat-croſs of *Edinburgh*, by you and your complices, commiſſioners at *Breda*; all which are here repeated as a part of the Libel, *brevitatis cauſa*. And his Majeſty, upon conſideration, that the ſaid unreaſonable, unlawful and treaſonable conditions were exacted of his Majeſty by you, and a few number of factious ſubjects, who had, by the aſſiſtance of the uſurper and tyrant *Oliver Cromwel*, thruſt yourſelf into the government of his Majeſty's ancient Kingdom; and truſting to the fidelity, the loyalty and good affection of his other good ſubjects, having, notwithſtanding the ſaid hard and unjuſt conditions, reſolved to caſt himſelf upon the loyalty and affections of his other good and faithful ſubjects; you, to obſtruct his Majeſty's purpoſe and reſolution, yea, and ſo far as in you lay, to fright and terrify him therefrom by you and your complices cruel execution upon the Marquis of *Montroſs*, his Majeſty's commiſſioner, and who repreſented his perſon in his ſaid ancient kingdom; cauſed to be moſt horridly and inhumanly murdered the ſaid Marquis, at the Mercat-croſs, upon the 21ſt day of *May*, 1650, with all the circumſtances of diſgrace and diſhonour: which ſo much reflected upon his Majeſty's perſon, dignity and authority, and upon the honour of all true nobility; and is ſo recent and freſh, with deteſtation, in the memories of all good ſubjects and generous ſpirits, at home and abroad, that it is not fit to be mentioned or repeated here. But his Majeſty ſtill continuing in his former purpoſe and reſolution, and after a moſt tedious and dangerous voyage at ſea, having, by the providence of Almighty God, happily and ſafely arrived in his ſaid ancient Kingdom; ſhortly thereafter, the cruel bloody murderer and uſurper *Oliver Cromwel*, in purſuance of his Majeſty, with a powerful army of Sectaries, by ſea and land, invaded his ſaid Majeſty's ancient Kingdom. For oppoſing of whom, an army being raiſed; while both the ſaid armies were in the field, you moſt treacherouſly and treaſonably kept correſpondency, and had intelligence with the ſaid uſurper, by writing to, and receiving letters from him, without his Majeſty's private conſent or warrant; at leaſt, by ſending to, and receiving meſſages from him by word of mouth. And further, to advance the deſigns of that abominable Regicide, after you had by your indirect means, plots, advices or contrivances, gotten his Majeſty removed from his army at *Leith*; you by your influence upon a few number of the Commiſſioners of the General Aſſembly, yourſelf being one of the number then met at St. *Cuthbert*'s church, commonly called the Weſt-Kirk, prevailed ſo, that for the weakening of the hands of friends, and ſtrengthening the enemies, there was in a moſt clandeſtine and ſurreptitious manner an Act, as of the ſaid commiſſion of the Kirk, made, printed and publiſhed; wherein, beſides many reproachful and ſlanderous expreſſions of his Majeſty and his royal anceſtors, more fully expreſſed in the ſaid pretended Act, bearing date *Auguſt* 13, 1650, it was declared, that you diſclaimed, and would not own his Majeſty's intereſt, becauſe of his refuſal to ſubſcribe and emit a declaration offered to him; and which declaration was contrived and drawn up by you, and contains many ſcandalous, ſeditious, imperious, reproachful and treaſonable expreſſions, not only againſt his Majeſty's authority and government, but alſo againſt his royal father and mother, and others his royal progenitors, as is more at large expreſſed in the aforeſaid Act of the date above-written, and declaration bearing date the day the ſame year: of which declaration there needs no more be ſaid, than that the circumſtances by which his Majeſty was enforced to ſign the ſame, are enough known to the world; and that the worthieſt and greateſt part of his Majeſty's ancient Kingdom did even deteſt and abhor the evil uſage of his Majeſty in that particular, when the ſame tyranny was exerciſed there by the power of you and a few evil men your complices, which at that time had ſpread itſelf over his Majeſty's Kingdom of *England*; at leaſt you and your complices did ratify and approve the ſaid Act of the Weſt-Kirk, and conſent thereto; and at leaſt you did deal with, and preſs and force his Majeſty to ſign and ſubſcribe the declaration aforeſaid; at leaſt you were author or contriver, adviſer or counſellor, perſuader or voter, or aſſenter, aſſiſter, aider or abettor of the aforeſaid reſtrictions, limitations and conditions, and of the aforeſaid murder of his ſaid Majeſty's Commiſſioner, and manner thereof, and of the keeping of the ſaid correſpondence with the ſaid invader and uſurper, and of the ſaid Act and Declarations, or any or other of them, or all or part thereof, or one or other of them.

Eleventhly, After it had pleaſed God to ſuffer that monſter of men and cruel Regicide, *Oliver Cromwel*, ſo far to prevail againſt all his Majeſty's endeavours for recovering his juſt right and intereſt in this and in his other Kingdoms, and over all the armies and forces raiſed by him for that end, ſo that he was neceſſitated to refugeate himſelf with foreign Princes and Eſtates: howbeit, at his Majeſty's coronation, you, in the preſence of God, and a great many of the Nobility of this Kingdom, and others therein convened at *Schoon*, the 1ſt of *January*, 1651, did ſwear to be faithful to the Crown, and true liege-men to his Majeſty: yet nevertheleſs, contrary to the ſaid oath, and notwithſtanding the many favours, honours, benefits and acts of indemnity conferred upon you, and contrary to the Laws and Acts of Parliament, as is expreſſed; you did moſt perfidiouſly, ungratefully and treaſonably, in *anno* 1653, or 1654, not only according to your bounden duty, not riſe in arms, and join with the Earls of *Glencairn* and *Middleton*, who were commiſſioned from his Majeſty for hindering the further progreſs of the uſurpers, and expelling them forth of this Kingdom; but did in open hoſtility join with the ſaid uſurpers their forces; eſpecially with the Colonels *Overton*, *Cobbet* and *Twiſleton*; at leaſt with the ſaid Colonels *Cobbet* and *Twiſleton*; at leaſt with Colonel *Twiſleton*, when he was in the Highlands in oppoſition to the ſaid Earl of *Glencairn*; at leaſt joined with one or other of them in counſel; did take and relieve priſoners, did furniſh ſeveral pieces of great cannon, to the number of fourteen, in *anno* 1653, or 1654, to Colonel *Aldred*, then governor of *Air:* which cannon, or a great many of them, were taken out by you of his Majeſty's caſtle of *Dunbarton*, at the time and in the manner above expreſſed. And likewiſe you did take pay from the ſaid uſurpers for a company of foot under them and in their ſervice, thereby openly and clearly making it appear what you did intend by all your more covered and private machinations, plottings and treaſonable actings againſt his Majeſty's deareſt father and himſelf. Likewiſe to make it appear what intimacy and power you had with the uſurper, you not only did term and call the actings of his Majeſty's forces againſt you and the uſurpers, rebellion, but alſo you in *anno* 1654, did take upon you power to bring off ſuch as were in that ſervice, and to give remiſſions therefore under your own hand; particularly to *John Mac-Dowgaw* of *Dunolick*, as the ſame under your hand, the ſaid *John*, will verify.

Twelfthly, The ſaid *Oliver Cromwel*, that monſter of men, vileſt of traitors, moſt cruel murderer, bloody tyrant and uſurper, having reached, as he thought, the end of all his deviliſh plots and treaſonable machinations, by uſurping the dominion and authority of his Majeſty's three Kingdoms, and ſettling the ſame, ſo far as in him lay, upon him and his family; you conceiving the ſame ſo fixed and riveted, that in human probability it was not poſſible to be removed or ſhaken; that you might avowedly reap the fruits of your former more covered, vile and damnable plottings, contrivings and actings for the ſaid arch-tyrant and traitor, you then pulled off and laid aſide the maſk of pretended loyalty and religion, under which you had all along formerly lurked, thereby having deceived and cheated a great many of his Majeſty's good ſubjects from their due allegiance and loyalty under hypocritical fair pretences of your affection and zeal for Religion, Prince, and Country, to the utter ruin (if not of ſouls) of many of their bodies, eſtates and fortunes; and did openly, in face of the world, diſcover yourſelf in your own colours, appearing in a thing profeſſedly and publickly in behalf of the ſaid uſurper againſt his Majeſty's perſon and authority: in ſo far as in the month of 1657, after the deceaſe of the ſaid uſurper, the ſucceeding uſurper, his ſon, being moſt treaſonably and tyrannically proclaimed Chief Magiſtrate and ſole Protector of all his Majeſty's dominions and territories thereto belonging, at the mercat-croſs of his Majeſty's cities of *Edinburgh* and *Dunbarton*, you having apparently, for ſuch like ſervices done or to be done, received from the ſaid uſurper *Oliver* one precept due upon the Exchequer of *Scotland*, for payment to you of 12,000*l. ſterling*, or thereabout, did with your perſonal preſence countenance the ſaid tyrannical and treaſonable proclamation; thereby, ſo far as in you lay, diveſting his Majeſty of his juſt and royal intereſt and right, and eſtabliſhing the ſame on the perſons and families of the ſaid uſurpers. Likewiſe not long after the ſaid uſurper, the more to eſtabliſh himſelf in his uſurped government, having called a pretended Parliament, conſiſting of a pretended new-coined Houſe of Peers, and certain perſons of his Majeſty's three Kingdoms as a Houſe of Commons to ſit in *Weſtminſter*; you did procure yourſelf elected Commiſſioner for the ſhire of *Aberdeen*, at leaſt did accept of a commiſſion from them; albeit both by the nobility of your birth, and your non-reſidence within the ſaid ſhire, you was in law incapable to be ſo elected; at leaſt ought and might have refuſed to accept any commiſſion. Nevertheleſs having voluntarily, and of your own accord, embraced the ſaid charge and employment; you thereupon took journey, and went to *London*, and moſt baſely, perfidiouſly and treaſonably, ſate, voted, and otherwiſe acted in the ſaid uſurper's pretended Parliament, by whom his Majeſty's right and intereſt was diſclaimed and abjured, and the ſame owned only in the ſaid uſurper's

Uſurper's Perſon as a Member of the ſaid pretended Houſe of Commons, to the high Indignity and Contempt of his Majeſty's ſacred Perſon and Authority, the utter Deſtruction of monarchical Government, the Diſhonour of this Kingdom, and the great Diſgrace of your own Family and Poſterity.

Thirteenthly, You the ſaid Marquis, to make it further appear to the World, that it was always your Purpoſe and Intention to deſtroy his Majeſty's Authority and Government, and to oppoſe his Reſtauration to his juſt Right and Intereſt to his three Kingdoms, at a provincial Aſſembly holden at *Innerary* a little after the Defeat of his Majeſty's Army at *Worceſter*, the Miniſters praying for his Majeſty after the accuſtomed Manner, you did moſt villainouſly and treaſonably rebuke them, ſaying, *That they were but Fools to pray for a malignant and wicked King, whom God had rejected, and would never reſtore him again*; or ſome ſuch-like Words to that Purpoſe. And alſo, you being at *London*, in the Time of the Uſurper *Oliver*, you ſaid in Preſence of divers Perſons of Quality, *That you wondered how People could be ſo mad, as to call home a Family whom God had rejected*, or ſuch Words to that Purpoſe: Likewiſe after your home-coming to *Scotland*, yea, openly in a publick Meeting at *James Mauſtertonne*'s, in *Niddrey*'s Winde, in Preſence of ſeveral Noblemen and Gentlemen, you boaſted, *That you would own any thing you had done in theſe things by-gone*; *and that if it were to do, you would do it again*; *howbeit you had known that all that had, would have come:* Thereby preſumptuouſly taking upon you, by outward Succeſs, to give Judgment upon the hidden and ſecret Counſels and Determinations of Almighty God, and thereby to alienate the Affections, Duties, and Allegiance of his Majeſty's good Subjects, and to harden and confirm others, ſuch as are otherways diſpoſed in their wicked Courſes towards his Majeſty's Perſon and Authority.

Laſtly, That your monſtrous and execrable Treaſon may appear to all the World, it is of Verity, that in the Year 1648, at a private Conference betwixt you, *Oliver Cromwell*, and Col. *Ireton*, the ſaid *Oliver* complaining of the many Difficulties that attended their Affairs, by reaſon of the divers Deſigns which his Majeſty had on Foot from time to time againſt them; you the ſaid Marquis made Anſwer, *That their Danger was great indeed, in regard that if any of theſe Deſigns ſhould take effect, they were all ruined.* And thereupon gave your poſitive Advice, that they ſhould proceed to the queſtioning of the King for his Life; aſſuring them, that they could never be ſafe until they had taken away his Majeſty's Life. At leaſt, you did know of the horrible and treaſonable Deſign of murdering his ſaid Majeſty; and did moſt treaſonably conceal, and not reveal the ſame till after the ſaid horrid Deed was committed, and ſo paſt Prevention or Remedy. At which time, *in Anno* 1649, publickly in the Face of the pretended Parliament then ſitting, you ſaid, that the Uſurper *Cromwell* had told you, *That* England *and* Scotland *would never be at Peace, until the King were put to Death.* By all which Particulars reſpectively, above rehearſed, it is clearly evinced, that you were, and are Author, Contriver, Deviſer, Conſulter, Adviſer, of all or Part of all the aforeſaid Crimes of Treaſon, and other above libelled, or other of them, in Manner above declared. And thereby has incurred the Pains and Puniſhments of High-Treaſon, and others contained in the Laws and Acts of Parliament above-written; which muſt and ſhould be inflicted upon you with all Rigour, in Example to others in all time coming.

Sic ſubſcrib. *Jo. Fletcher.*

31 *January*, 1661.

Ordered, That the above-written Dittay be given to the Marquis of *Argyle*, by a Herald or Purſuivant, and he to anſwer thereto, upon the 13th Day of *February* next to come.

The Marquis of *Argyle*'s Petition to the Parliament of *Scotland*, craving a Precognition of his Caſe, containing many weighty Reaſons urging the Neceſſity thereof. Preſented to the Parliament, *February* 12, 1661.

To my Lord Commiſſioner his Grace, and Honourable Eſtates of Parliament,

The humble Petition of Archibald *Marquis of* Argyle,

Humbly ſheweth,

THAT for as much as the Petitioner can with a ſafe Conſcience affirm, and ſolemnly proteſt, That whatever his Actings or Acceſſion has been in relation to publick Buſineſs ſince the Beginning of the Troubles, till his Majeſty's Departure hence in the Year 1651, though he will not purge himſelf of Errors, Failings, and Miſtakes, both in Judgment and Practice, incident to human Frailty, and common to him, if not with the whole, at leaſt with the greateſt Part of the Nation; yet in one thing, though he were to die, he would ſtill avouch and retain his Innocency, that he never intended any thing treaſonably, out of any pernicious Deſign againſt his Majeſty's late Royal Father of ever-glorious Memory, or his preſent Majeſty (whom God may long preſerve), their Perſons or Government; but endeavoured always to his uttermoſt for ſettling the Differences betwixt their Majeſties and the People. And as to any Actings before the Year 1641, or from the ſaid Year, till his Majeſty being in the Parliament at *Perth* and *Sterling*, your Petitioner did with a full Aſſurance rely upon his gracious Majeſty, and his Royal Father, their Treaties, Approbation, Oblivion, and Indemnity, for what was paſt, and firmly believed that the ſame ſhould never have riſen in Judgment, or that the Petitioner ſhould have been drawn in queſtion therefore. And during his Majeſty's Abſence, and being forced from the Exerciſe of his Royal Government by the late Uſurpers, and long after that the Nation, by their Deputies, had accepted of their Authority and Government, and they in Poſſeſſion, the Petitioner was forced to Capitulation with them, being in their Hands, and under Sickneſs, and the ſame was, after all Endeavours uſed, according to the Duty of a good Subject; and upon the Petitioner's Part, ſo innocent and neceſſary for Self-preſervation, without the leaſt Intention, Action, or Effect to his Majeſty's Prejudice: That albeit upon Miſ-information (as the Petitioner humbly conceives) his Actings and Compliance both in their Deſigns and Quality have been miſ-repreſented, as particularly ſingular and perſonal, ſtating the Petitioner in a degree of guilt beyond others, and incapable of pardon; the ſame have ſo far prevailed upon his Majeſty, as to cloud and damp the propitious and comfortable rays of his Royal Grace and Favour, and have ſtrained his gracious inclination beyond its natural diſpoſition of clemency expreſs'd to his other Subjects, to commit the Petitioner's perſon, and give way to the trial of his carriage and actings: Yet ſo firmly rooted is the Petitioner's perſuaſion of his Majeſty's Juſtice and Clemency, and that he intends the reclaiming, and not the ruin of the meaneſt of his Subjects, who retain their loyalty, duty, and good affection to his Perſon and Government; that upon true and right repreſentation of the Petitioner's carriage and actings, he ſhall be able to vindicate himſelf of theſe aſperſions, and ſhall give his Majeſty ſatisfaction; at leaſt ſo far to extenuate his guilt, as may render him a fit object of that Royal Clemency, which is of that depth, that having ſwallowed and paſt by, not only perſonal but national guiltineſs, of much more a deeper dye than any the Petitioner can be charged with, or made out againſt him; and ſo will not ſtrain to paſs by and pardon the faults and failings of a perſon, who never acted but in a publick joint way, without any ſiniſter or treaſonable deſign againſt his Majeſty or his Royal Father; and againſt which he can defend himſelf either by acts of approbation and oblivion *in verbo principis*, which he conceives to be the ſupreme, ſacred, and inviolable ſecurity, or which he was forced to, much againſt his inclination, by an inſuperable neceſſity. And albeit his Majeſty's grace and favour is ſtrictly tied to no other rule but his royal will and pleaſure; yet his Majeſty's ſo innate, eſſential, and inſeparable a quality of his royal nature, that the Petitioner is perſuaded in all human certainty, that the leaving and committing to his Parliament (as is expreſs'd in his Majeſty's Declaration of *October* 12th laſt by-paſt) the trying and judging of the carriage of his ſubjects during the late troubles, as indeed it is in its own nature, and ought to be ſo accepted of all, as an undoubted evidence of his Majeſty's affection to, and confidence in his people; ſo no other trial or judging is therein meaned, but a fair, juſt, legal and uſual Trial, without any prejudice, paſſion, or prelimitation, or precipitation; like as by the ſaid Declaration there was a freedom for all the people intereſted, to make their application to the Parliament, or in the mean time to the Committee, from whom only his Majeſty is pleaſed to declare he would receive addreſs and information. And ſeeing it was the Petitioner's misfortune, during the ſitting of the ſaid Committee, to be priſoner in *England*; whereas if he had been priſoner here in *Scotland*, he would have made application to them, and would have craved, and in juſtice expected that precognition might have been taken by them, to whom the preparing and ordering of that affair (to wit, anent the Trial of the Subjects carriage during the troubles) was recommended, that the Petitioner's abſence, which was his puniſhment, not his fault, may not be prejudicial, ſeeing the Petitioner has lately received two ſeveral Dittays, wherein there be many crimes groſly falſe, with all the aſperſions and aggravations imaginable laid to his charge; importing no leſs than the loſs of his life, fame, and eſtate, and the ruin of him and his poſterity; which he is confident is not intended by his Majeſty. And that by the Law and Practice of this Kingdom, conſonant to all reaſon and equity, the Petitioner ought to have upon his deſire a precognition, for taking the depoſition of certain perſons, which being frequently and uſually practiſed in this country, when any perſon is defamed for any crime, and therefore incarcerate before he was brought to a Trial, at his deſire, precognition was taken in all buſineſs relating thereto; which the Petitioner in all humility conceives, ought much more not to be denied to him, not only by reaſon of reſpect to his quality, and of the importance and conſequence thereof to all his Majeſty's Subjects of all quality in all time coming; but alſo in regard it has been ſo meaned and intended by his Majeſty's Declaration aforeſaid; like as the manner of the crimes objected, being actings in times of wars and troubles, the guilt thereof was not perſonal and particular, but rather national and univerſal, and veiled and covered with acts of indempnity and oblivion; and ſo tender and tickliſh, that if duly pondered, after a hearing allowed to the Petitioner, in prudence and policy, will not be found expedient to be toſſed in public, or touched with every hand, but rather to be precognoſced upon by ſome wiſe, ſober, noble, and judicious perſons, for thir and ſeveral other reaſons in the paper hereto annexed. Nor does the Petitioner deſire the ſame *animo protelandi*, nor needs the ſame breed any longer delay; nor is it ſought without an end of zeal to his Majeſty's power, and vindication of the Petitioner's innocency, as to many particulars wherewith he is aſperſed; and it would be ſeriouſly pondered, that ſeeing *Cunctatio nulla longa ubi agitur de vita hominis*, far leſs can this ſmall delay, which is uſual, and in this caſe moſt expedient, if not abſolutely neceſſary, be refuſed, *ubi agitur non ſolum de vita, ſed de fama*, and of all worldly intereſts that can be dear or of value to any man.

Upon conſideration of the premiſes, it is humbly craved, That your Grace, and the Honourable Eſtates of Parliament, may grant the Petitioner's deſire, and to give Warrant to cite perſons to depone before your Grace, and the Eſtates of Parliament, upon ſuch interrogatories as your Petitioner ſhall give in, for clearing of ſeveral things concerning his intention and loyalty during the troubles. And for ſuch as are out of the Country, and Strangers, reſidenters in England, *Commiſſions may be directed to ſuch as your Grace and the Parliament ſhall think fit, to take their depoſitions upon Oath, and to return the ſame.*

And your Petitioner ſhall ever pray, *&c.*

Edinburgh, February 12, 1661.

This Petition being read, was refuſed:

Edinburgh, at the Parliament-Houſe, *February* 13, 1661.

THE Marquis of *Argyle* (being accuſed of High-Treaſon, at the inſtance of Sir *John Fletcher*, his Majeſty's Advocate for his Intereſt) was brought to the Bar. His Lordſhip humbly deſired but to ſpeak a few words before reading the Indictment; aſſuring to ſpeak nothing in the cauſe itſelf.

itſelf. Whereupon he was removed a little, and after ſome debate, the Houſe reſolved that the ſaid Indictment ſhould be firſt read. Then his Lordſhip deſired that a Bill which he had cauſed his Advocates to give in to the Lords of the Articles, (deſiring a precognition, with many reaſons urging the neceſſity of it) to which he had received no anſwer, might be read before the ſaid Indictment: which being likewiſe refuſed, the ſaid Indictment was firſt read; and after the reading thereof, the Marquis (being put off his firſt thoughts) was compelled to this extemporary diſcourſe following, as it was faithfully writ when his Lordſhip ſpoke.

May it pleaſe your Grace,

MY Lord-Chancellor, before I ſpeak any thing, I ſhall humbly proteſt my words may not be wreſted, but that I may have charity to be believed; and I ſhall, with God's aſſiſtance, ſpeak truth from my heart.

I ſhall, my Lord, reſume *Mephiboſheth*'s anſwer to *David* (after a great Rebellion, and himſelf evil reported of). Saith he, *Yea, let him take all, for as much as my Lord the King is come home again in peace into his own houſe*; 2 Sam. xix. 30. So ſay I, ſince it has pleaſed God Almighty graciouſly to return his ſacred Majeſty to the Royal Exerciſe of his Government over theſe Nations, to which he has undoubted right, and was moſt unjuſtly and violently thruſt therefrom by the late tyrannizing Uſurpers.

It is, my Lord, exceeding matter of joy to us all, that the iron yoke of Uſurpation (under which we have theſe many years ſadly groaned) is now broke, and with much freedom this High and Honourable Court of Parliament are meeting together under the refreſhing warm beams of his Majeſty's Royal Government (ſo much longed for by our almoſt ſtarved expectations): and I do earneſtly wiſh his Royal Preſence upon his Royal Throne amongſt us. But ſince at this time that great happineſs cannot probably be expected, I am glad that his Majeſty's prudence has ſingled out ſuch a qualified and worthy perſon (as my Lord Commiſſioner his Grace) to repreſent himſelf; whoſe unſpotted loyalty to his Majeſty we can all witneſs.

I cannot, my Lord, but acknowledge theſe two grand mercies, which comfortably attends my preſent condition. One is, the high thoughts I deſervedly entertain of that tranſcendent and princely clemency wherewith his ſacred Majeſty is ſo admirably delighted; abundantly evidenced by many noted and ſignal teſtimonies in all the ſteps of his Majeſty's carriage; as thoſe moſt gracious Letters, Declarations, and that free and moſt ample Act of Indempnity granted to all his Majeſty's Subjects, (excepting ſome of the immediate murderers of his Royal Father) to eradicate any timorous jealouſies of his Majeſty's gracious pardon, (which might haply ariſe by ſerious reflectings) convincing them forcibly of their own miſcarriages, in theſe unhappy times of diſtraction. The effects, my Lord, of which princely deportment (I am confidently hopeful) his Majeſty has experimentally, and ſhall find, prove one effectual cement to conciliate the moſt anti-monarchick and diſaffected perſons (excepting ſome of thoſe barbarous phanaticks) in all his Majeſty's Dominions, moſt willingly to the ſubjection of his Majeſty's Royal Scepter; and with a perfect hatred abominate all diſloyal practices in themſelves and others, in all time coming.

The ſecond is, my Lord, when I conſider that my Judges are not ſuch as we had of late, ſtrangers, but my own countrymen; both which jointly (together with the real ſenſe and ſolid convictions I have of my innocency of thoſe calumnies moſt unjuſtly charged upon me) encourages my hopes the rather, to expect ſuch dealing as will moſt ſympathize with that clement humour (to which his ſacred Majeſty has a natural propenſity), and ſuch equal adminiſtration of Juſtice (void of all biaſſing prejudices) as will be moſt ſuitable to ſuch a high and honourable Meeting.

I ſhall therefore, my Lord, deſire to uſe *Paul*'s anſwer for himſelf, (being accuſed of his Countrymen) he having a learned Orator, *Tertullus*, accuſing him, as I have in my Lord-Advocate; *Paul*'s was hereſy, mine of another nature; but I muſt ſay with him, that the things they alledge againſt me cannot be proved: but this I confeſs, in the way allowed by ſolemn Oaths and Covenants, I have ſerved God, my King, and Country, (as he ſaid) which they themſelves alſo allow.

I ſhall, my Lord, remember (not with repining, but for information) my hard uſage, never having had my hearing, nor allowance of pen, ink, nor paper, nor the comfort of ſeeing my friends freely, until I received this ſummons, which was in effect a load above a burden; enemies, both *Scots* and *Engliſh*, out of malice calumniating me for all the ſame things, excepting what relates to his Majeſty's moſt Royal Father, of ever-glorious memory.

Therefore, my Lord, I beg charity and patient hearing, not doubting but the wiſdom and goodneſs of the Parliament will be ſo favourable, and not as the inconſiderate multitude (as a learned and able man writes, Sir *Walter Raleigh*, in his Preface to the Hiſtory of the World). As we ſee in experience, that dogs always bark at them they know not; and that is their nature, to accompany one another in thoſe clamours; ſo it is with the inconſiderate multitude, who wanting that virtue which we call honeſty in all men, and that ſpecial gift of God, which we call Charity in Chriſtian men, condemn without hearing, and wound without offence given, led thereunto by uncertain Report only; which his Majeſty King *James* only acknowledges to be the father of lyes. I ſhall not deſire to be in the leaſt miſtaken by any that hear me; but ſure I am, it is pertinently applicable to my caſe.

I intreat your Lordſhip likewiſe to conſider the words of another notable man, (*Speed*, in his Hiſtory) who ſays, As the tongues of Paraſites are ill balances to weigh the virtues of Princes and great men; ſo neither ſhould theirs, nor other men's blemiſhes be looked upon as they are drawn with the deformed pencil of envy or rancour, which do always attend eminency, whether in place or virtue. I ſhall not, my Lord, be ſo preſumptuous as to arrogate any thing to myſelf in this, only I want not the two companions, for I am but a weak man, ſubject to many failings and infirmities, (whereof I do not purge myſelf) for as we muſt confeſs to God Almighty, if he ſhould mark iniquity, who can ſtand? Neither ſhall I ſay, that there cannot a hole be diſcovered (as the Proverb is) in my coat; and it cannot but be ſo with any, ſpecially ſuch as have labour'd in ſuch times and buſineſs. But I bleſs the Lord, that in theſe things which have been, and are here caſt upon me, I am able to make the falſhood and miſconſtruction of them palpably appear.

My Lord, before I mention any thing in particular, I muſt ſhew this honourable Meeting of Parliament, and all that hear me (who doubtleſs have various apprehenſions of my being preſent in this condition), that I am here rather as my misfortune, not my injury; wherein I deſire to explain the difference, as *Plato* and *Ariſtotle* do very well; calling injuries ſuch things as are done purpoſely with a wicked mind; and misfortunes, ſuch things as are done with a good mind, though the events prove bad, yet we could not foreſee them.

So my Lord, I ſhall take God to record (who muſt judge me one day) upon my Conſcience, that what I did, flowed not from any injurious principle to any, though I acknowledge the events were not ſtill ſo ſucceſsful (which was my misfortune) indeed; but it has been my lot often in theſe times (wherein I and many others have been inevitably involved) to be by the malicious tongues of my calumniating enemies miſconſtructed for the worſt; yea, even in many things that the Lord was pleaſed to make ſucceſsful. For the truth of this, I may, I hope ſafely appeal to many in this honourable Houſe, who can abundantly witneſs, my faithful and loyal endeavours for both my King and native Country; whereof I ſhould be very ſparing to be an Herald myſelf, were not the contrary ſo impudently affirmed. There are five main calumnies that I deſire, my Lord, to ſatisfy all that hear me a little in; to the end that the reſt of leſs moment may be likewiſe in their own due time heard, afterward abſtracted more from perſonal prejudice.

The firſt calumny is, my Lord, concerning that horrid and unparalleled murder of his late Royal Majeſty of eternally bleſſed memory. I do here publickly declare that I neither deſire, nor deſerve the leaſt countenance or favour, if I was either acceſſary to it, or on the counſel or knowledge of it: which to make clearly appear, is under oath in the Parliament-Books 1649; whereof I was the firſt ſtarter myſelf, to the intent that we might both vindicate ourſelves, and endeavour a diſcovery, if any amongſt us had any acceſſion to that horrid and villainous crime; as alſo in my latter Will, which I made going to *England*, *in Anno* 1655, or 1656, fearing what poſſibly might hereafter be obtruded by any upon me or my family upon that account, I ſet it down to clear my poſterity; that I was altogether free of that deteſtable and execrable crime, or of any prejudice to his Majeſty, in either Perſon or Government. I left this with a very worthy Gentleman, I believe well known to your Lordſhip, and never ſaw it ſince; ſo your Lordſhip may be pleaſed if ye will to call for it; and try the truth. Whatſoever other thing may be in it, I hope, my Lord, this opportunity is a mercy to me to have that vile calumny (amongſt many others) againſt me to be cleared.

And, my Lord, to make this particular yet more evident, I did ſtill, and do poſitively aſſert, that I never ſaw that monſtrous Uſurper *Oliver Cromwel* in the face, nor ever had the leaſt correſpondence with him, or any of that Sectarian Army, until the commands of the Committee of Eſtates ſent me, with ſome other Noblemen and Gentlemen, to the border *in anno* 1648, to ſtop his march into *Scotland*, after thoſe who retired from *Preſton* fight; neither after he left the border, in the year 1648, did I ever correſpond with him, or any of that Sectarian Army; ſo unſatisfied was I with their way, after the wicked and ſiniſter courſes he and they were upon, afforded evident preſumptions for us to apprehend that he and they intended prejudice to his Royal Majeſty. Only one letter I received from Sir *Arthur Haſlerig*, to which I returned anſwer, that he might ſpare his pains in writing to me, for I bleſſed the Lord, who had taught me by his word, *to fear God, and honour the King, and not to meddle with them that were given to change*. Though Sir *Arthur* be now dead, yet he acknowledged to ſeveral in the *Tower*, that he ſtill had my letter: and when I was there, I often deſired he might be poſed and examined about it; which I can preſently inſtruct. And during, my Lord, my being in *England*, neither in *London* nor *Newcaſtle*, *in anno* 1647, there was not any thing ſo much as mentioned concerning his late Majeſty's Perſon; all that ever I heard of, was in publick Parliament 1647. The Commiſſioners Papers at *London*, and Committee Books at *Newcaſtle*, will clear this fully.

The ſecond calumny is anent the inhuman murder of Duke *James Hamilton*: my Lord, it's well known my great reſpect to that truly noble and worthy Perſon, whereof (upon all occaſions) I gave ample teſtimonies, and can yet convince any of his friends with the reality of it; and evidenced my true ſorrow for the wicked cruelty committed upon him. But indeed I cannot deny I refuſed to compliment *Cromwel* on his behalf (he having, my Lord, been immediately preceding, ſo inſtrumental, and ſo very active in that moſt horrid and lamentable murder of his late ſacred Majeſty); and if I had done otherwiſe, undoubtedly it had been a more black Article in that Libel now read, than any that is in it.

The third calumny is, that which breeds a great part of theſe groundleſs clamours, (though it be not in the Indictment) is my Lord Marquis of *Huntley*'s death; wherein I may truly ſay, I was as earneſt to preſerve him, as poſſibly I could, (which is very well known to many in this honourable Houſe) and my not prevailing may ſufficiently evidence I had not ſo great a ſtroke nor power in the Parliament as is libelled. And, my Lord, for his Eſtate, I had nothing in that, but for my own abſolutely neceſſary relief, and was ever moſt willing to part with any Intereſt I had therein, getting his friends (who profeſſed much zeal for the ſtanding of the Family) engaged for warrandize to me, of any portion that ſhould happen to fall to my ſatisfaction. And to evidence that I was no means to harm the Family, I ſtood with my right betwixt all fines and forfeitures of Bonds, and accounted for any thing I could receive. And to manifeſt yet further, that the burden of that Family was not from any extrinſick cauſe to themſelves, I have under the old Marquis's own hand, and his Son, *George* Lord *Gordon*, (who was a very worthy young Nobleman) the juſt Inventory of their debts, amounting to about one million of marks, *in anno* 1640. It would, I fear, my Lord, conſume too much of the Parliament's precious time, to hear many other circumſtances, to make this particular more clear, which I ſhall at this time forbear.

The fourth calumny is, the death of the Marquis of *Montroſs*. There are many in this Houſe, my Lord, who know very well I refuſed to meddle either in the matter or manner of it: and ſo far were we from having

any

any particular quarrels at one another; that *in Anno* 1645, he and I were fully agreed upon Articles and Conditions contained in a Treaty past betwixt us: the Gentleman is yet alive who carried the messages both by word and writing betwixt us; and it was neither his fault nor mine that the business did not end at that time, which ('tis known to all) proved very obnoxious to the Kingdom thereafter.

The fifth calumny is concerning my dealing with the *English* after *Worcester* fight. It is well known, my Lord, to many, that myself, and the Gentlemen of *Argyleshire* (my Kinsmen, Vassals, and Tenants) endeavoured cordially to engage all their neighbours about them on all hands against the *English* (which they did not prevail in), but was most unhappily made known to the *English* Commanders for the time; which they caused immediately to be published (as a very notable discovery) in their News-books; which occasioned two sad disadvantages to us: For they not only crushed our attempts in the infancy, but also determined the severer resolutions against us; whereby two strong Regiments of Foot, (*Overton*'s and *Read*'s) and very near the number of one of Horse (under the command of one *Blackamoor*) were sent to *Argyle*; and when *Dean* came there, it pleased God to visit me with a great distemper of sickness (as Dr. *Cunningham*, and many others who were with me, can witness). What, my Lord, I was prest to, when I was violently in their hands, may be instructed by the paper itself (written by *Dean*'s man's own hand, yet extant to shew), which I did absolutely refuse, upon all the hazard of the uttermost of their malice; as also what I was necessitated to do, is likewise ready to be shewn, whereby I was still continued their Prisoner upon demand.

I shall, my Lord, add one reason more to clear this (besides many other weighty publick reasons and considerations, which I shall forbear to mention at this time, it being more natural to bring them in by way of defences afterward), my own Interest, and of all Noblemen and Superiors in *Scotland*. It may rationally be presumed, that I had been a very senseless fool, if ever I had been for promoting such an Authority and Interest over me, as levelled all, and was so totally destructive to all that differenced, myself and other Noblemen, from their own Vassals, (which many say I was too earnest in) yea, it being absurdly derogative to all true Nobility; and my Ancestors and I (as it is said in that libel) having had so many titles of honour, dignity, and eminent places of trust, conferred upon us by his Majesty's Royal Predecessors and himself (all for our constant Loyalty and Adherence to the Crown on all occasions), as the Records and Histories of this ancient Kingdom hold forth, besides the narratives of all our grants, and asserting the just privileges thereof, against all opposers. I did, my Lord, ever (even when the *English* were at the intolerable height of Usurpation) declare my true abhorrence to a Commonwealth Government, which was well known to them all. I was not indeed, my Lord, very dissatisfied, when there were rumours spread abroad of *Cromwel*'s being made a King (as some here present can witness); for I told them it was a most probable way for his Majesty; and the more it were encouraged, would tend the more to *Cromwel*'s, and their deformed Commonwealth's Government's ruin, and promote his Majesty's just Interest the more. My Lord, I shall not much blame my Lord-Advocate for doing his endeavour, (it being an essential part of his function to accuse) but I must say, that it is very hard measure, that so able a man has taken near as many months, in taking pains to prompt as many enemies as his persuasions could possibly invite, to vent out the highest notes of their malice; and laying out search by them for, and collecting all the bad reports, or rather (to give them their genuine term) I may call them a confused mass of the common clashes of the Country, thereby to advise misconstructions of all the publick actings of both Parliaments and Committees during the late troubles, and with strange and remote inferences to adduce all those to the channel of my particular actings; he has taken, I say, my Lord, as many months, as I have had days to answer them, being an exceeding disadvantage. But, my Lord, that's not all, I am likewise extremely troubled, that he labours in that libel all along to draw an obscure veil of perpetual oblivion over all my good services; and specially my faithful and loyal endeavours in restoring of his sacred Majesty to the Crown of this his most ancient Kingdom of *Scotland*, and the exercise of his Majesty's royal authority therein; with my cordial endeavours for his Majesty's restitution to the rest of his Dominions also; which his Majesty both knows, and has been pleased often to acknowledge it to have been good service. Yea, and many present in this honourable House know, that I extended both my zeal and affection to the utmost of my power for his Majesty's service in that particular; which I willingly acknowledge nothing, my Lord, but my duty, whereunto I was tied both by natural, civil, and christian bands to my Sovereign; and specially such a King, of whom I may say well, (as I have often affirmed) That he is a King in whom the Lord has been pleased to take such pleasure, as to possess his Majesty with so many superlative degrees of excellency, that will certainly exalt his Majesty's fame, both in our age, and to subsequent posterity, above all the Monarchs in the world. So that, my Lord, we may consequently discover a high demonstration of the Lord's singular kindness and special providential care for us his Majesty's Subjects, in preserving such a rich blessing as his sacred Majesty, (in whom the happiness of these Nations is wrapt up) under the safe wings of his divine Protection; I may say, even when the extravagant malice of men would have swallowed him up.

After my Lord had ended this discourse (being heard by all very attentively, without any interruptions), thus the Lord Advocate spoke to my Lord Chancellor:

My Lord, what can the Marquis of *Argyle* say to the opposition at *Sterling*. *in Anno* 1648?

The Marquis replied, that he found my Lord Advocate endeavoured to bring him to debate the particulars, (which he hoped should be cleared at another more convenient time) and waved answering the thing itself, but insisted thus:

My Lord Chancellor,

I have (*informative* only) hinted a little at the main things which I am often charged with, my memory cannot fully reach all, neither will time permit to circumstantiate these particulars, which I have only touched in the general; nor is it my purpose at present to fall on the debate of any of that Libel (not having yet consulted the process) by reason these Advocates your Lordship was pleased to allow me, have not yet all embraced, and the excuses of my ordinary Advocates (in whom I had confidence) being admitted as relevant. And these Gentlemen, that have been pleased (in obedience to your Lordship's command) to come here with me, not being much acquainted with matters of this weight, and not having unbraced till within these two or three days, so that they are strangers altogether to my case; I shall, therefore, my Lord, humbly desire, that a competent time may be allowed me, that I may prepare my defences, and I shall (God willing) abundantly clear every particular in that Libel. And also, my Lord, I humbly desire, that these other Advocates, who were ordained by your Lordships to assist me (and after the honourable Lords of Articles had heard them, rejected their excuses), may be now reordained to consult and appear for me.

The Marquis's Advocates entered a protestation, that what should happen to escape them in pleading (either by word or writ) for the life, honour, and estate of the said noble Marquis, their client, might not thereafter be obtruded to them as treasonable; whereupon they took instruments.

The Marquis assured my Lord Chancellor, that he knew not of any such protestation to be prefented, and that it flowed simply of themselves: Whereupon the Lord Chancellor desired the Marquis and his Advocates to remove, till the House should consider both of my Lord's desire, and the Advocates protestation.

The Marquis and his Advocates being removed, the House (after some small debate) resolved, as to my Lord Marquis's desires, his Lordship should have till the 26th of *February* to give in his defences in writ, and ordained Mr. *Andrew Ker* to be one of his Advocates.

As to the Advocates protestation, the House resolved, that they could not be allowed to speak in cases of treason either by word or writ, but upon their peril; only allowed them in the general, as much as in such cases was indulged to any.

The Marquis and his Advocates being called in, my Lord Chancellor intimated the aforesaid resolutions of the House, both in reference to my Lord Marquis, and to the Advocates protestation.

When my Lord Chancellor had done, the Marquis spoke as followeth:

My Lord Chancellor,

THere is one thing that had almost escaped me, anent that opposition at *Sterling*, 1648, that my Lord Advocate was speaking of; that it may not stick with any of this honourable Meeting, I shall ingenuously declare, That after the defeat at *Preston*, I was desired to come and meet with the Committee of Estates (meaning those who were in the then Engagement), and being come with some of my friends to *Sterling*, fearing no harm, and suspecting nothing, I was invaded by Sir *George Munro*, where several of my friends were killed, and myself hardly escaped, which is all that can be said I acted in arms, as many here know.

My Lord, not that I am any ways diffident, but I shall in due time clear every particular of that Libel; yet I am not a little troubled that some who have heard the calumnies therein, may let them have such an impression (being asserted with such confidence) as to conceive a possibility, if not a probability of their being true; I shall therefore desire so much charity from this honourable Meeting, that there be no hard thoughts entertained till I be fully heard.

The Marquis therefore, with the joint concurrence of his Advocates, humbly desired, That the Bill (containing many pungent reasons) for a precognition of his process, given to the honourable Lords of Articles, might be read and considered in plain Parliament.

To which my Lord Chancellor replied, That it had been formerly refused at the Articles, and that it would not be granted.

So his Lordship was carried back to the Castle.

Edinburgh, *March* 5, 1661, *at the Parliament House*.

The Marquis of Argyle *being called in, gave in a Bill, containing several weighty Reasons, desiring a continuation till the meeting of Parliament tomorrow. His Lordship being removed, after long debate it was carried against him by two or three votes; and his Lordship being called in, my Lord Chancellor told him it was refused, and ordered his Lordship to produce his defences; whereupon he spoke as followeth:*

May it please your Grace,

MY Lord Chancellor, this business is of very great concernment to me, and not small in the preparative of it to the whole Nation; yea, it may concern many of your Lordships who are sitting here, and your posterity: and therefore I desire to have your Grace (my Lord Commissioner) and the remanent Members of this honourable Meeting, your patience to hear me a few words without prejudice or mis-construction, which any thing I can say is often obnoxious to.

I shall, my Lord, begin with the words of that godly King *Jehosaphat*, that good King of *Judah* (after he was come back in peace to *Jerusalem*) in his instructions to his Judges, he desires them to take heed what they do, for they judge not for men, but for the Lord, who is with them in the judgment.

My Lord, I shall speak another word to many young men, who were either not born, or so young that it is impossible they could know the beginning of these businesses, which are contained in the Libel against me, (being all that hath been done since the year 1638) so that they might have heard by report what was done; but not why, or upon what grounds; and what some have suffered, but not what they have deserved.—Therefore I desire your Lordship's charity, until all the particulars, and several circumstances of every particular be heard, without which no man can judge rightly of any action: For as it is well observed by that incomparable *Grotius*, that *Aristotle* asserts, That there is more certainty in the mathematicks than morals; for as *Grotius* has it, the mathematicks separates forms from matters, as betwixt straight and crooked there is no midst; but in morals, even the least circumstances vary the matter, so that they are wont to have something betwixt them, with such latitudes, that the access is near sometime to this, sometime to that extreme; so that betwixt that which ought to be done, and that which ought not to be done, is interposed that which may be done, but is nearer now to this than to the other extremity, or part, whence

whence ambiguity often ariſeth. The particular circumſtances are ſo obvious to every underſtanding man, that I need only to mention them.

Polybius, my Lord, makes much of his hiſtory depend upon theſe three, *concilia*, *cauſa*, *& eventus*; and there are likewiſe other three, *tempus*, *locus*, *& perſonæ*, the change whereof makes that which is lawful duty unlawful, and on the contrary: So likewiſe in ſpeaking or repeating words, the adding or paring from them will quite alter the ſenſe and meaning; as alſo in writing, the placing of commas or points, will change the ſentence to a quite other purpoſe than it was intended.

There is, my Lord, another maxim, which I do not mention as always undeniable; but when there is no lawful Magiſtrate exerciſing power and authority in a Nation, but an invading Uſurper in poſſeſſion, eſteeming former laws crimes; in ſuch a caſe, I ſay, the ſafety of the people is the ſupreme Law.

There is another maxim which is not queſtioned by any, and it is, Neceſſity has no law; for even the moral law of God yields to it, and Chriſt's diſciples, in *David*'s example: For this *Seneca* ſays, Neceſſity (the defence of human imbecillity) breaks every law; *Nam neceſſitas legum irridet vincula*, neceſſity ſcorns the fetters of law. So he that anſwers that Libel, *The Long Parliament revived*, ſpeaking of this laſt Parliament (which his Majeſty calls a bleſſed, healing Parliament), he ſays, the neceſſity to have it, may diſpenſe with ſome formalities: So *Ravenella* (ſo much eſteemed in matters of Scripture), after he has divided neceſſity into abſolute and hypothetick, makes that of ſubmitting to Powers of abſolute neceſſity. *Joſephus* alſo, my Lord, that famous hiſtorian, when he mentioned *David*'s ſpeech to his children, after he had made *Solomon* (being but younger Brother) King, he exhorts them to unity among themſelves, and ſubmiſſion to him and his authority; for if it ſhould pleaſe God to bring a foreign ſword amongſt you, you muſt ſubmit to them; much more then to him who is your brother, and one of your own Nation.

There is another maxim, my Lord, *Inter arma ſilent leges*; and it is well known, that divers retours and other things in *Scotland* were done in conſideration of times of peace, and times of war.

Another maxim, *Ex duobus malis minimum eligendum eſt, cum unum eorum non poteſt evitari*; ſays *Ariſtotle*, *Cicero*, and *Quintilian*, *cum diverſa mala inter ſe comparantur, minimum eorum locum boni occupat.*

There is another maxim, No man's intention muſt be judged by the event of any action, there being oftentimes ſo wide a difference betwixt the condition of a work, and the intention of the worker.

I ſhall only add another maxim, It cannot be eſteemed virtue to abſtain from vice, but where it is in our power to commit the vice, and we meet with a temptation.

As I have named ſhortly ſome few maxims, my Lord, I ſhall humbly tender ſome weighty conſiderations to your Lordſhip's thoughts.

The firſt conſideration is, That there are different conſiderations to be had of ſubjects actions when their lawful Magiſtrate is in the exerciſe of his authority by himſelf, or others lawfully conſtituted by him, and when there is no King in *Iſrael.*

The ſecond is, That there is a different conſideration betwixt the ſubjects actions when the lawful Magiſtrate is in the Nation, and when he is put from it, and ſo forced to leave the people to the prevalent power of a foreign ſword, and the invader in poſſeſſion of authority.

Thirdly, That there is a difference betwixt ſubjects actions, even with the invading Uſurper, after the repreſentatives of a Nation have ſubmitted to, and accepted of their authority and government, and they in poſſeſſion ſeveral years; the Nation acknowledging their conſtitutions, and all the lawyers preſſing and pleading them as laws.

Fourthly, The actions of ſubjects are to be conſidered, when aſſiſting the lawful Magiſtrate to their power, and never ſubmitting to the invading Uſurper until they were priſoners, and could do no better.

Fifthly, That there is likewiſe conſideration to be had of the actions of ſuch ſubjects, being ſtill priſoners upon demand under articles to that purpoſe.

Sixthly, It is to be conſidered likewiſe of the actions of ſuch a ſubject, who was particularly noticed and perſecuted by the invaders, for his affection to the lawful Magiſtrate and his government.

Seventhly, It is to be conſidered, that there is a great difference betwixt actions done *ad lucrum captandum*, and thoſe done *ad damnum evitandum*; that is to ſay, actions to procure benefit, and actions to ſhun detriment.

Eighthly, It is to be conſidered, that there hath ever been a favourable conſideration had, by any Prince, of any perſon coming voluntarily, and caſting himſelf upon a Prince's clemency.

Ninthly, It is to be conſidered, that his Majeſty himſelf hath a gracious, natural inclination unto clemency and mercy, which hath been ſo abundantly manifeſted to his ſubjects in *England*, even to all (except to ſome of the immediate murderers of his royal father) that it cannot be doubted, that the ſame will be wanting to his people in *Scotland*, who ſuffered by them (whom his Majeſty hath graciouſly pardoned) even for their dutiful ſervice, and affection to his Majeſty.

Therefore without thought of any prejudice to the Parliament, or this honourable Meeting, I muſt make uſe of my Lord Chancellor of *England* his words, though in another caſe, ſaying, *There cannot too much evil befal thoſe who do the beſt they can to corrupt his Majeſty's good-nature, and to extinguiſh his clemency:* For his Majeſty's ſelf declared his natural inclination to clemency, in his ſpeech to both his Houſes of Parliament in *England*, whom he hath, with all his people, conjured, deſired, and commanded, to aboliſh all notes of diſcord, ſeparations and difference of parties, and to lay aſide all other animoſities, and the memory of paſt provocations, and to return to a perfect unity amongſt themſelves under his Majeſty's protection; which is hoped all your Lordſhips will concur in, having ſo worthy a pattern to follow: And as theſe are his Majeſty's inclinations expreſs'd, ſo it is ſuitable to the arms he bears as King of *Scotland*, which is the Lion, whoſe motto is known to all:

——— *Nobilis eſt ira Leonis,*
Parcere ſubjectis, & debellare ſuperbos.

Which is to ſay, to vanquiſh and ſubdue the proud, and ſpare ſuch as are ſubmiſſive; of the which number I am one, and for that effect, in all humility preſent this humble ſubmiſſion to his Majeſty, and your Grace, my Lord Commiſſioner, in his Majeſty's name.

To my Lord Commiſſioner his Grace, and High Court of Parliament, March 5, 1661.

FOraſmuch as I *Archibald*, Marquis of *Argyle*, am accuſed of treaſon at the inſtance of his Majeſty's Advocate, before the high Court of Parliament; and being altogether unwilling to appear any way in oppoſition to his ſacred Majeſty; conſidering alſo that this is the firſt Parliament called by his Majeſty after his happy return to his Kingdom and Government, for healing and repairing the diſtempers and breaches made by the late and long troubles: I have therefore reſolved that their conſultations and debates about the great affairs and concernment of his Majeſty and this Kingdom ſhall have no interruption upon occaſion of any proceſs againſt me. I will not repreſent the fatality and contagion of thoſe times, wherein I, with many others in theſe three Kingdoms have been involved; which have produced many ſad conſequences and effects, far contrary to our intentions. Nor will I inſiſt upon the defence of our actings in this Kingdom before the prevailing of the late Uſurpers, which, if examined according to the ſtricteſt interpretation, and ſevereſt cenſure of Law, may be eſteemed a treſpaſs of his Majeſty's royal commands, and a tranſgreſſion of the Law: But, notwithſtanding thereof, are by his Majeſty's clemency covered with the veil of oblivion by divers Acts of Parliament, and others, to that purpoſe, for the ſafety and ſecurity of his Majeſty's ſubjects: And that my actings ſince, and any compliances with ſo prevalent a power (which had wholly ſubdued this, and all his Majeſty's other dominions, and was univerſally acknowledged) may be looked upon as acts of mere neceſſity, which hath no law; and it is known, that during that time I had no favour from theſe Uſurpers.

It was inconſiſtent with, and repugnant to my Intereſt, and cannot be thought (unleſs I had been demented and void of reaſon) that I ſhould have had freedom or affection to be for them, who being conſpired enemies to monarchy, could never be expected to befriend or tolerate Nobility. And whereas that moſt horrid and abominable crime of taking away the precious life of the late King of ever-glorious memory, is moſt maliciouſly and falſly charged upon me; if I had the leaſt acceſſion to that moſt vile and heinous crime, I would eſteem myſelf unworthy to live, and that all higheſt puniſhments ſhould be inflicted upon me: but my witneſs is in heaven, and my record on high, that no ſuch wicked or diſloyal thought ever entered into my heart. But chuſing to ſhun all debate, rather than to uſe any words or arguments to reaſon with his Majeſty, whom though I were righteous, yet would I not anſwer, but would make my ſupplication to my Judge; and therefore (without any excuſe or vindication) I do, in all humility, throw myſelf down at his Majeſty's feet (and before his Grace his Majeſty's Commiſſioner, and the honourable Eſtates of Parliament), and do ſubmit and betake myſelf to his Majeſty's mercy: and though it be the great unhappineſs of theſe times (the diſtempers and failings of theſe Kingdoms being ſo epidemick and univerſal), that his Majeſty ſhould have had ſo much occaſion and ſubject of his royal clemency; yet it is our great happineſs, and his Majeſty's high honour, that he has expreſſed and given ſo ample teſtimony thereof, even to thoſe who did invade his Majeſty and this Nation, for no other cauſe than for their faithful and loyal adherence to his Majeſty, and his juſt, royal intereſts: which renders his Majeſty's goodneſs incomparable, and without parallel, and gives me confidence, that his Grace his Majeſty's Commiſſioner, and the honourable Parliament, of their own goodneſs, and in imitation of ſo great and excellent a pattern, will compaſſionate my condition. And ſeeing it is a ſpecial part of his Majeſty's ſovereignty and royal prerogative, to diſpenſe with the ſeverity of the Laws, and that it is a part of the juſt liberty and privilege of the ſubjects, that in caſes of greateſt extremity and danger, they may have recourſe to his Majeſty as to a ſanctuary and refuge:

It is in all humility ſupplicated, that the Lord Commiſſioner's Grace, and the honourable Parliament, would be pleaſed favourably to repreſent my caſe to his Majeſty, and that the door of his royal mercy and bounty, which is ſo large and patent to many, may not be ſhut upon one, whoſe anceſtors for many ages (without the leaſt ſtain) have had the honour, by many ſignal proofs of their loyalty, to be reputed ſerviceable to his Majeſty's royal progenitors in the defence of the Crown, and this his ancient Kingdom. And if his Majeſty ſhall deign to hold out the golden ſceptre of his clemency, as an indelible character of his Majeſty's royal favour, it will lay a perpetual obligation of all poſſible gratitude upon me and my poſterity, and will ever engage and devote us entirely to his Majeſty's ſervice. And the interceſſion of this honourable Parliament on my behalf to his gracious Majeſty, will be a real evidence of their moderation, and they ſhall be truly called a healing Parliament; and God, whoſe mercy is above all his works, ſhall have the honour and glory which is due to his great name, when mercy triumphs over juſtice.

The aforeſaid ſubmiſſion being read, the Lords of Articles would give him no preſent anſwer; but reſolved to report the ſame to the Parliament the morrow.

Edinburgh, Martii 6, 1661; *at the Parliament.*

MY Lord Chancellor having reported what had been done the former day before the Lords of Articles anent the Marquis of *Argyle*'s proceſs, preſented his ſubmiſſion, which was immediately read; and after a long debate, the firſt queſtion was ſtated;

If it was ſatisfactory, or ſhould be accepted or not?

The ſecond queſtion was, Whether they ſhould proceed preſently in his proceſs, without regard to his ſubmiſſion or not?

Both which were carried in the negative againſt him. Then he was brought to the bar, and the Lord Chancellor told him, that his ſubmiſſion was rejected, and that notwithſtanding thereof, the Parliament commanded him to give in his defences.

He replied, That his caſe was very hard, to be debarred from that which was his juſt privilege, and of all ſubjects, in ſuch extremities to refuge themſelves at his Majeſty's mercy and clemency; and that as it was the undeniable privilege of the ſubject, ſo alſo it was a ſpecial prerogative of his Majeſty, and the grandeur of it conſiſted much in

the eminency of the ſubject, whom his Majeſty ſhould graciouſly be pleaſed to extend his mercy unto: And beſides many other ſtrong perſuaſions that encouraged his ſubmiſſion, his Majeſty's own Proclamation (which he acquieſces in), wherein his Majeſty is graciouſly pleaſed to declare, *That his juſt intereſt and royal prerogative being firſt aſſerted, and trial only taken of his ſubjects carriages, then he is moſt willing to paſs an Act of Indemnity to ſecure them.* And the like being already done in our neighbouring Nation, and his Majeſty having performed his royal promiſe there already, he deſired that their ſtudy might be to imitate his royal pattern; conſidering, that as it was a practice moſt agreeable to his Majeſty's clement inclination, ſo alſo, that as *Solomon* that wiſe King ſaid, That *the King's throne is eſtabliſhed by righteouſneſs and mercy:* He entreated therefore their Lordſhips ſeriouſly to conſider his condition, and not to ſingle him out, and aim at his ruin; and not only his, but alſo, he feared, both his family and name, their ruins alſo.

As for giving in his defences preſently, he ſaid, That the confidence and firm hope he had that his humble ſubmiſſion ſhould have been accepted, and ſo cut off totally all further trouble either to their Lordſhips or himſelf, made him the more ſecure and ſlack, not reſolving to lean to them, or any way (as he had expreſs'd in his ſubmiſſion) make uſe of them, though he were altogether innocent: and if he were neceſſitated to make uſe of his defences (as he declared he was moſt unwilling to do), it ſhould be ſimply in obedience to their Lordſhips commands, and no otherwiſe.

Not having fully ended,

The Chancellor told him, if his Lordſhip had them not in readineſs at that time, to have them ready to give in to the Lords of Articles the morrow.

So he was returned to the Caſtle.

March 7, 1661, *at the Lords of Articles.*

THE Marquis being called before the Lords of Articles to give in his defences,

He declared, that he had ſeen their Lordſhips Order, that he might forbear his coming, if he would produce his defences; therefore he told their Lordſhips ingenuouſly, that if he had them in readineſs, he would neither have troubled their Lordſhips nor himſelf; for having a petition ready to deſire a delay, he thought it rather his duty to come and propoſe it himſelf, hoping their Lordſhips would conſider that his preſenting his defences either lame and wanting ſomething, or blotted ſo as they could not well be read, was a very great prejudice to him; but a delay of a few days was no prejudice at all to any thing my Lord Advocate could ſay; and therefore hoped their Lordſhips would not refuſe him ſome competent time, whereby he might have them in readineſs.

Upon the which he was removed; and after ſome debate, being called in again, my Lord Chancellor told his Lordſhip, That he was ordered to give in his defences before *Monday* at ten o'clock to my Lord Advocate, otherwiſe the Lords of Articles would take the whole buſineſs to their conſideration, without regard to any thing he could ſay.

The Advocate told his Lordſhip, that he muſt give in his whole defences.

To which he anſwered,

That that was a new form to give in peremptory defences before the diſcuſſing of relevances.

Whereupon Sir *John Bychmore* did riſe up, and told his Lordſhip, That he was commanded to inform him, that there was a different way betwixt a proceſs in writ, and the ordinary way before the Seſſion, or Chief-Juſtice.

To which his Lordſhip anſwered, That he was very ill-yoked with ſo able men; but he muſt tell them, that he had once the honour to ſit as Chief-Juſtice in this city, and he knew the proceſs before them was in writ, and yet the relevance was always firſt anſwered, before any peremptor proponed; for relevance is moſt to be conſidered in criminals.

Sir *John Thereſter* ſaid, and ſo did the Advocate, That it was his Lordſhip's advantage to give in as ſtrongly his defences as he could, otherwiſe the Advocate might refer the whole buſineſs to the Judge, and make no other anſwer.

His Lordſhip replied, That he would do in that by advice of his lawyers, and hoped any order of their Lordſhips at preſent, was without prejudice to his giving in more defences afterwards, ſince he was ſo ſtraitned with time, and commanded to give in what was ready: His Lordſhip likewiſe added, if their Lordſhips and the Parliament had been pleaſed to grant his deſire of a Precognition, which was agreeable, as he humbly conceived, both to Law and Practice, and his Majeſty's Proclamation, which he acquieſced in, it could not but have been the readieſt way for trying his carriage during the late troubles; where now of neceſſity he muſt in the proceſs, which he hopes will not be refuſed, crave one way for exculpation in many particulars; for he both was reſolved, and is reſolved to deal very ingenuouſly as to matter of fact. And if that had been firſt tried, which he was moſt deſirous of, both from the Committee, and ſince from the Parliament, he is hopeful there would not remain ſo much prejudice againſt him in the moſt part of things of greateſt concernment in this Libel; and for his own part, he deſired nothing more than the truth to have place, and to do with his perſon what they pleaſed; for by the courſe of nature he could not expect a long time to live, and he ſhould not think his life ill beſtowed, to be ſacrificed for all that had been done in theſe Nations, if that were all.

Thereafter he was returned to the Caſtle.

The Marquis of Argyle's *Defences againſt the grand Indictment of High-Treaſon exhibited againſt him to the Parliament in* Scotland.

THE defender profeſſes his ſenſe of the mercy and happineſs of the land, that we are delivered from the lawleſs arbitrary power of the armed force of cruel uſurpers, and have reſtored to us our only lawful Sovereign Lord, and in his ſacred perſon, the authority of law, the order of legal judgment, and in them the liberty of legal defences: thereupon depend the great ſecurity of the liberties, lives and eſtates of the ſubject; this gives the defender confidence to appear in judgment, nothing doubting of a fair procedure and full hearing, compleat time being allowed in all the dyets of the proceſs, and all things therein ſo ordered, as may be ſuitable to the juſtice and gravity of this high and honourable Court, and the importance of the cauſe; juſtice, not only as to the defender, but juſtice as to the preparative and conſequence. And he with much confidence expects all juſtice from his moſt gracious Sovereign, the juſteſt of Princes, and who is repreſented and acting by ſo truly noble a perſon as my Lord Commiſſioner's Grace, alſo hoping the honourable Court of Parliament will without all prejudice impartially conſider his legal and juſt defences; and that they will proceed ſo far without all ground of ſuſpicion therein, that any who is within degrees to perſons againſt whom he is libelled to have committed any of the deeds which are made the ground of his dittay; or if any are conſcious to themſelves of capital enmity, or has been any ways informer againſt the defender, or have predetermined by uttering the judgment already of his cauſe, conſcience and honour will make them abſtain ſitting and voting therein: ſo much the more, that they ſee how unwilling he is to propone any recuſatory againſt any Member of the Houſe upon theſe or other grounds in law; ſo confident is he of the vindication of his own carriage, ſo much he defers to the ingenuity or generoſity, and ſo high is the honour he bears to this honourable Court.

Firſt, It is alledged, that there be no proceſs, nor is the defender holden to anſwer, till the whole Libel and all the parts thereof be given him up to ſee: alſo it is the Commiſſioner's inſtructions, and addreſſes ſent and made to his Majeſty by the defender, as is alledged, and the Commiſſioners at *Breda* are expreſsly repeated, as a part of the libel, *brevitatis cauſa*, in the tenth article, and yet the ſame has not been produced nor given to the defender to ſee and adviſe with; till which be done, he cannot be held in to anſwer: like as, where points of the dittay are founded upon writ, the defender craves that he may have up the writs whereupon the ſame are founded, to ſee before he be holden to anſwer to the dittay, which is very conſonant to law, *l.* 1. Sect. 3. *F. de edendo ubi edenda ſunt omnia quæ actor editurus eſt, apud indicem, & l.* 3. *cod. eodem.* whereby the purſuer is ordained to ſhew to the defender all that he will uſe againſt the defender before the Judge: Otherwiſe the defender cannot prepare himſelf for his defence, which is the reaſon given in theſe laws; *Paulus, lib.* 5. cent. 16. and the doctors throughout the ſaid laws, *& l. unius*, Sect. 9 *F. de queſt. poſt alios* to *l.* 2. *Mun.* 3. 4. 5. 6. *eo dedendo Bart. ad leg. ubi min.* 8. *F. de queſt.* But ſo it is, there are ſeveral articles in this dittay founded upon writ, not produced; as in the firſt articles in the proſecution of Mr. *John Steward* to death, as a leaſing-maker between the King and his ſubjects libelled, and yet neither libel nor ſentence againſt Mr. *John* produced.

Item, Colonel *Henderſon*'s commiſſion for keeping *Dunbarton* caſtle is libelled, and the Commiſſion not produced.

Item, In the ſixth article a capitulation alledged, made and ſubſcribed by the Laird of *Arkinglas* and other officers under the defender's command, with the Laird of *Lamond* and *Eſcoge*.

Item, The aſſurance alledged given to the perſons within the houſe of *Lochhead*, mentioned in the ſeventh article, the defender craves, *ante omnia*, it may be produced.

Item, That ordinance of Parliament or Committee of Eſtates, whereby it is libelled in the ſame ſeventh article, that *Cailkitoch* was ordained to be brought from the priſon where he was for the time, *&c.* to the town of *Edinburgh*.

Item, In the ninth article the defender's proteſtation, Parliam. *anno* 1648.

Item, In the ſame article the letter written to *Cromwell*, libelled as being dated the 6th of *October*, 1648; whereby it is libelled, that the defender and his complices wrote to *Cromwell*, &c.

Item, In the ſame article Sir *John Cheeſly*'s inſtructions libelled, as being dated the 17th of *October*, 1648, deſiring the perſons taken in the engagement to be detained as pledges of that Kingdom's peace.

Item, *Eod. art.* the warrant alledged to be under the defender's hand for a proclamation againſt the families of *Ogilvie* and *Rea*.

Item, Art. 10. the letter alledged written to *Cromwell*, *anno* 1650, after his invaſion.

Item, *Eod. art.* the act of the Weſt-Kirk, with the declaration whereunto it relates.

Item, Art. 11. the remiſſion alledged given to *John Mac-Dougal* of *Dimolich*, under the defender's hand.

All which the defender humbly alledges ought to be given up to ſee, before he be held in to anſwer; eſpecially *poſt tanti temporis intervallum*, ſo long a time having intervened between the Intention of this purſuit, and the dates of the ſaid Act and papers aforeſaid libelled on; ſome of them being twenty years ago, ſome fifteen, and the lateſt ten or eleven years; as has always been the practice in ſuch caſes, and may be inſtanced in my Lord *Balmerino*'s proceſs, and was found by this honourable court in Mr. *James Guthrie*'s proceſs.

Second, Under proteſtation that the former exceptation may be the firſt diſcuſſed, that the papers therein mentioned, *ante omnia*, be given up to the defender to ſee; it is alledged, that it has been always the princely care of his Majeſty's royal anceſtors to keep the Laws of this Realm certain, *Ne dum incerto utemur jure, fluctuaret reſpublica*; and leſt Law, which is introduced for the lieges ſecurity, ſhould become their ſnare: Therefore, by King *James* I. (that illuſtrious Prince) Parliament 7, *cap.* 107. all the interpretation of his Majeſty's ſtatutes, otherwiſe than the ſame bear, is forbidden; and if forbidden, can be no ground of dittay: and in effect to found a dittay upon Statutes otherwiſe than they bear, were to found it upon ſuch Statutes we have not; but ſo it is in the propoſition of this libel. The Acts of Parliament whereupon the ſame is founded, are otherwiſe repeated than they bear: for, 1. The firſt part of the propoſition of the dittay founded upon the two firſt Acts of Parliament libelled, *viz.* the third Act of the 5th Parliament of King *James* I. and the firſt Act of King *James* VI. doth upon the ſaid Acts conclude the pain of Forfeiture and Treaſon. The ſame is moſt irrelevant, becauſe in the ſaid Acts, there is no mention made of any crimes of the nature and quality libelled; the ſaid third Act of the 5th Parliament of King *James* I. being anent the fees of Craftſmen, and the price of the work; and the firſt Act of King *James* VI. being anent the conſtitution of the Earl of *Murray*, Regent; and in neither of the ſaid Acts is there any pain or puniſhment inferred, and ſo far leſs can the pain of Forfeiture or Treaſon be from the ſaid Acts concluded againſt the defender. And if it ſhould be ſaid, the 5th Parliament of King *James* I. is miſtaken in the writing for the firſt Parliament; and in citing the firſt Act of King *James* VI. the citation of the number of the Parliament is alſo omitted, *viz.* the number 18: The

dittay repeats theſe two Acts otherways than they bear, for the words of the ſaid 3d Act of the firſt Parliament of King *James* I. ſtatutes and ordains, *That no man openly or notoriouſly rebel againſt the King's perſon, under the pain and forfeiting of life, lands and goods*; which is not at all in the libel repeated. And as to the ſaid 1ſt Act of the 18th Parliament of King *James* VI. the words thereof are cited, yet with ſome difference and tranſpoſition libelled; but thereto is added the ſanction and pain, *That whoſoever doth in the contrary, they are to be puniſhed as Traitors, and to forfeit their life, lands and goods*; whereas there is no ſanction or pain in the ſaid Act, only it is declarative of his Majeſty's prerogative, and of his three Eſtates to maintain the ſame.

Item, In the ſecond part of the propoſition of the dittay, founded upon the 25th Act of the 6th Parliament of King *James* II. and 75th Act of the 9th Parliament of Queen *Mary*; is not repeated as it bears as to puniſhment, for therein they who attempt to do, or raiſe any bands of men of war, horſe or foot, without any ſpecial licence of his Majeſty, and his Succeſſors, are only declared puniſhable by death; whereas they are libelled to be puniſhable as Traitors, while it is the pain only of the ſaid 25th Act of the 6th Parliament of King *James* II.

Item, In the next part of the propoſition of the dittay, founded upon the 43d Act of the 2d Parliament of King *James* I. and the 134th Act of the 8th Parliament, and the 10th Act of the 10th Parliament, and 205th Act of the 14th Parliament of King *James* VI. none of theſe Acts are repeated as they bear, but confounded, both as to the crimes and pains therein contained, to a very far different ſenſe (as is humbly conceived) from that which the ſaid Acts ſeverally propoſe; transferring the pains of the ſaid ſeveral Acts and Crimes therein contained from one to another, as may appear by what follows. For the firſt of theſe Acts, being the 43d Act of the 2d Parliament of King *James* I. is only of leaſing-makers and tellers of them, which may engender ſtriſe between the King and his People; and the pain of the Act is tinſel of life and goods to the King, as is clear both by the title and body of the Act. The ſecond Act, *viz.* the 134th Act of the 8th Parliament of King *James* VI. is alſo the ſame crime, *viz.* againſt thoſe that utter falſe, ſlanderous and untrue ſpeeches, to the diſdain, reproach or contempt of his Majeſty, his Council or Proceedings, or to the diſhonour of his Majeſty's parents and progenitors: adding alſo thoſe that meddle in the affairs of his Majeſty and his Eſtates, and the pain is the pain contained in the Acts of Parliament made againſt Leaſing-makers and tellers of them. The third is the 10th Act of the 10th Parliament of King *James* VI. againſt thoſe who ſpeak or write any purpoſe of reproach or ſlander againſt his Majeſty's Perſon, Eſtates or Government, or deprave his Laws or Acts of Parliament, or miſconſtrue his Majeſty's proceedings, whereby any miſbelieving may be moved between his Majeſty and Nobility, and his loving Subjects: And the pain thereof is only the pain of death. And by the 205th Act of the 14th Parliament of King *James* VI. thoſe that hear the ſaid words Leaſings, and do not apprehend and reveal the Authors thereof, ſhall incur the like puniſhment with the principal offenders; and yet Leaſing-making, and telling, which is the crime puniſhable by the firſt of theſe Acts, *viz.* the 43d Act of the 2d Parliament of King *James* I. is puniſhable, but the loſs of life and goods to the King is omitted. And falſe ſlanders, which is the crime contained in the 134th Act of the 8th Parliament of King *James* VI. and only ſpeaking to the diſhonour of his Majeſty's Parents and Progenitors, and meddling with the affairs of his Highneſs's eſtate, is repeated out of the ſaid 134th Act; and joined to the crime contained in the ſaid Acts, 10th Parliament, 10 *James* VI. And to both, the pains added of loſing life, lands and goods, whereas the pain of the ſaid 10th Act is only of death. And the pain of the ſaid 134th Act of the 8th Parliament of King *James* VI. is only the pain contained in the Acts againſt Leaſing-makers, which in the ſaid 43d Act of the 2d Parliament of King *James* I. is only the loſs of life and goods, and not of life, lands and goods: but allanerly the eſcheats of goods moveable: as may appear, *Firſt*, Becauſe whenever the pain of tinſel of life and goods is found either in the Acts of Parliament or old Laws, goods are underſtood moveable, as is clear from the crimes that are ordained to be ſo puniſhed: As man-ſlaughter, by the 42d Statute of *Robert* III. is prohibited under the pain of tinſel of life and goods; where *Skein* explains, that the goods are to be underſtood of moveables. And by the 90th Act of the 6th Parliament of King *James* I. the receipt of him who is fugitive for ſlaughter, is forbidden under the pain of tinſel of life and goods. (Where *Skein* expounds goods to be goods moveable, in his Tractate of Crimes, tit. 2. *cap.* 6. Parl. 4.) And ſo it is clear in the other Acts of Parliament, that their whole pains are diſtinct, *viz.* tinſel of life and goods alike, is only extended to moveables; and tinſel of life, lands and goods, which latter pain in the ſtile of our Acts of Parliament is commonly thus expreſſed: That he who incurs it ſhall die, and forfeit life, lands and goods, as the 31ſt Act of the 7th Parliament of King *James* II. *& paſſim alibi* forfeiture properly relating to lands; and in the common ſignification of our ſaid goods, to be underſtood of goods moveable.

More eſpecially it may appear, that the pain of the ſaid 43d Act of the 2d Parliament of King *James* I. given to the ſaid 134th Act of the 8th Parliament of King *James* VI. is only the pain of eſcheat of moveables, becauſe the pain of forfeiting of life, lands and goods, is the proper pain of the crimes that by our laws are declared Treaſon. And therefore *Skein*, both in his Index of the Acts of Parliament on the word Treaſon, refers the crimes that are ſo puniſhable to the head of Treaſon; as alſo in his tract upon crimes in the end of *Reg. Maj.* but doth not at all mention therein the crime of the ſaid 43d Act of the 2d Parliament of King *James* I. nor of the 134th Act of the 8th Parliament of King *James* VI. nor of the other Acts whereupon this part of the propoſition is founded. But in his Index has the crime of Leaſing-making between the King and his people under a head by itſelf, and therein expreſsly mentions both the ſaid 43d Act of King *James* I. and 134th Act of King *James* VI. like as in the ſaid tract of crimes after the chapters of Treaſon and points thereof, *cap.* 1. and pain of the ſame, which, *cap.* 2. he expreſsly ſays, is the tinſel of life, lands and goods; and declares, that he underſtands by goods, moveable goods. And anent the Proceſs and Judge of the crime of Treaſon, *cap.* 3. when he comes to other crimes capital, of all which the pains are either the tinſel of life and moveable goods, or life only, or of ſome leſs pain in body or goods, but never of life, lands and goods, as is clear through the whole tract that follows. And in his 12 *cap.* anent the crime of falſity, he has the crime of Leaſing-making between the King and his people. And the ſame Acts of Parliament, *viz.* Act 43d of the 2d Parliament of King *James* I. and the 205th Act of the 14th of King *James* VI. and in his 25th *cap.* has the crime of infamous and ſeditious libels; and the ſaid 10th Act of the 10th Parliament of King *James* VI. cited therefore.

Item, in the laſt two Acts of Parliament whereupon the propoſition of the dittay is founded, *viz.* the 37th Act of the 2d Parliament of King *James* I. and 144th Act of the 12th Parliament of King *James* VI. it is libelled, That all recepters, ſupplyers or intercommoners with any Traitors, are puniſhable by forfeiture, as the Traitors themſelves; which is not as the Act bears, for both the crime and pain libelled out of the ſaid 144th Act of the 12th Parliament of King *James* VI. the Act is not ſimply againſt thoſe who intercommon with Traitors and Rebels, but with ſuch as are declared Rebels and Traitors. From all which it follows, that the propoſition of the libel founded upon the Acts as they are libelled, is not relevant; and therefore the Defendant ought to be aſſoilzied *in hoc libello.*

Tertio, As to the laſt part of the propoſition of the dittay, the Defender abhors ſo much the crime therein mentioned, that he thinks any perſon who will conceal any malicious purpoſe, wronging in the leaſt, far more in putting violent hands on the inviolable ſacred perſon of his Sovereign Lord, were unworthy to breathe in common air, let alone to be defended; and is ſo conſcious to himſelf of his own innocency in any ſuch things, that he needs no other defence, but the confident denial of any guiltineſs therein, either leſs or more. But before a practice paſs in this honourable Court of Parliament, of founding a dittay of Treaſon upon common Law and Practice; it is under proteſtation aforeſaid, and with all humility alledged againſt the relevancy of that part of the propoſition, as founded upon the ſaid Common Law and Practice, That it is not relevantly founded thereon, in ſo far as by the 28th Act of Parliament 1640 it is expreſsly found and declared Traitors, but after Trial by the Parliament or Judges ordinary; and finding that the ſaid Perſons have contravened a Law and Act of Parliament, made under the pain of Treaſon: and therefore a perſon cannot be declared guilty of Treaſon on a Dittay founded on Common Law and Practice. 2. *Pœna* being *legis ſanctio*; and the Common Law is known with us, to have only *vim rationis*, *non legis*; and therefore no pain, but eſpecially the higheſt of pains cannot be founded thereupon. And 3. ſpecially as the practice beſide the reaſon aforeſaid; becauſe *L. ſ. 4. fad. ſenat. Conſult. Turpilianum, facti quidem quæſtio in arbitrio eſt judicantis, pœnæ vero perſecutio non ejus voluntati mandatur, ſed legis authoritati aſſervatur.* Whence *Menochius* lib. 5. Preſumpt. cap. 29. *in principio* ſaith expreſsly, *pœna indici non poteſt niſi expreſſo jure ſit cautum per l. at ſi quis divus fad. reli. & ſumptibus funerum.* And it is the common opinion of the Doctors, That ever when puniſhment is not expreſsly defined in the Law, but is permitted *arbitrio judicis*, it cannot be extended to death, far leſs to the pain of Treaſon. And the foreſaid Act of Parliament, 28th Act, *anno* 1640, takes away the relevancy of founding Treaſon upon Common Law and Practice, as ſaid is.

If a Dittay to infer the crime of Treaſon might be founded on practice, either of the Juſtice-Court or Parliament, which are two Courts, before which crimes of Treaſon are judged; yet our practice is *conſuetudo rerum ita judicatarum*, as *Craig* defines it, *lib.* 1. *de feudis dig.* 8. And therefore to it, as to the introducing of all other conſuetudes, there muſt be *actuum frequentia*, reiterated acts and practices, *per l. de quibus ff. de legibus & Cart. Jaſon*, and other Doctors on that Law; *& per l. Cod. quæ ſit longa conſuetudo, & L. & in totum* 3. *c. de creſ. dif. privat.* 2. *illud explorandum, an contradictio aliquo judicio ſit firmata*; that is, it would be tried if decrees *in foro contradictorio* have been given thereupon. As alſo ſaith *Craig*, *dicta diſg.* 8. *in fine*; and if in any caſe, that ought to be far more in crimes; and if in crimes, yet more in the higheſt of crimes; and in all concernments of one of the moſt eminent Peers of the land, which is clear.

For in matters civil (how ſmall ſoever) before the ſeſſion, a practice will never be founded on ſome decrees given either for non-compearance, or on compearance where there is little or no diſpute, or it may be great inequality in Advocates of the two parties. And if in civils, where the intereſt is only pecuniary, this ought to be much more in libels of Treaſon, as hath been ſaid; but ſo it is, neither in Juſtice-Court nor Parliament will be found, that it hath been frequently judged, nor *in foro contradictorio*, on a diſpute where this defence hath been propounded. Yea, it may be well alledged, that there can be no practice ſhewed of either of theſe Courts, that any hath been found guilty of Treaſon, but on ſome Act of Parliament under the pain of Treaſon, as is ſaid; but however the ſaid 28th Act of Parliament 1640 is moſt clear, which is moſt agreeable to reaſon, and the Law of *England*, very laudable in that point; as *Coke* has it in his chapter of Treaſon, and therefore the libel as founded on practice is noways relevant, and the defender ought to be aſſoilzied therefrom.

Quarto, Every libel both of civil Law and our Law ought to be clear, diſtinct and ſpecial; but eſpecially criminal libels, becauſe of the great importance of them, ought to be moſt clear, diſtinct and ſpecial, *jure libellus in criminalibus debet eſſe clariſſimus*, ſaith *Dambaud*, *prax. crim.* 3. *num.* 3. And therefore, *Libellus Criminalis obſcurus parte etiam non excipiente extenditur favore rei, Baldus in lege addita, num.* 10. *c. de edendo, Alex. Conſil.* 72. *col. verſit. & licet volum.* 1 *hip. Conſil.* 49. *& Battander prax. Cran. Reg.* 6. *ſ.* 3 *&* 4. *nec enim debet accuſator cum exiſtimationis alienæ jactura, & diſcrimine vagari licet. L. ſi in rem ff. de rei unum.* So that any obſcure criminal libel is inept, and the defender ought to be aſſoilzied therefrom, though he did not oppone his defence for that effect. But ſo it is, this Dittay is moſt unclear and undiſtinct, in ſo far as in the propoſition of the Dittay, there are many Acts of Parliament libelled on, being Statutes anent diverſe crimes of very different natures, and inferring different puniſhments, according to the article of the crimes; and in the ſubſumption the Pannel is indicted for ſeveral crimes alledged committed by him, contrary to the ſaid Laws and Acts of Parliament in general, without condeſcending on the particular Acts of Parliament

that the Pannel has contravened by committing the particular deeds libelled, and ſo leaving him to great uncertainty. Whereas in all Law, Reaſon, and form of proceſs, the defendant ought to be certified what Acts and Laws he has contravened, by committing ſuch deeds that are in a multiplicity of crimes. After propoſing all the Statutes relating to the ſame crimes, all the deeds immediately ought to be ſubſumed, falling under the compaſs of ſuch Statutes, and thereafter the Acts relating to another indifferent crime ought to be propoſed, and the deeds falling under the compaſs of theſe Acts immediately ſubſumed, and throughout the libel, which is no way done here; but firſt, by many different Acts accumulated together in the propoſition, and then the moſt different facts accumulated together indiſtinctly in the ſubſumption, not condeſcending on the Acts by them contravened: and therefore the libel is inept, and the defendant ought to be aſſoilzied therefrom.

This defence is further confirmed in law; 2. Becauſe a libel being *ſyllogiſmus quidem practicus*, *Faſon* and the *Doct. inſtit. de act.* in criminal dittays the propoſition conſiſts *in jure conſtitutionis*, in the laws whereupon the libel is founded: The manner is in the ſubſumption of the facts or crimes under theſe laws, and the concluſion inferring the pain: Becauſe of ſuch a crime, as falling under the law libelled, on a very eſſential part of every libel, is *quo jure petatur*; and a libel being uncertain in this, is unclear and uncertain in a very eſſential point, and inept. 3. In law, a libel ought ſo to be conceived as the defender may know *actionis ſpeciem*, otherwiſe it is inept. l. f. *de edendo*, l. 3. *c. eodem*, and may alſo know *actionis jus*, and that he may deliberate how to defend; but in our caſe, that ariſes from the diſtinct application of the laws to the facts, *ex quibus jus oritur*. 4. If ſuch uncertain libel were admitted, the defender, becauſe of the obſcurity and uncertainty of the libel, ſhould be prejudged of a certain defence he could make againſt the relevancy of the ſame, becauſe the relevancy of it conſiſts in the ſubſumption of the facts and crimes libelled under ſome certain law: which being condeſcended on by a diſtinct ſubſumption, under each law, of the crimes that were libelled properly to fall under the ſame, the defendant would alledge why ſuch crimes cannot be ſubſumed relevantly under ſuch laws and acts, which he otherwiſe cannot do in ſuch multiplicity both of different acts and crimes as are libelled in this dittay: there being not only in divers articles, but even in every article, a great diverſity of the crimes therein libelled, and yet the defender left in uncertainty under which of all the acts libelled on, the purſuer intends the ſubſumption thereof; and ſo in uncertainty altogether how to conceive his defence. And if this be not *maxime vagari*, *cum maximo alienæ vitæ et fortunarum periculo*; it is hoped, as it will be found very evident ſo it was never the practice heretofore uſed in criminal libels; and which, that it ſhould not be now ſuſtained, is of univerſal concernment: and if ſuſtained, might prove of very dangerous conſequence. And the libel, as it is now conceived, is inept, and the defender ought to be aſſoilzied therefrom.

BEFORE the defender come to his particular anſwer to the ſeveral articles of the dittay, to the effect the defender's caſe, in his acceſſion to the publick actings of this kingdom, during the unhappy troubles till the treaty of *Breda*, and his Majeſty's home-coming, may be truly ſtated; it is humbly craved that the Commiſſioner's Grace and honourable Eſtates of Parliament may be pleaſed to remember, that the Kirk and whole body of this Kingdom entered at firſt into the national covenant, for defence of religion and his Majeſty's perſon and authority, and mutual defence one of another in maintaining the ſame; wherein, and in what followed in proſecution thereof till the treaty with his late Majeſty, and Act of oblivion, ſet down at length and ratified in the 6th Act of the 2d Parliament, *anno* 1641; his late Majeſty did ſo far acknowledge and approve their loyalty, that in the ſeventh article of the ſaid large treaty his Majeſty was pleaſed to appoint, that at the cloſe of that treaty, their ſaid loyalty ſhould be made known at the time of publick thankſgiving in all places, particularly in the pariſh churches of his Majeſty's dominions. And in the ſaid Act of pacification and oblivion, is pleaſed to declare, that their conſtant loyalty in their intentions and proceedings ſhould not be hereafter called in queſtion; and that whatſoever fell forth in thoſe tumultuous times, whether prejudicial to his Majeſty's honour and authority, to the laws and liberty of the church, or the particular intereſt of the ſubject, might be buried in perpetual oblivion; and whatever had enſued thereon, no mention ſhould be made thereof in judgment or without: like as his Majeſty for himſelf and his ſucceſſors, promiſes, *in verbo Principis*, never to come in contrary to the ſaid ſtatute, nor any thing therein contained; but to hold the ſame firm and ſtable, and to cauſe it to be truly obſerved, and theſe preſents to have the full force and ſtrength of a perfect and true ſecurity. Like as thereafter *in anno* 1643, the league and covenant was entered in with the two Houſes of Parliament, upon the ground of the large treaty, by the Church and whole body of this Kingdom, purporting the ſame ends of the Covenant, for maintenance of Religion, King and Kingdom; which was thereafter approved by the Parliament, 1644, and fifth Act thereof, and proſecuted by wars both within and without the Kingdom, by the authority of divers ſucceeding Parliaments; church and ſtate going unanimouſly along together, without any apparent publick difference till the year 1648. And even then that Parliament, 1648, ſo highly homologate the ſaid league and covenant, that they declare the breaches thereof to be the grounds of their reſolutions of that war, Act 4, 7 and 8; and their deſires for preventing thereof to be the fulfilling of the ſame, *Ibidem*. The neceſſary qualification required in all with whom they would join either in their armies or committees, is, that they be ſuch who were of known faithfulneſs to the cauſe and covenant in the ſaid Act 7, and that they would oppoſe, and endeavour to ſuppreſs the enemies to the cauſe and covenant on all hands, *Ibid.* Witneſſing to the world that they ſwerved not from the principles contained in the national covenant and league and covenant, and that they reſolved cloſely and conſtantly to adhere thereunto, and to all the ends thereof. So that at that time there was ſtill no difference as to the cauſe and covenant, any difference being only in the manner, and not in the matter of that engagement.

Thereafter what ſtraits this poor Kingdom was reduced to, by the defeat of that engagement, and how unable it was to make reſiſtance to that *Engliſh* army, who, in proſecution of their victory, came to the borders, and entered the ſame, is notorious to all; wherewith the whole Kingdom being ſurprized with amazement, and in evident hazard, it was hard in that juncture of affairs to reſolve upon any courſe for preventing the ſame, or rather incumbent hazard of the Kingdom. Whereupon a *Quorum* of the Committee of Eſtates appointed by the ſaid Parliament, 1648, were neceſſitated to take upon them the managing of affairs, and to ſue for conditions of peace, not being able to reſiſt by force (the flower and ſtrength of the Nation being broke by the ſaid defeat) and to accept the ſame upon the eaſieſt terms that could be had for the time; which as it was endeavoured upon no other intention, or for any other end but that which they were conſtrained to by inevitable neceſſity; ſo at that time it was generally looked upon as good ſervice, and which at that time was moſt neceſſary to evite very great, and otherwiſe inevitable evils, being either neceſſitate to condeſcend to their demands at that time, or otherwiſe to have delivered the perſons of all that did proſecute the ſaid engagements, according to the obleaſment of the large treaty, together with the forts and ſtrength of the Kingdom. The ſucceeding Parliament for the time, in the year 1649, after proclamation of his preſent Majeſty, did ſend Commiſſioners to *Holland*, and afterwards, according to his Majeſty's deſire, to *Breda*, where there was a treaty concluded by his ſacred Majeſty; wherein he was graciouſly pleaſed to approve of the ſaid Parliament, *in anno* 1644, and remanent Parliaments, and their proceedings from the year 1641, preceding the ſaid treaty, which was thereafter ratified by his ſacred Majeſty and his Parliament at *Perth* and *Sterling*; and, after the royal example of his ever-glorious Father, an act of oblivion was indulged, whereby all that might be ground of queſtion was buried in oblivion, and pardoned by a general Act of oblivion in a moſt full and ample form.

This being the ſtate of publick affairs during the time aforeſaid, albeit by the firſt ten articles of the dittay, the defender is charged with deeds and publick actings, coming within the compaſs of the ſaid approbation and oblivion aforeſaid; yet ſuch firm reliance hath he of his Majeſty's perſiſting in his gracious clemency, which does in his royal heart ſo much abound, that albeit his Majeſty by his proclamation, dated the 12th of *October*, 1660, is pleaſed graciouſly to declare, that he has remitted to his Parliament the trial of the carriage of his ſubjects in *Scotland* during the late troubles: That the late troubles have only reſpect to the time during the Uſurper's poſſeſſion, and that trial ſhould be taken during that time of the ſubject's carriage: The defender in all humility conceiving, that it is no ways to be ſuppoſed, that his gracious Majeſty did thereby intend to rip up or revive, or to inſtitute any new trial of old offences, forgotten and forgiven, as is ſaid; eſpecially ſeeing it is not to be ſuppoſed that the bowels of his mercies ſhould be ſo ſtraitned to this his ancient Kingdom, to which he has upon all occaſions given ſo many ſignal and recent teſtimonies of his ſuperabundant favour, than they are, and have been to his ſubjects of his other dominions; to whom, according to his Majeſty's declarations, he hath granted a full and free pardon, from which few, and theſe only the unpardonable murderers of his royal Father, are excluded; for whom, or any guilty thereof, no puniſhment can be ſufficient. And therefore the defender in all humility conceives the ſaid articles, though libelled, are not to be inſiſted on.

The ſolemnity of the oaths, both of covenant and league, will be, as the defender hopes, pregnant preſumptions to put an end to all controverſy, anent the ſincerity of his (as of the Church and Kingdom) their loyal intentions for the maintenance of the perſon and authority of our dread Sovereign, whereunto they were thereby ſo religiouſly engaged; and the conſtant tenour of his acting ſtill by virtue of publick orders and warrants of Parliament, and their Committees, wherein his faithfulneſs in the execution was alſo in the like manner approved, will witneſs, that what he did was not for any private intereſt, but for the publick ends; whereunto he conceived himſelf engaged in manner aforeſaid. Nor was the defender for continuing of theſe unnatural civil diſcords, as he did witneſs by his inclination to an accommodation with *Montroſs*, in the year 1645, mentioned after in anſwer to the tenth article; which albeit fully agreed to betwixt him and the defender, yet he could not obtain the Committee's approbation thereof: which is an evidence, that the defender had not the chief ſway of affairs, and was always inclinable to peace, religion being ſecured; like as the carrying on the engagement in the year 1648, though the defender differed in his judgment as to the way and manner, upon the grounds and reaſons thereafter expreſs'd in anſwer to the ninth article, doth clearly evince, that he had not the chief ſway in publick actings. And what power and intereſt he had in the year 1649, he did faithfully, according to his bond duty, improve the ſame for removing theſe differences betwixt his Majeſty and his ſubjects, wherein he was paſſionately earneſt, as ſhall be made appear in anſwer to the ſaid tenth article. And after his Majeſty's home-coming, and during his being in this Kingdom; and thereafter, till the enemy had fully prevailed, and that by his articles of agreement he was there priſoner, he faithfully ſerved his Majeſty, and even during his Majeſty's abſence, did always, and ſtill ſhall, return loyal duty and good affection to his perſon, government, and poſterity.

And whatever theſe who are grown up may judge, who only ſee the unhappy and accidental events that are the effects of the corruption of men, but have not known the counſels and cauſes which are the two parts of theſe things neceſſary to be known to all who would judge of human actions aright; events being for the moſt part uncertain, and the worſt of events of times, through the corruption of agents, or other extrinſical circumſtances following upon the beſt of actions, yet had they been intimately acquainted with the grounds, cauſes, and nature of the actings while a-doing, the defender is confident that they would have concurred and been of the ſame judgment, as being clear, that theſe proceedings had no native connexion with the ſad and unexpected conſequences that have enſued.

And now to come to the particular defences to the ſeveral points of the ſubſumption, of the dittay. And firſt as to the article of the ſubſumption, anent the words alledged, ſpoken at the ford of *Lions*, which are libelled to have been, That it was the opinion and judgment of many lawyers and divines, that a King might be depoſed for deſertion, vendition, or invaſion; and which is alledged to have been meaned by the pannel of the then King's Majeſty; and the preſumptions adduced for inforcing that to have been the defender's meaning, are ſome words

words alledged ſubjoined, to wit, *Mr.* John, *you underſtand Latin.* It is alledged for the defender, no ways acknowledging, to the beſt of his memory, that he uttered any ſuch words; 1. All criminal dittays ſhould contain in them at leaſt year, month and place, otherwiſe they are inept; *Bartol. & D. D. ad L. libellorum ff. de accuſatione*, becauſe amongſt other reaſons, *diverſitas loci varia argueret facinora*, ſaith *Battand. Reg.* 6. *Prax. cum poſtangel.* &c. But ſo it is, there is no month condeſcended on, when the defender ſhould have ſpoken theſe words, and therefore the dittay in this article is inept. 2. There is no particular Act of Parliament in the Act libelled upon in the propoſition condeſcended on, which is contravened by the words libelled; therefore the libel in this article of the ſubſumption is general and obſcure, and till the particular law contravened be condeſcended on, one can receive no anſwer. 3. The ſpeeches as they are libelled fall not under the compaſs of the acts libelled on in the propoſition of the Libel, to infer any of the pains therein contained; becauſe they are but libelled as the narration of the opinion of others, which is not relevant to infer ſo much, that the narrator is of the ſame opinion, except it were alſo libelled, that he did declare his homologation, and that he was of the ſame judgment, which neither is, nor can be libelled; far leſs then is it relevant to infer a crime, and ſo high a crime as treaſon. For ſuppone the defender had ſaid, that they are very learned, both divines and lawyers, whoſe opinion it is, that the Pope is the head of the church, and that he has power to diſpenſe with the article of faith, to depoſe Kings, a horrid opinion, *&c.* and that it is their opinion alſo we may merit heaven by good works, and that all Hugonots or Proteſtants are damnable hereticks, and that he had related their words in *Latin*, as the *Latin* of that verſe of the gloſs of the common law, *cap. ſicut de exceſs. prælat.*

Reſtituit Papa ſalus deponit, &c.
articulus ſolvit.

And had ſaid to Mr. *John Stewart* thereupon, Mr. *John*, you underſtand *Latin*; albeit theſe opinions of theſe divines and lawyers be execrably heretical, yet nobody will ſay, that the defender's relation of them would have inferred him to have been guilty of the ſame; no more in our caſe can the relation libelled infer him to have been of that opinion with theſe divines and lawyers, or in any way thereby to have contravened any act of Parliament libelled. 2. The aforeſaid opinion is libelled only to have been related *in abſtracto* (nothing of our King's Majeſty who then was). And whereas it is libelled, that it appears the ſenſe and meaning thereof appeared to have been of the then King's Majeſty, in ſo far as the defender ſubjoined to Mr. *John Stewart*, the words aforeſaid, that he underſtood *Latin*: 1. The libel in this part is ambiguous; for this may be interpreted, either that it was the meaning of the opinion of theſe divines which he related, (this ſeems to be moſt conſonant to the words) or elſe that his own meaning was, That it was the judgment that the then King's Majeſty our Sovereign might be ſo dealt with, as is libelled in the latter part of this article, and ſo the article in this part thereof is ambiguous and inept, and there ought to be no proceſs thereupon. *Nam libellus (in criminalibus præſertim) nihil ambiguitatis vel obſcuritatis continere debet, per cap. Conſtitut.* 6. *extr. derig. don. Bet.* 3. If it be underſtood in the former ſenſe, it is but ſtill relative of the opinion of others; and if in this latter ſenſe, to wit, that it was his own judgment, the preſumption libelled of what he ſpake to Mr. *John Stewart* is no way relevant to infer it. 1. Becauſe they held a more obvious meaning, *viz.* That it might have been, the opinion of theſe divines and lawyers was related in *Latin*; and indeed *Grotius* and *Barclaius*, who writ of that ſubject, are both in *Latin*, and that he had ſubjoined to Mr. *John Stewart*, *Mr.* John, *you underſtand* Latin. 2. That ſuch opinions being rather the fancy of notional ſchoolmen, (otherwiſe not unlearned in their own art) or of ſuch as are Doctors notional in the law, if there be any of ſuch opinions, rather than of ſolid juriſconſults, who for moſt part do not ſo much as move theſe queſtions, not to be moved. 3. If any ſuch words had been ſpoken to Mr. *John Stewart*, they might have had this more proverbial ſenſe: ſome lawyers and divines are of that opinion, but the ſubtilty of theſe queſtions or opinions is *Latin* to me, that is, I underſtand it not; as we ſay commonly of things we underſtand not, *It is Latin to me*; but, Mr. *John*, you are a Scholar, and you underſtand it. Now it is a Rule in law, that where the meaning is doubtful or obſcure, that which is the moſt favourable ſenſe ſhould be followed. *L.* 9. *ff. de reg. juris*, and *Matheus de afflictis*, *deciſione* 265. *n.* 68, 69. *& deciſ.* 307. *n.* 15. And when theſe words are ambiguous, the declaration of him who uttered them ſhould be acquieſced unto, *Menochius*, *conſilio* 197. And the defender is ready to declare, that if he had ever ſpoken ſuch words, he was very far from any ſuch meaning as is libelled againſt him. Nor 4. is it any way preſumable, that any rational man, who had the honour to know his late Majeſty, could have made application of any of theſe three cauſes to ſo worthy and illuſtrious a Prince, ſeeing the ſaid *Grotius*, *Barclay*, and others that write upon that ſubject acknowledge, yea, it is obvious to common ſenſe, that hardly can they fall out in the worſt of princes, if he be but *compos mentis.* And as to the preſumption that follows, that the defender meaned by the late King's Majeſty, becauſe of the condition wherein the Kingdom was for the time; 1. It is far more preſumable that the Kingdom was in ſuch a condition of affection to his Majeſty's ſacred perſon and authority, as at that time none durſt have uttered what might reflect thereupon, ſeeing it is libelled to have been ſhortly after the ſubſcribing of the Covenant, wherein they had ſolemnly bound themſelves by the oath of God to maintain his Majeſty's perſon and authority. 2. His Majeſty by his Royal judgment in the Act of oblivion, 1641, has preſumed the loyalty of his ſubjects, both in their intentions and proceedings in theſe times, which is *preſumptio juris, & de pre.* As for the defender's proſecuting of Mr. *John Stewart*, 1. It was a judicial proceſs and legal act, and ſo can be no imputation to him, wherein the proceſs was laid in ſo fair a courſe of law, that he was condemned, not only upon clear probation, but his own confeſſion: and yet the words whereupon he was indicted and convicted were far different from theſe words, as they are here libelled, otherwiſe the defender would never have purſued it.

Ultimo, Adhering always to the alledgance above propounded, humbly proteſting, that they may be firſt diſcuſſed: and whereupon it is craved, he may be aſſoilzied *in hoc libello*, becauſe by Act of Parliament *in anno* 1641, amongſt the imprinted Acts *anno* 70. the ſame ſervice is approved and he exonered. It is alledged, that the Defender ought to be aſſoilzied from the whole crimes in the firſt article, becauſe after the time libelled of the alledged committing of the ſame, his late Majeſty of glorious memory granted that never-to-be-forgotten Act of Indempnity and Oblivion *in anno* 1641; which did proceed upon the preceding Treaty with his Majeſty, and which is ſolemnly confirmed by his Majeſty himſelf in Perſon, and his three Eſtates in his Parliament, 1641, 6th Act thereof; wherein his Majeſty, for himſelf and his ſucceſſors, does promiſe *in verbo Principis*, never to come in the contrary of that Statute and ſanction, or any thing therein contained; but to hold the ſame in all points firm and ſtable, yea, and to cauſe it to be truly obſerved by all his Majeſty's lieges for ever. Hereupon the Defender doth confidently rely, for all that is libelled as committed by him in this article, or any other preceding that time, as being confident it is the greateſt imaginable ſecurity that he and the reſt of the lieges of the land can have.

As to the ſecond article, and whole head thereof, 1. Neither day, month nor year of God are condeſcended on; and therefore ſo general, that it is inept. *Nam generalitas parit obſcuritatem, Marent. part.* 6. *ſpec. & de libel. oblat. quomodo concip. & per textus ibi citatos.* 2. It is not condeſcended which of the Acts of Parliament libelled this article, and the ſeveral heads thereof, contravenes, which is a general ineptitude and nullity in this libel. 3. As to the firſt point; if that article anent the in-taking of the houſe of *Airly*, cutting and deſtroying the planting, and demoliſhing the houſes; 1. It is not relevantly libelled, in ſo far as it was libelled that the houſe was kept for his Majeſty's ſervice, but doth not condeſcend that ſervice now. 2. Is it libelled that there was any in it had a commiſſion from his Majeſty, without which it has not any colour of relevance? 4. The Defender never had any private quarrel, nor perſonal prejudice againſt the noble Lord *James* Earl of *Airly*; but if his marching to that houſe be meaned of that which was *in anno* 1640, it was by virtue of, and in obedience to, a commiſſion put upon him by the Committee of Eſtates for the time: nor was the ſaid houſe, at his arrival thereat, kept for his Majeſty's Service, as is (though wrongfully) libelled. But before that time was ſurrendered to the Earl of *Montroſs*, who had put Col. *Sibbald* to keep the ſame for the King and Country's uſe, and which Col. *Sibbald*, upon ſight of the Defender's commiſſion, did abandon the ſaid houſe. And if there was any planting cut, it was allenarly ſome few ſhrubs and buſhes, which the Defender could not hinder, for hurting to the ſoldiery; and though the Defender's commiſſion bear power and warrant to demoliſh the houſe, he was ſo far from ſtretching or fully executing the ſame, that he did not only ſlight the houſe, and delayed a long time to do the ſame, in expectation that the Lord *Ogilvy* ſhould have procured a countermand from the Committee, and did ſlight it till he was paſt all hope of obtaining the ſame; and this as is hoped will be acknowledged by the ſaid noble Earl; neither did, ſo far as the Defender knew or could hinder, the Earl, his friends and followers, ſuſtain any other prejudice than what was uſual, and what all places are ordinarily obnoxious to, where armies or parties of ſoldiers come: but however it is not relevant, as ſaid is.

Tertio, That part of the ſaid article, though it were true (as it is not), is no ways relevant to infer the concluſion of the Dittay, there being no Law nor Statute libelled on; that for cutting of timber, or demoliſhing the houſes of private perſons (though done upon private quarrels, as this was not) infers the pain of Treaſon.

As to that part of the article, anent the burning of the houſe of *Forther*, beſide the exceptions againſt both the points thereof, alledged before in the beginning, it is not relevant to ſay, that the Defender ſeized thereupon to infer any crime, except it were libelled he ſeized by force, for he might have entered *in vacuam poſſeſſionem.* 2. *Non relevat* to libel, that thoſe under him did ſeize thereupon, or raiſe fire therein, except it were libelled that the Defender had given expreſs order or warrant to raiſe that wilful fire; who, as he gave not order therefore, ſo he was not preſent nor near the place, nor knew any thing thereof, till after the houſe was burnt, and *noxia caput ſequitur.* 3. In the Acts of Parliament libelled on, anent burning and wilful fire-raiſing, the ſame can only be underſtood of burning and raiſing of fire on private feuds, and for particular revenge in time of peace, and is not to be extended to ſuch deeds done in the heat and fury of wars, ſeeing *inter arma ſilent leges.*

And as to the aggravation of the Defender's hatred againſt the Earl, merely for his loyalty to his Majeſty, it is *gratis dictum*, and againſt that preſumption, *qua unuſquiſque præſumitur bonus*, and againſt that loyalty to his Majeſty, that is hoped ſhall more and more appear in the Defender.

Laſtly, The Defender ought to be aſſoilzied from the ſaid article, and all deeds therein mentioned. Becauſe the ſame preceded the Act of oblivion *in anno* 1641, whereby all things that did fall forth in theſe tumultuous times, whether prejudicial to his Majeſty's honour and ſafety, or to the Laws and Practices of the Church and Kingdom, or to the particular intereſts of the ſubject, are buried in perpetual oblivion, as more fully is contained in the ſaid Act.

3. As to the third article, anent the beſieging of *Dunbarton* Caſtle, and tranſporting Cannon and Ammunition out thereof:

It is alledged for the Defender, That the aſſaulting of the ſaid Caſtle is not relevant to infer the concluſion of the Dittay, becauſe, as is before alledged, none can be declared Traitors, but thoſe who have contravened a ſpecial Act made under the pain of Treaſon. But ſo it is, that none of the particular Acts of Parliament, whereupon the propoſition is founded, mentions any thing againſt thoſe who aſſault the King's Caſtle, nor does any of them infer the pain of Treaſon therefore: But only the 25th Act of Parliament, 6 *Jac.* VI. intitled *Sundry Points of Treaſon*, by the which Acts they only are to be puniſhed as Traitors, who aſſault the Caſtle or places where the King's perſon is, and that without warrant of Eſtates; but it is neither libelled, nor was the King's perſon in the ſaid Caſtle at the time of the alledged aſſaults thereof; nor did the Defender aſſault and lay ſiege to the ſame without warrant from the Eſtates, but by their expreſs order and commiſſion. And the truth is, the Defender himſelf did not appear before the ſaid houſe, till the ſaid Sir *John Henderſon* being ſtraitned with the ſiege, ſent for the Defender, and offered to ſurrender the houſe upon honourable conditions, which the Defender ſuffered him to make himſelf, and which

which were accordingly kept, not without ſome difficulty, the Inhabitants of the town, by reaſon of prejudice done to them, being highly incenſed againſt the ſaid Colonel.

As to that part of the ſaid article, anent the tranſporting of the King's Cannon and Ammunition, not relevant to infer the Concluſion, none of the Acts libelled on concluding againſt any ſuch fact, the ſaid crime of Treaſon; and the truth is, the Defender did never tranſport any Cannon or Ammunition out of the ſaid Caſtle, but two Cannons, which the Duke of *Richmond*, heritable Keeper thereof, gifted to the Defender, and which he would never have gifted, if they had not been his own, and not the King's. 2. The Defender ought to be aſſoilzied from the ſaid article, and all deeds therein contained, the ſame having alſo preceded the ſaid Act of oblivion, *in anno* 1641.

4. And as to the fourth article of the Dittay, anent the Defender's calling, or cauſing to be called a convention of Eſtates, *in anno* 1643, entering in league with his Majeſty's enemies, impoſing exciſe and ſubſidies on the Kingdom, raiſing an army, entering *England* therewith, fighting for and with the Rebels there; it is anſwered, That the whole points of this article of the Dittay are charged perſonally on the Defender, ſo contrary to the notoriety of the matter of the fact known to both Kingdoms, and to his Majeſty's Commiſſioner's Grace, and to the whole Parliament; yea, to the fifth Act of Parliament, 1644, relating and approving all the Acts that are made points of this article; that there needs no more but propone as known to all, and to repeat out of the ſaid publick Law and Act of Parliament, what is therein libelled, to evince that they are not the Defender's perſonal deeds: but the Committees (Commiſſioners eſtabliſhed by his Majeſty), Convention of Eſtates, and of the whole Church and Kingdom of *Scotland*, and approved by Parliament, 1644, in the ſaid fifth Act thereof. Firſt then as it is notorious, ſo it is clear by that Act, that the ſaid Convention of Eſtates was called not by the Defender, as is libelled, but by his Majeſty's Privy-Council, Commiſſioners for conſerving the Articles of the Treaty therein mentioned, and Commiſſioners of common burdens, all eſtabliſh'd by his Majeſty's authority *in anno* 1641, which Conſervators concerning that article in the large Treaty, bearing the Kingdom of *Scotland* their deſire for unity in Religion, and conformity in Church-Government, as a ſpecial means for conſerving of peace betwixt the two Kingdoms; in anſwer thereto his Majeſty, with advice of both Houſes of Parliament in *England*, doth declare his approbation of their affection in their deſire of having conformity of Church-Government between the Nations; and as the Parliament had already taken to conſideration the reformation of Church-Government; ſo they would proceed therein in due time: and this was one of the main grounds whereupon both Houſes entered the ſaid league. (2.) That the enacting and entering the League and Covenant, was an Act of that Convention of Eſtates, not the Defender's perſonal act. (3.) That the League and Covenant was entered in with the two Houſes of the Long Parliament, and aſſiſtance given to them in fighting with or for their army, or otherwiſe, which is libelled fighting with Rebels. The point of fact being thus cleared in oppoſition to the Dittay. 2. It is alledged, That the firſt two Members of this article are ſubſumed under none of the Acts of Parliament libelled on in the propoſition; there being no Act of Parliament libelled againſt meetings, bands or leagues in general; or in ſpecial betwixt the two Nations or Eſtates thereof. 3. As to the remanent members of the article, they can no ways be relevant (with all ſubmiſſion) except it were qualified, that the two Houſes of the Long Parliament, to whom the aſſiſtance libelled was given, that they were Enemies and Rebels; but that the Defender is confident it will not be ſaid, becauſe by his Majeſty's Act of Oblivion, 25 *April*, 1660, his Majeſty, after his happy Reſtoration, declares, that what was acted even againſt his Majeſty, and his Royal Father, by his Subjects in *England* during theſe times, thereafter ſhall not be called in queſtion at all, ſo much as to the prejudice of their reputation, in manner at length contained in that gracious Act. And how loyal the Long Parliament was, did appear in that the Uſurper durſt never attempt any thing againſt his late Majeſty's perſon, till they were broken; as alſo what loyalty the ſecluded Members of that Parliament have (as became them) ſhewed to his Majeſty in his juſt and glorious Reſtoration, is known to all *Europe*, to their eternal commendation and renown: No doubt as from conſcience of their oath of duty and allegiance, ſo of the oath of God whereunto they bound themſelves to maintain his Majeſty's perſon, authority and greatneſs, as well as Religion, in that Covenant. 4. All the foreſaid deeds, which are the members of this article, *viz.* The calling the foreſaid Convention of Eſtates, as being the Act of the foreſaid Council and Commiſſioners, the entering in the League and Covenant, raiſing of the army for aſſiſting the two Houſes of Parliament of *England*, impoſing Exciſe, *&c.* as all being acts of the ſaid Convention of Eſtates, together with the ſame Convention of Eſtates, are all approved by the ſaid 5th Act of Parliament, 1644. In reſpect whereof the Defender ought to be aſſoilzied from this whole article, and all the crimes contained therein. 5. Not only is the ſaid calling of the ſaid Convention of Eſtates, and the ſaid Convention entering in the League and Covenant, impoſing of Exciſe, raiſing of Forces for the Parliament of *England*, and remanent Acts of the ſaid Convention approved by the ſaid 5th Act of Parliament of 1644; but by his Majeſty's Treaty of *Breda*, and the Act of Oblivion, in the Parliament holden at *St. Johnſton* and *Sterling*, *in anno* 1650 and 1651, or either of them, all things done during theſe tumultuous times, intervening betwixt the ſaid Act of Oblivion 1641, and his Majeſty's home-coming 1650, whether prejudicial to his Majeſty's honour and authority, or to the Laws and Liberties of the Church and Kingdom, or to the particular intereſt of the ſubject, are buried in perpetual oblivion. And by the ſaid Treaty and Act of Ratification of the ſaid Parliament, or one or other of them, the ſaid Parliament 1644, and all Acts thereof are ratified; and ſo amongſt the reſt, this which is the 5th Act, which approves all the Acts, whereupon this 4th article of the Dittay is founded, and therefore the Defendant ought to be aſſoilzied therefrom.

5. As to the 5th Article, anent the burning of the houſe of *Menſtrie*, *in anno* 1645, the Defender is ſo innocent thereof, that if it were libelled relevantly, he needed no other defence but a ſimple denial; but the truth is, that it hath been burnt by ſome of the ſoldiers, commanded by Major-General *Bailey*, for the time, upon the greateſt provocations that could be; two pariſhes, *viz. Muckart* and *Doller*, having been burnt the night before, and ſeveral, both men, women and children, cruelly killed by the concourſe of thoſe that were in that houſe. But it is no way relevantly libelled, in ſo far as it is libelled, that the Defender, or others under his command, burnt it: 1. Becauſe there is no Act of Parliament, of all the Acts libelled upon in the propoſition, whereupon this can be ſubſumed; eſpecially the Acts anent the raiſing of fire, upon which (if upon any) it ſeeems it is particularly founded, there is no ſuch odd extenſion of that ſo high a crime, as to make any guilty of it, by committing of it by others, who are under their command. And this were a very univerſal, terrible concernment; and in the preſent caſe were moſt dangerous and unjuſt, that a Commander ſhould be holden to anſwer for all the illegal deeds done by his ſoldiers. 2. It is againſt common reaſon, the Common Law, by which this therefore is well eſtabliſhed, that *delicta proprios tenent authores, & noxa caput ſequitur*; and therefore is not relevant that the Defender burnt it by himſelf, or others by his ſpecial direction, or particular order for that effect.

4. Though it were made relevant in manner foreſaid, yet the Dittay is inept as to this article, and the Defender ought yet to be aſſoilzied therefrom, becauſe the year of God is only libelled, to-wit, the year 1645; whereas not only the month, as in all criminal libels, *per L. libellorum ff. de accuſationibus*, and the Doctors treating thereupon, but the very day ought to be condeſcended on; for the omiſſion of the day prejudges the Defender of his defence; ſpecially his *alibi*, which he might and would propone, if the day were condeſcended on; that being required, the day ought to be condeſcended on, otherwiſe the libel is inept. *Nam Libellus debet continere non tantum annum & menſem, ſed & diem ſi reus id requiſierit cum probaturus ſuum alibi.* Damhaud, cap. 3. num. 4. 5. & *Battander Reg.* 6. *num.* 4. *Maranta in ſpec. de bel. Obl.* 3. *num.* 12. *per bark. in L. Si quis reus Column.* 3. *in fin. de publ. judic. & Jaſon. in L. Ubitraria* 2 *ſect. Si quis occiſi ff. de eo quod Crito loco.* But ſo it is, that if the day were condeſcended on of the ſaid burning, the Defender might, and if need were, would offer to prove, that he was that day, during all the time of the burning, *alibi*, at a conſiderable diſtance from the ſame place.

3. *Abſolvitur*, Becauſe Lieutenant-General *Bailey*, at that time when the houſe was burnt, had the command of the ſaid forces (adhering always to the former defences againſt the aptitude and relevancy of this part of the Dittay, and expreſſing the ſame that may be diſcuſs'd *anté omnia*): In reſpect whereof the Defender ought to be aſſoilzied *ab hoc libello*, at leaſt there can be no proceſs upon that part of the Dittay, as it is now libelled. 4. Albeit the Defender had burnt, or given direction only to burn the ſaid houſe, as he had not; yet by ſpecial Act and commiſſion of Lieutenancy, granted him by the Parliament 1644, he was empowered to purſue the *Macdonalds*, and their adherents and acceſſaries, with all kind of hoſtility, by fire and ſword, (with a diſpenſation) with ſlaughter, mutilations, raiſings of fire, aſſailing of houſes, taking of priſoners, and other inconvenements whatſoever, that ſhould fall out in the execution of that Commiſſion in purſuing of them; as the ſaid Act and Commiſſion may at length bear, and which commiſſion is ratified by his Majeſty in the Treaty at *Breda*, his ratification of that Seſſion of Parliament 1644, among the other Parliaments and Seſſions thereof ratified by his Majeſty, all after 1641, and preceding his return. But ſo it is, that the ſaid *Macdonalds* were at that time, at the burning of the ſaid houſe, joined with *Montroſs*; and it was in purſuance of both that the ſaid houſe was burnt, as is notorious, (and, if need be, the Defender will prove) and therefore though he had burnt, or given direction for the burning thereof, he ought to be aſſoilzied.

5. By Act of Parliament, 30th Act, 22 *March*, 1647, it is ſtatute and ordained, that all his Majeſty's good Subjects ſhall be altogether freed, and liberate in all time coming, from being any ways called, convened, purſued, troubled or moleſted in judgment, civil or criminal, or out with the ſame, for any deed done, or to be done by them, againſt the perſons, lands or goods, of ſuch as have, or ſhall be in the rebellion; (by which it is notorious, that the ſame armed oppoſition, made by the deceaſed Marquis of *Montroſs* and the ſaid *Macdonald*, and others under his command, to the Eſtates, is underſtood) during the time of their being in the ſaid rebellion, or have been, or ſhall be guilty with the rebels in their wicked courſes, or of any of them, who came under the firſt or ſecond Claſſes of delinquents, contained in the 5th Act of the 5th Seſſion of that Parliament holden at *St. Andrew's* in the month of *January*, 1646. But ſo it is, the Defender offers to prove, if need be, that a ſon of the Earl of *Sterling*, named *Charles* or *John Alexander*, who had, or either of them had right to *Menſtrie*, had joined with *Montroſs* and thoſe under him; and ſo came under the ſecond claſs of the ſaid 5th Act of the 5th Seſſion of Parliament, 1646: Or at leaſt, went or ſent into their leaguer, or without compulſion entertained them in the ſaid houſe; and therefore the Defender ought not to be purſued, even though he had burnt, or given direction to burn the ſaid houſe (as he no ways did), and being purſued, ought to be aſſoilzied from this article; like as it is *conjunctim* alledged for the Defender in fortification of the ſaid Act, That the ſame is ratified by his Majeſty's large Treaty at *Breda*, as being one of the Acts of that Seſſion of Parliament, 1647, which amongſt the other Seſſions of Parliament, and Acts thereof, ſince the year 1641, and preceding his Majeſty's return, *in anno* 1650, are ratified by the ſaid Treaty, as alſo by the Act of ratification, at *St. Johnſton's* or *Sterling*, in *anno* 1650 and 1651. By which ratification (or ratification of his Majeſty by the Treaty aforeſaid) the ſaid Act of Parliament 30, *in anno* 1647, comes (as a moſt ſolemn remiſſion granted by his Majeſty, and whole Eſtates of Parliament, to the perſons therein contained); and ſo like as if every one of them had got a particular remiſſion ſo ſolemn, it had been an uncontrovertible remiſſion for what were therein contained; ſo muſt it now be, being in effect of the ſame nature and virtue, albeit many be included in one.

6. By the Act of Oblivion at *St. Johnſton's* or *Sterling*, in the year 1650 or 1651, all acts of hoſtility, whether between the King and his Subjects, or between Subject and Subject, and what things fell out in theſe times, betwixt the year 1641, and his Majeſty's return, whether prejudicial to his Majeſty's honour and authority, or to the Laws of the Kingdom,

or the particular intereſt of his Subjects, are buried in oblivion. In reſpect whereof, though the Defender were acceſſary to the ſaid burning, as he is not, yet he ought to be aſſoilzied.

As to the ſixth article, anent the taking of the houſe of *Towart*, belonging to the Laird of *Lamond*, and the houſe of *Oſcoge*, belonging to *Oſcoge*; and after articles of capitulation drawn and ſubſcribed by *Ardkinglas*, and others under his command, truſt and aſſurance, murdering a great many of *Lamond*'s and *Oſcoge*'s friends: As this is no way true, (the Defender being altogether innocent thereof) ſo it is no ways relevantly libelled. For, 1. Neither day nor month of theſe deeds are condeſcended on. 2. The alternity, by others under his command, not relevant to infer a crime, far leſs Treaſon againſt the Defender, for the reaſon contained in the firſt anſwer to the former article, *viz.* That there is neither Act of Parliament libelled, nor Common Law, ordaining a man to be liable to a pain, far leſs the higheſt of pains, for deeds or crimes by thoſe under his command, except he gave them ſpecial direction. But every one is to ſuffer for his own fault, as more at length is contained in the ſaid anſwer, which is here repeated. 3. *Non relevat* thoſe for whom he is anſwerable, for the ſame reaſons, becauſe every one is anſwerable for his own fault and crime. 4. *Non relevat*, that others whom he might ſtop, did it; becauſe there is neither any Act of Parliament libelled on, ordaining any to be anſwerable for all the deeds of thoſe he might ſtop (ſpecially the Act againſt murder under truſt, bearing no ſuch thing); nor is there any Law nor reaſon for the ſame, but *delicta proprios, tenent authores*, as hath been ſaid; and no ways granting the Defender could have ſtopped them: for the truth is, he could not, and was not near them, when what is libelled was done: and albeit indeed, it be *contra officium charitatis*, not to ſtop any doing of miſchief, if any one may ſafely do it, yet that it comes under the compaſs of Law to infer a crime, eſpecially Treaſon, cannot be affirmed. 5. Taking of the houſe of *Towart* and *Oſcoge*, is not ſubſumed upon any of the Acts of Parliament libelled, there being none of them, anent the taking in of houſes belonging to the lieges, and ſo is not relevant to infer any of the crimes contained therein. 6. The alledged killing a great many of *Lamond*'s and *Oſcoge*'s friends, after the aſſurance given by *Ardkinglas*, is no ways relevantly libelled, to infer the crime of ſlaughter under truſt, becauſe by the Act of Parliament, *Jac.* VI. *par.* 11. *cap.* 51. of ſlaughter under truſt, upon the which it is founded, ſlaughter under truſt, is only when the party ſlain is under the truſt and aſſurance of the ſlayer, which is no way here libelled; but that the perſons who are libelled to have been ſlain by the Defender, were under the truſt of another, to-wit, *Ardkinglas*; who if he, or any other under the Defender's command, have done any thing againſt their own aſſurance, they are to anſwer for it.

7. The Defender adhering to theſe defences, and craving that they being againſt the relevancy be firſt diſcuſs'd, repeats his former anſwer founded upon his Commiſſion of Lieutenancy therein mentioned; for they who are deſigned *Lamond*'s and *Oſcoge*'s friends, were the *Macdonalds*, or their adherents and acceſſaries, (as is notorious, and the Defender, if need ſhall be, offers to prove it) whom by the aforeſaid Commiſſion he had power to proſecute with fire and ſword, with diſpenſation of ſlaughter, and raiſings of fire, in manner at length contained in the Commiſſion; which amongſt the other Acts of Parliament, 1644, is ratified by his Majeſty in his Treaty at *Breda*, as is alledged in the ſaid anſwer, which is holden herein repeated; and therefore the Defender ought to be aſſoilzied from this article. And truly what cruelty was exerciſed, was by the Laird of *Lamond* himſelf, againſt the heritors and other inhabitants in the Sheriffdom of *Argyle*; for the which, upon a ſupplication given in to the King's Majeſty and Committee of Eſtates at *Sterling*, in *Auguſt* 1651, he was impriſoned within the Caſtle of *Sterling*, till after Trial, Juſtice ſhould have been done upon him; but was releaſed by the *Engliſh* when they took the Caſtle, with the other priſoners. However, the Defender is confident, as it is known, ſo he ſhall make it appear, if need be, in the other proceſs whereunto this relates, and wherein it will be more pertinent; and yet the day and time of the committing of the deeds mentioned in this article not being condeſcended on, as it ought to be when required by the Defender, that he may propone his *alibi*, he offers to prove, if need be, that he was *alibi* the time of the committing of the ſaid deeds, at a very great diſtance, to-wit, in *England*. Like as his Majeſty, by his Treaty at *Breda*, hath ratified and approved the Acts of Parliament; and his Majeſty, and Eſtates of Parliament have ratified the ſaid Treaty, and paſt an Act of Oblivion, of all former deeds done by the Subjects, which ſecures and indemnifies them for any former actings, in reſpect whereof he ought to be aſſoilzied.

As to the ſeventh article made up of ſeveral members or parts; as, 1. Anent the men alledged murdered at *Lockhead* and *Dunnaverty*. 2. Anent the aggravation added thereto; anent an old man begging his ſon's life, and denied him. 3. Anent the ſending two hundred men from *Ila* to ſtarve in *Jura*. 4. Anent the taking of the perſon of Col. *Kittoch* out of a Ship in *Leith* road, wherein it is libelled, that he had been brought by order of Parliament.

It is alledged againſt the ſeventh article, that, 1. The firſt part thereof (anent the men alledged murdered at *Lockhead* and *Dunnaverty*) is no ways relevant, not only in reſpect that the particular month and days whereupon the ſame ſhould have been done, are not condeſcended upon, but alſo in reſpect there is not one particular perſon by name, and ſurname, whereby he might be known, condeſcended upon, againſt whom the deeds libelled ſhould have been committed; without the which, this part of the article cannot be ſuſtained as relevant; it being contrary to all Law and Practice, that murder in general, without naming the perſons murdered, ſhould be ſuſtained as a relevant Dittay againſt any. 2. The ſlaughter alledged, committed upon thoſe in the houſe of *Lockhead*, is not relevantly ſubſumed upon the Acts of Parliament libelled, in ſo far as there is no aſſurance libelled to have been given to them, to bring it under the Act of murder under truſt, and there is no other Act libelled under which it can fall. 3. It is alledged, that the Defender cannot be charged with any of the deeds libelled in the ſaid firſt part of the article (though they were true and relevantly libelled, as they are not), becauſe the expedition made againſt the Rebels in *Kintyre*, in the year libelled, was by *David Leſley*, and thoſe under his command, againſt each, who, contrary to his Majeſty's order ſent to them at that time, commanding them to lay down arms, and contrary to their own engagements not to join with *Aliſter Macdonald*, did notwithſtanding continue in arms rebelliouſly, (as was then declared by the Eſtates of Parliament) reſiſted *David Leſley* in the execution of his ſaid commiſſion againſt them; who therefore after defeating of them in the field, who took them out of the ſaid houſes of *Lockhead* and *Dunnaverty* without any capitulation, and diſpoſed of them, as the Council of War then preſent with him thought fit, (which is notorious, and the Defender offers to prove, if need be;) for which, and other his ſervices, the ſaid *David Leſley* got the Parliament's approbation *in Anno* 1648, as the ſaid approbation and exoneration bears date; which will clearly prove any thing that is herein alledged. And therefore the Defender, nor any in his company at that time, cannot be charged with any deeds libelled in the firſt part of this article, but ought to be aſſoilzied therefrom. 4. The Defender repeats his third defence made to the fifth article founded upon his Commiſſion of Lieutenancy; the perſons mentioned in this article, againſt whom the deeds are libelled to have been committed, having been the *Macdonalds*, or the Adherents and Acceſſaries, which is notorious, (and the Defender offers to prove, if need be) to proſecute whom he had the Commiſſion containing diſpenſation, and which was ratified in manner mentioned in the ſaid anſwer; like as he repeats the fourth and fifth anſwer made to the ſaid article, in reſpect whereof he ought to be aſſoilzied therefrom.

It is alledged againſt the ſecond, third and fourth members of this ſeventh article, that they are no ways ſubſumed, nor cannot be ſubſumed under any of the Acts of Parliament libelled, and therefore the Dittay herein is inept, and the Defender ought to be aſſoilzied therefrom (and yet in point of fact they are but mere calumnies). As to the ſecond part (anent the ſaid old man and his ſon) it is no ways relevant, not condeſcending on the perſons names, and therefore can receive no other anſwer, but that it is a mere fiction to make the Defender more odious, who ingenuouſly profeſſes, that he never heard of ſuch a thing till he ſaw it in the libel. The third part of this article hath no better ground than the ſecond; and the Defender deſires, that for clearing his innocency of the fact libelled therein (anent the ſending of two hundred men from *Ila* to ſtarve in *Jura*), that the Gentlemen in the ſaid Iſles may be examined upon the truth of the matter. It is alledged, that the fourth part of this article, anent Col. *Kittoch*, is of the ſame nature with the former two, and therefore the ſimple relation of the truth is ſufficient to refute the falſehood thereof; which is ſhortly this, *viz.* That Col. *Kittoch* was not brought to *Leith*, either by order of the Committee of Eſtates or Parliament; but being taken priſoner in *Ila*, by the forces under the command of *David Leſley*, and delivered to the Defender, the Defender put him aboard in Captain *Brown*'s ſhip, who undertook to deliver him at *Dunſtaffnage*. But Captain *Brown* finding the opportunity of a fair wind to *Leith*, to which he intended, and not willing to loſe the ſame, did not go to *Dunſtaffnage*, but came ſtreight to *Leith* road; and immediately gave the Defender notice, that he had his priſoner aboard; whom therefore the Defender received from him, and ſent him to *Dunſtaffnage*. And the Defender deſires that Captain *Brown*, who lives at *Weems*, may be examined upon the truth of this matter; by whom he offers to prove this, if need were.

And whereas it is libelled, that Col. *Kittoch* was hanged, it is true; but it is alſo true, that he was condemned to die in a Juſtice or Lieutenant-Court judicially; which is notorious, and the Defender offers to prove, if need ſhall be: ſo that this can be a ground of no Crime nor Dittay whatſoever; but however the Defender ought to be aſſoilzied therefrom.

8. To the firſt member of the eighth article, that notwithſtanding the manifold acts of dignity, favour and honour conferred upon him by his then dread Sovereign; his Majeſty being reduced to great ſtraits by that army of Sectaries, and having caſt himſelf over in the hands of the army of his *Scots* Subjects for ſhelter and preſervation of his royal perſon; nevertheleſs, the ſaid Marquis being chief ring-leader of that factious party, who then ſwayed the eſtate of affairs both in Council and Army, did ſo contrive and complot, and by his influence ſo prevail, that after all fair offers made by his Majeſty, and his deſire to have come and lived in *Scotland*, till all differences in both Kingdoms had been ſettled, an Act of Parliament was made, for abandoning his Majeſty to the mercy of his inveterate enemies, the ſaid army of Sectaries.

It is anſwered, that as he muſt continually acknowledge the late King's and his preſent Majeſty's acts of favour, honour and truſt; ſo muſt he ſtill deny (as he ſafely may in the preſence of God, who is the Searcher of all hearts, and of all men) that he never entertained any diſloyal thought, or contrived any treaſonable plot or machination againſt the ſacred perſon, dignity or authority of his late Sovereign, or of his preſent moſt ſacred Majeſty; and therefore with a clear conſcience may anſwer this Dittay:

1. That the ſame is not ſpecial nor clear, but very obſcure and general, how and in what manner he was chief ring-leader of any factious party.

2. Who that factious party were; nor,

3. By what deeds, and how he ſwayed the ſtate of affairs: nor,

4. Thoſe means, by which, and upon whom, he procured his influence to prevail.

5. The alledged offers made by his Majeſty are not expreſs'd; and therefore the ſaid articles are altogether general and inept.

The Act of Parliament, which the Defendant is alledged to have procured to have been made, is not produced, nor indicated by number or rubrick, nor does the Defender know any Act of the tenor and title libelled.

And the Defender in humility conceives, that it is not conſiſtent with the Act libelled on, in the oppoſition of the Dittay, diſcharging perſons to impugn the authority of the Eſtates of Parliament, to term the members thereof, eſpecially in making an Act (which being carried by plurality of voices, as the deed of the whole, and eſpecially ſuch an Act as is mentioned in the libel, where there were none, or very few of a contrary judgment) a factious party.

13. The cauſe of the firſt member of the ſaid eighth article, anent the pretended Act of Parliament, as is libelled, for abandoning and leaving his Majeſty to the diſpoſal and mercy of his enemies, the Sectarian army, does ariſe from the Acts of Parliament (as clearly appears), and can be ſubſumed on under none of the Acts of Parliament libelled: For if the tenth Act of Parliament, 1647, be underſtood and meaned as the Act libelled, that being an Act of Parliament, the defender humbly alledges, That an Act of an acknowledged lawful Parliament ſhould be made a crime of acceſſion, whereunto a Member of Parliament ſhall be indicted, eſpecially for ſo high a crime as treaſon, is without ground of law or practice, and is hoped the honourable Parliament will no ways ſuſtain it; and therefore, that he needs ſay no more now in confirmation hereof.

14. Likewiſe, all that is in that Act and ſubſtance thereof, being the Eſtates of Parliament their declaring their concurrence for his Majeſty's going to *Holmby-Houſe*, or ſome other of his houſes in and about *London*; and that expreſsly to ſatisfy the deſire both of his Majeſty himſelf, and of his two Houſes of Parliament in *England*; and there to remain, not under the power of Sectaries, but with ſuch attendance about him as both Houſes ſhould think fit to appoint, with reſpect alſo had to the ſafety and preſervation of his Royal perſon: And the Eſtates therein do alſo declare againſt all harm and prejudice, violence or injury to be done to the ſame (as indeed it was horrid to think that any on earth ſhould have done), or prejudice to his Majeſty's poſterity: But thereafter it is clear from the fourth and ſeventh Acts of the Parliament, 1648, that the Sectarian army diſobeyed, and threatened the Houſes of Parliament, impriſoned and baniſhed faithful Members, and by a ſudden ſurprize, violently ſeized upon the perſon of the King's Majeſty, carried him from his houſe at *Holmby* againſt his own will, and declared reſolutions of both Kingdoms, and kept him under their guards; till at length, by their power and prevalency, he was committed, and kept cloſe priſoner at the Iſle of *Wight*: this being the true caſe out of the expreſs words of the Acts before cited.

As to that declaration, Act 10. Parl. 1647, the defender alledges, 1. The Act bears expreſs, that it was to ſatisfy his Majeſty's own deſire. 2. That it is homologate and approved by the Parliament, 1648, in ſo far as by their fourth Act, intitled, *Anent their reſolutions concerning the breaches of covenant and treaties betwixt the Kingdom of* Scotland *and* England, *and demands for reparation thereof*; finds the violent ſeizing on his ſacred Majeſty's perſon, and taking him away from *Holmby-houſe*, (as appears by Act 7.) by that army, againſt the reſolutions of both Kingdoms, a breach: And amongſt the Reparations, they deſire expreſly, that conform to the former deſires of this Kingdom, the King's Majeſty may come with honour, freedom and ſafety to ſome of his Houſes in or near *London*, that the Parliaments of both Kingdoms may make applications to him. And in their ſeventh Act, intitled, *A declaration of the Parliament of* Scotland, *to all his Majeſty's good ſubjects of this Kingdom, concerning their reſolutions for Religion, King and Kingdom*, &c. after they declare, that violently ſeizing on his Majeſty's perſon, and carrying him away by that army, againſt the reſolutions of both Kingdoms, to be a breach: And they declare, they intend to ſend to the two Houſes of the Parliament of *England* the deſires following; which they call neceſſary and juſt deſires for Religion, his Majeſty's good, and peace of theſe Kingdoms: whereof this is one, That conform to the former deſires of this Kingdom, the King's Majeſty may come with honour, freedom and ſafety to ſome of his Houſes in or near *London*; and declares, that thereafter they will endeavour it: And Act 8. in their deſires to both Houſes of Parliament in *England*, the ſame deſire is repeated, conform to the former deſires of this Kingdom. By all which it is clear, that the ſeizing upon his ſacred Majeſty's perſon, was the violent deed of that wicked army, done with a violent ſurpriſal againſt the declared reſolutions of both Kingdoms. And that his Majeſty's coming to ſome of his Houſes in or about *London*, where both Kingdoms might make application to him, conform to his Kingdom's deſire; which is, that wherein the Eſtates declare their concurrence with his Majeſty and both Houſes of Parliament in *England*'s deſire in the ſaid tenth Act, is approved as a juſt and neceſſary deſire for his Majeſty, and accordingly enacted among that Parliament, 1648, their deſires to the ſaid Houſes; and declare it ſhould be endeavoured, if refuſed: ſo highly it is approved by the ſaid Parliament. In reſpect whereof, eſpecially of the ſtanding Acts of Parliament, 1648, the Defender humbly craves, That albeit the article was relevantly, diſtinctly and clearly libelled and ſubſumed on ſome of the Acts of Parliament in the propoſition condeſcended on, (as he humbly conceives it is not) yet he ought to be aſſoilzied therefrom.

And for further clearing what was the ground and occaſion of that Act, and the reaſons inducing the Defender and the Parliament at that time to go along therein, and how little ground there is for challenging him thereon, it would be conſidered, That when the late King came to the army before *Newcaſtle*, the Defender was in *Ireland*, by commiſſion from the Parliament, 1646; and that his Majeſty's declarations anent the grounds of his reſolution in coming to the *Scots*, was ſent both to the Committee of Eſtates in *Scotland*, and to the Parliament of *England*; ſo that the ſame being printed before the Defender came to *Newcaſtle*, he neither did, nor could know, any other ground of his coming, nor what was contained in his declaration, *viz.* his gracious reſolution to comply with his Parliaments in both Nations, and thoſe entruſted by them, in every thing, for ſettling of truth and peace; and that he would totally commit himſelf to their Councils and Advices. Upon which terms, both the Committee of *Scotland*, and Officers of the army, declared to his Majeſty, and to the Parliament of *England*, that they received him, and all this before the Defender came from *Ireland* to *Newcaſtle*; from whence his Majeſty ſent him with inſtructions to the Commiſſioners at *London* (of which Commiſſioners the Defender was one alſo) to haſten the Propoſitions; and privately commanded the Defender to take the advice of the Duke of *Richmond*, and Marquis of *Hertford*, anent what might concern his Majeſty; and particularly, if it was fit that the *Scots* army ſhould declare for his Majeſty; whoſe judgment and opinion was (which they conjured him to tell his Majeſty), that ſuch a courſe was the only way at preſent to ruin his Majeſty: for that he himſelf knew, that neither the Nobility nor Gentry of *England* who attended him at *Oxford*, wiſhed him to prevail over his Parliament by the ſword, and much leſs would they endure the *Scots* army to do it; and that it would make all *England* as one man againſt him. And that it was their earneſt requeſt to his Majeſty, by any means to give way to the Propoſitions. Which advice he not only faithfully told to his Majeſty at *Newcaſtle*, and many others there, and to our gracious Sovereign who now is, when he was in *Scotland*; but alſo being in the Tower, he intreated the Lieutenant thereof to propoſe for him, that the Marquis of *Hertford*, who was then alive, might be examined in this matter; which was put off from time to time, becauſe of his Majeſty's great affairs. And as it is moſt certain, that neither Independent nor Sectary was able to carry one vote in the Houſe at that time; ſo it is notorious, that they who tendered his Majeſty moſt in *England*, were for diſbanding the *Scots* army, and his Majeſty's ſtaying in *England*: wherein the Defender appeals to the particular knowledge of the Earl of *Lauderdale*, *Loudon*, Sir *Charles Erſkine*, and the reſt of the Commiſſioners then there. And it is of truth, which all know, that ſo little fear, ſuſpicion and jealouſy there was of what follow'd, that the great fear of his Majeſty's friends in both Kingdoms was, that if he fixed on his ſubjects in *Scotland*, all *England* would be againſt him, and probably caſt off his Government and Intereſt for ever: So that under what repreſentation ſoever the matter may now appear, becauſe of the ſad ſequels, yet to them who know the matter, as it was there ſtated, what declarations and aſſurances there were from the Parliament of *England*, and how little fear of the prevalency of Sectaries; it did appear to be an Act, if not of neceſſity, at leaſt an Act very expedient and convenient for the time, otherwiſe many who did diſſent thereto, would never have condeſcended; and conſequently the Defender's concurring therein, upon ſuch probable grounds, can be no ſuch crime as is libelled; nor is it relevant to anſwer the concluſion of the dittay.

To the ſecond member of this Article, bearing, that under pretext for ſatisfaction for the arrears of the army, he went to *London*; and there treaſonably gave up, at leaſt condeſcended to the up-giving of his dread Sovereign and Maſter, as being impowered ſo to do by the Kingdom of *Scotland*:

It is anſwered, 1. This member is not relevant, becauſe neither the time of his going to *London*, nor of his being there, or the perſons to whom he condeſcended to give up, are particularly mentioned and ſet down.

By which generality he is precluded from ſeveral defences which might ariſe to him if the dittay were clear; and it is a principle in common law, and of conſtant practice, That *non eſt vagandum in crimine, ſed debet certum & ſpeciatim dici*: for that *dolus & error verſantur in generalibus*.

2. No ways acknowledging the relevancy of the ſubſumption herein, upon any of the acts of the Propoſition, till the ſame be clearly condeſcended on; and craving the ſame may be firſt done, oppones the Act of Parliament: And the truth is, while the Defender was at *London*, there was nothing ſpoken at all by him of leaving his Majeſty in *England*, except what he was expreſsly commanded by his Majeſty to ſpeak to *Richmond* and *Hertford*, as aforeſaid.

To the third member of the eighth Article, bearing, That in a joint Committee of both Kingdoms, where the *Engliſh* queſtioned, whether the *Scots* army would concur with them in theirſaid treaſon and treachery; the Defender after many arguments uſed in their favour, earneſtly requeſted them to have patience for a little time, and that it would appear how far they intended to concur. And that within few days thereafter there was a declaration and vindication emitted in name of the ſaid army, holding forth, That in caſe his Majeſty did not condeſcend to all the deſires of both Kingdoms, which were no leſs than diveſting himſelf of all regal power, civil, eccleſiaſtical and military, they would deliver him up; which immediately upon the receipt of two hundred thouſand pounds the Defender and they did:

It is anſwered, That adhering to the former defences anent the ſubſumption, and repeating it here, this member, although it were rightly ſubſumed, as it is not, is moſt irrelevant and general in time, place, perſon and ſpeeches; mention being made of many arguments, and never a one produced, and of a queſtion and anſwer, out of which (even as libelled) Treaſon cannot be inferred, *viz.* That the Defender requeſted them to have patience a while, and it would appear how far the army intended to concur; but within few days after, the army declared themſelves in manner as aforeſaid: ſeeing theſe alledged words of the Defender, as they are indefinite and general, ſo the moſt they could infer is, That in a ſhort time it would appear whether the army would concur or not. And what can from thence be inferred, as to any thing the army did? If they have outſhot their duty, as it was in regard of him, with the ſpeaking of theſe words, a future contingent, wherein the Defender had no caſualty; ſo they muſt anſwer for themſelves, and not the Defender.

And for aught he knows, there never was any ſuch declaration emitted; neither ſhould there be any captious uſe made of words, if there had been any ſuch words ſpoken, as there never was, eſpecially to infer his Treaſon; for that *lubricum linguæ* is oftener a frailty than a fault; and that by all Doctors of both Laws it is conſtantly held, that *verba debent intelligi ne ſonent in delictum*. And that *in dubio* they ſhould be interpreted *à proferenti*. And therefore no ways acknowledging the words and deeds libelled, except in ſo far as concerns the Defender's vote to the declaration, and as the circumſtance libelled, That the delivery of his Majeſty was immediately after the payment of 200,000 *l.* it is clear that there was no reſpect to that money in what was done therein, by the Act of 7 Parl. 1648, wherein the Eſtates there declare, That money was never the cauſe nor motive of any of our undertakings and reſolutions, whatever our enemies had falſly ſuggeſted of that kind. And laſtly, adhering to his former defences, oppones to this whole Article, the treaty at *Breda*, and the Acts of Parliament of oblivion and ratification.

As to the ninth Article, and whole firſt member thereof, bearing, That the Defender oppoſed the proceedings of Parliament, 1648, by arguing, voting, and after the Reſolutions of Parliament were paſs'd in an Act, in proteſting againſt the ſame:

It is alledged for the Defender, 1. It is not condeſcended, under which of the Acts of Parliament libelled on in the Propoſition, this Article is ſubſumed; and therefore the libel, as to that member of the Article, for arguing, voting and proteſting, is inept, and the Defender hath juſt reaſon in ſuch an incertitude to deny, that it can be relevantly ſubſumed on any of the ſaid Acts of Parliament.

2. Arguing,

2. Arguing and voting is no ways relevant to infer the concluſion of the dittay; becauſe by divine law, Law of Nations, ſtatutes and practices of this Kingdom, *in deliberando*, a Member of Parliament or other Council, ſhould give advice or ſuffrage, according to his perſuaſion of the good or ill of the ſubject debated on, and under conſideration; wherein if his reaſon cannot bring him up, nor his conſcience admit him the length of others in ſuch public Councils, he ought to have charity for the one, and excuſe for the other.

Like as by the 5th Act, Parl. 2. K. *Charles* I. it is expreſsly ſtatute, That every Member of Parliament ſhall faithfully and freely ſpeak, anſwer and expreſs themſelves upon all and every thing which is propounded, in ſo far as they think in their conſcience may conduce to the glory of God, the peace of the Church and State, and employ their beſt endeavours to promote the ſame. Under which oath, (read in the audience of the late King, and by him approved in the Parliament, 1641) the defender, as a Peer of that Parliament, *in anno* 1648, was ſolemnly tied to the dictates of his reaſon, and preſcripts of his conſcience, and cannot be called in queſtion as a Member, having freedom therein; and conform thereto is the oath of this preſent Parliament, bearing, that every Member ſhall faithfully and freely, according to their beſt judgment, give their advice and vote in Parliament.

To the ſecond part of the firſt member of the ſaid Article, anent the defender's proteſting and diſſenting from the ſaid Act, 1648; it is alledged for the defender, The proteſtation is not produced as it ought to be, whereby it will appear, that if any was, the ſame was before the Act of Parliament paſs'd; and that they did only proteſt and enter their diſſent againſt proceeding to the determination of the queſtion then in hand, which evinces the ſame to have been before the Act was made. Like as the defender offers himſelf to prove by the Members of Parliament then preſent, That being aſked if they would renew the proteſtation after the Act, they ſhunned to do the ſame, the Act being now paſs'd.

2. *Abſolvitur*, (tho' the ſame were produced) becauſe it is offered to be proved, that the ſame was ratified in the fourth Act, Parl. 2. Seſſ. 2. *Char.* II. which was approved at the treaty at *Breda*, and confirmed at *Perth* and *Sterling*, as is ſaid. But for the honourable Parliament, their more full clearing, anent the defender's carriage in the ſaid particular, it is offered to be proved, if need be, That the defender (before the Commiſſioners return from the ſaid Iſle of *Wight*, in the ſaid year), when he heard that his Majeſty had ſatisfied his people's deſires concerning religion, in preſence of divers perſons of honour, he expreſs'd himſelf paſſionately earneſt to engage for his Majeſty's freedom. Like as the only difference of the opinion anent the engagement was in the manner the grounds of thoſe that were diſſatisfied; being as they are expreſs'd in the ſaid proteſtation, *viz.* That the Parliament ſhould not proceed till the commiſſion of the Church were conſulted; and adding alſo, (which is not therein expreſs'd) till advertiſement and three month's warning were given, conform to the large treaty; until all means of peace had been firſt eſſayed, and while firſt the lawfulneſs and neceſſity of that war ſhould be found by the Parliament, conform to the 7th Act thereof. And it is humbly conceived, that many in this preſent Parliament do remember, how unanimous all were, that his Majeſty ſhould be brought out of the hands of the Sectaries, to ſome of his houſes in or about *London:* And all they differed in was, that the Church ſhould be conſulted anent the ſecuring of Religion, all means of peace ſhould firſt have been eſſayed, and warning given in manner aforeſaid, conform to the large Treaty; the breach whereof was made one of the grounds of that declaration, Act 7. And it cannot be refuted, but that at ſeveral meetings, the diſſenters debated the dangerouſneſs of that war (eſpecially if the army ſhould be defeated), from the ſad conſequences that might thereupon enſue to the King, Kingdom and Religion; as immediately thereafter fell out. Whereas had the Nation been intire and whole in their power and force, that army of Sectaries, in probability, would not have dared to have attempted thoſe matters which afterwards they did. So that the caſe being truly ſtated, there will appear no malice againſt his Majeſty's perſon, authority, and reſtitution thereof; but an unclearneſs to enter into a war of ſuch danger and hazard, and the reſpect they had to the ſecurity of Religion (as all then profeſſed) according to the Covenant.

To the ſecond member of the ninth Article, whereby it is alledged, That in contempt of the authority of that Parliament, and againſt the preſervation of his Majeſty's perſon and authority, that the defender convocated an army of rebellious Subjects, and therewith committed divers and ſundry outrages, ſlaughters and vaſtations, upon the perſons and eſtates of his Majeſty's Subjects; invaded cities and caſtles, ſeized upon magazines, arms and ammunition, and called in an army of Sectaries to his aſſiſtance:

It is anſwered, firſt, That the ſame is not relevantly ſubſumed upon any act of the propoſition; at leaſt till the Advocate condeſcend upon which act thereof the ſame is founded, the defender is not bound to make anſwer.

Secondly, The defender denies that he did convocate theſe forces, or gave counſel or command therefore: And as to his being with them, he muſt be aſſoilzied,

1. Becauſe by a treaty at *Sterling*, betwixt the chief Officers of the army then alive, and out of priſon; and a *Quorum* of Members of the Committee by authority of Parliament, 1648; who had power to order the incident affairs of the Nation, the ſaid meeting, and all acts of hoſtility, and others thereby committed, are expreſsly diſcharged, *hinc inde*, and a mutual oblivion and indempnity therefore.

2. Any meeting he had with them, was by a call of thoſe of the Committee of Eſtates, who joined with thoſe forces, and who in the Treaty is acknowledged the Committee of Eſtates.

3. The ſaid meeting and acting thereof, together with the Treaty and Articles thereof, is ratified and approved by the third Act, 2 Parl. 2. Seſſ. *Charles* II.

The third member of the ninth Article, bearing, That apprehending his power was not able to withſtand his Majeſty's good ſubjects, the defender called in to his aſſiſtance the army of Sectaries; and that he went into *Mordington*, and met with the commander of that army, had private conſultations with him, and prevailed with him to come to *Edinburgh* with his army, whoſe coming he might have hindered; becauſe *Oliver* ſaid, That he could not help his lying upon the tenants of *Mordington*, for that his ſtaying and going depended upon the defender; and that he did countenance and conſult with the Sectaries and their commanders, in *Edinburgh*, or the *Canongate*, in the houſe called the Lady *Hume*'s Lodging:

It is anſwered, That as to ſpeeches and conſultations in general, not relevant except they were condeſcended on; and as to the words ſpoken by *Cromwel*, if ſpoken by him, it was a lye, and can infer nothing againſt the defender: and the occaſion of his ſtay was till he got *Berwick* and *Carliſle*, which could not be reſtored till the Treaty of *Sterling* was cloſed. And as to his meeting and treating with him, *abſolvitur*, becauſe he and others did the ſame by warrant of the Committee, and which Treaty was ratified in the aforeſaid Act of Parliament thereafter.

To the fourth member, That he concealed and voted to the drawing up of a letter, directed to *Cromwel*, wherein he and his complices engaged themſelves, in the name of the Kingdom of *Scotland*, to do their utmoſt endeavours, that none who had been acceſſary to the engagement, or in arms at *Sterling*, in purſuance thereof, ſhould be employed in any place of Truſt, without the advice and conſent of the Parliament:

It is anſwered, 1. No ſuch letter produced.

2. Though it were produced, yet conſenting and voting not relevant; becauſe a vote in the Committee of Eſtates can infer no crime againſt the defender, nor any member thereof, nor any Act paſs'd in the ſaid Committee: eſpecially ſeeing,

3. The Acts of the ſaid Committee were ratified in the fourth Act of the Parliament aforeſaid; all ratified thereafter by the Treaty at *Breda*, and Acts of ratification at *Perth* and *Sterling:* and the neceſſity thereof would be alſo conſidered in reſpect of the large Treaty, both Kingdoms having given their publick faith, that the breakers ſhould be rendered up to the obſervers; and that the *Engliſh* army then upon the borders, required the performance thereof againſt the engagers, and for farther ſecurity, pledges and places of ſtrength. It was at that time counted a great favour (conſidering their power to have made their own terms) when they might have impoſed and forced what they pleaſed more, yet they did accept this Act.

To the fifth member of this article, bearing, That he did draw up, at leaſt did counſel the drawing of certain inſtructions, given to Sir *John Chieſly*, purporting, That the Noblemen, Gentlemen of quality, and conſiderable Officers, who went into *England* under Duke *Hamilton*, and were there priſoners, ſhould be kept as pledges for the peace of the Kingdom:

It is anſwered, 1. Not produced as it ought to be, that it may thereby appear whether he ſubſcribed the ſame or not.

2. Not relevant (one of the Committee) except it were libelled preſent, and voted at that time; for *noxa caput ſequitur.*

3. Not relevant, voted *quia in ſenatu nemo tenetur de conſilio.*

4. Oppones the authority of the Committee, Treaty, Acts of Parliament, and Ratifications aforeſaid.

To the laſt member of this Article, bearing, That he gave warrant under his hand for iſſuing of a proclamation againſt the families of the Laird of *Rea* and *Vyres:*

It is alledged for the defender, 1. No ſuch warrant produced; if any ſuch a warrant were produced under the defender's hand, it will certainly appear to be as Preſident of ſome Committee, and ſo not his perſonal deed; nor ſuch a deed as can infer any crime againſt him.

2. No ſuch proclamation enſued.

3. Although enſued, yet that took no effect, and ſo was *minæ tantum, & animus ad effectum non perductus.*

4. Oppones the Act of the Committee, and Act of Parliament, 1649, aforeſaid; which Parliament, and the whole Act thereof, is ratified in the Treaty at *Breda*, and approved in the Parliament at *St. Johnſton*'s and *Sterling*; wherein was alſo made an Act of oblivion, oftentimes before alledged on: in reſpect whereof the defender ought to be aſſoilzied from the ſaid ninth Article, and whole member thereof, and all therein contained. And becauſe the defender has in his defences ſo oft alledged the Act of Parliament, 1649, for his vindication, he deſires that it may be obſerved (which is very obſervable) that by the printed Treaty at *Edinburgh* and *Sterling*, *September*, 1648, it is agreed and appointed by thoſe of the Committee at *Sterling*, 1648, that a Parliament ſhould ſit down before the 10th of *January* next; conform thereunto, they did convene and ſit down the fourth of the month of *January*, as by the ſaid Treaty, and the firſt and third Acts of the Parliament doth appear: whereby it is clear, that the ſaid Parliament, 1649, was appointed to ſit by the Committee of the Parliament, 1648; who had power by the laſt Act of the ſaid Parliament, to convene the Parliament before the firſt *Thurſday* in *March*, 1650, if they thought fit: as alſo that Seſſion of the Parliament, 1649, by the laſt Act thereof continues the ſame to the firſt *Thurſday* in *March*, 1650. At which day they convened in the next Seſſions, and therein ratified the Act of Parliament made in the former Seſſion; and which day was the Dyet to which the Parliament, 1648, continued the ſame, with power to the Committee of Eſtates to convene the ſame ſooner, if they thought fit, as is ſaid. Whence it is evident, that the ſaid Parliament, 1649, whether as appointed by the uncontroverted Committee, 1648, at *Sterling*, in the firſt Seſſion, or as it is continued to the firſt *Tueſday* of *March*, 1650, in the ſecond Seſſion, (both conform to the laſt Act of the Parliament, 1648) muſt ſubſiſt and ſway the ſaid defender his juſt reaſon, to found his defences upon the acts thereof. It is alſo further conſiderable, as to the loyalty of that Parliament, that therein the murder of his late Majeſty was declared againſt, his preſent Majeſty proclaimed and brought home, his ſubjects of this Nation reconciled to him, and taken into favour, an army appointed to oppoſe his enemies, the crown ſet upon his head; and that Seſſion of *Perth*, wherein the whole preceding proceedings were approved, was dignified by the preſence of his royal perſon.

And to the tenth Article, and that part thereof where it is libelled, That the defender, *in anno* 1649, not daring to oppoſe in public, or in a direct way, his Majeſty's home-coming, he procured the application made, to be clogged with ſuch limitations and reſtrictions, as were moſt derogatory to monarchical Government; as is alledged to be more fully expreſs'd in the Commiſſion, Inſtructions and addreſſes, which are repeated as a part of the Libel.

It

It is alledged for the defender, 1. Seeing the ſaid commiſſion, inſtructions and addreſſes are libelled on, and repeated as a part of the dittay; in all law and form of proceſs, they ought to be produced with the libel, for the reaſon adduced in the defence, againſt the revelancy of the propoſition of the dittay; and till which be produced, it cannot be conſiſtent with the ſaid limitations and reſtrictions, and how far they are derogatory to monarchical Government; and therefore till then there can be no proceſs.

2. It is not condeſcended nor cleared, on which of the acts libelled on in the propoſition, this Article and Members thereof are ſubſumed; and therefore it is obſcure and inept: and in that incertitude, the defender has juſt reaſon to deny, that it can be ſubſumed on any of the ſaid Acts, to infer the crime and pain libelled againſt the defender, none of the ſaid Statutes making any mention of treating or inferring any pain therefore. Likewiſe after ruptures and differences betwixt a King and his ſubjects, all Lawyers and Politicians do agree, that the beſt and ſafeſt way of removing the ſame, is by Treaty; and that being concluded on, it is alſo their opinions, that the ſame are to be obſerved, at leaſt ſo far as to exempt the ſubjects from puniſhment, to whom indempnity has been thereby promiſed. And in this, *Grotius de jure belli & pacis, lib.* 3. *cap.* 19. is moſt clear; and many others who write on that ſubject. And therefore the ſaid Treaty being concluded, and after ratified by his Majeſty and his Parliament, the defender cannot be called in queſtion for his acceſſion thereto, nor the pain of treaſon thereupon inferred: For the ſaid Treaty and conditions thereof being accepted and agreed by his Majeſty's voluntary contract, cannot be like as a crime, far leſs ſo high a crime as treaſon, againſt the defender.

3. *Abſolvitur* from that member of the ſaid Article; becauſe not only after the ſaid Treaty did his Majeſty tacitly remit any crime, if any was, in the ſaid Treaty, by admitting the defender to places of truſt, by receiving the crown from his hand at the coronation, and by admitting him to take the oath of allegiance, and to be a Member of his Majeſty's Privy-Council; but alſo after the ſaid Treaty was ratified, there was an Act of pardon and oblivion by his Majeſty and Eſtates of Parliament, oft-times before alledged, and is here repeated.

Though the above-written defences be relevant in law, as to the ſaid member; yet for the defender's further vindication, the honourable Parliament would take notice, that all along the preceding Articles, all the publick actings from the year of God 1640, to the year 1648, (wherein the Generality and Repreſentatives, both civil and eccleſiaſtick in the Kingdom, concurred) are charged upon the defender as his particular actings, or as if the defender had been the ſpecial author; whereas in this article anent the treating with, and bringing home of his Majeſty, therein it is known the defender, according to his bounden duty, was moſt active and zealous; and therein he wreſtled with all his might, and by his pains and God's bleſſing thereon, overcame many difficulties, and did effectuate the ſame. The libeller does ſo far detract from the defender's faithful diſcharge of his duty in this ſo glorious action, and without libelling the leaſt preſumption of any circumſtance to make the ſame probable; the defender is accuſed, as if he had in his judgment been againſt his Majeſty's home-coming; which becauſe he durſt not avow publickly, therefore he betook himſelf to underhand dealing, to clog the Treaty with limitations and reſtrictions, excluding the defender from all acceſſion to the ſaid duty, in ſo far as it was good, *viz.* to bring home the King; and making him to be the ſole author of all libelled to be evil therein, to wit, of the limitations and reſtrictions. Whereas the truth is, he was active in the King's home-bringing, and was paſſive in the other; having laboured what he could, that there ſhould be as few conditions, and the ſame as ſatisfactory to his Majeſty as was poſſible at that time to obtain; which is known to all that did tranſact the ſaid affair, and which, if need be, is offered to be proved. And for further clearing hereof, if this Article ſhall be further inſiſted on, my Lord Advocate will be pleaſed to condeſcend to declare who the Parties were that made the motion for addreſſes to his Majeſty, of whom the defender ſhould have been afraid, if he had been of a contrary judgment, to have oppoſed openly. For if the defender had ſo great ſway in affairs, as all along the preceding Articles he is allowed to have had; and alſo if he had intended, (as is broadly and with foul mouth alledged) in the ſaid Libel all along alledged, to have extirpated and evacuated the King's Majeſty's authority, government and poſterity; and had ſuch correſpondence with thoſe abominable Regicides, as all are perſuaded by the ſaid libel to believe, in the ſaid year of God, 1649; when the ſaid traytors were ſtrong, and both this land thro' diviſions and otherwiſe, very low; and when the power was in the defender's and his complices hands, (as my Lord Advocate is pleaſed to libel and term them) who at that time had the managing of affairs; then was the fitteſt time and beſt opportunity, if they had any ſuch diſloyal thoughts, to have ſhaken off that Government. But ſo far did they abhor any ſuch treachery, that they not only proclaimed his Majeſty, and according to their duty owned his intereſt, even with the hazard of their lives and fortunes, there being none ſo ſhallow, but eaſily might have ſeen, that the diſcharge of the ſaid duty would bring upon themſelves and the Nation the power of *England*, (the only power of arms and armies being at that time in the abominable Regicides their hands) who did immediately thereafter invade this Kingdom.

As to the other member of the tenth Article, whereby it is libelled, That the defender, (to obſtruct his Majeſty's purpoſe, yea, in ſo far as in him lay, and to terrify him therefrom; by his and his complices cruelty executed upon the Marquis of *Montroſs*, who as his Majeſty's Commiſſioner did repreſent his Majeſty's perſon) cauſed to murder the ſaid Marquis, *in anno* 1650, in manner, *&c.*

1. It is no way relevantly libelled, that the defender in general cauſed to murder him, except it were condeſcended, *quo modo* he cauſed; and if thereby be meant his voicing in Parliament, 1649, in the ſaid matter; *non relevat*, becauſe a Vote, Act, or Sentence of Parliament, is no way relevant to infer a crime againſt any particular member therein, as hath been oft before alledged.

Likewiſe, 2. The ſentence of the forfeiture of the life and eſtate of the ſaid Marquis, was no decree of the Parliament 1649, but of the Parliament 1645, which was homologate by ſeveral other Acts of Parliament, excepting the ſaid Marquis among other excepted perſons, as ſpecially by and by the 22d Act of the Parliament 1648.

And yet, 3. the Defender did not vote in the buſineſs of *Montroſs*, as he can prove, if need be, by the members there preſent 1649. And as to the aggravations of the ſaid murder, the ſaid Marquis being his Majeſty's Commiſſioner for the time; it is no way a relevant circumſtance to aggravate the ſame, except it had been libelled, that the ſaid commiſſion had been ſhown to the Parliament, which nobody can affirm; but on the contrary, the ſaid Parliament conceived they had juſt reaſon to preſume that there could be no ſuch commiſſion for his coming againſt them at that time; becauſe his Majeſty, after the murder of his royal Father, very graciouſly had admitted their gracious applications to him.

Like as before *Montroſs*'s coming at that time to *Scotland*, and always thereafter, his Majeſty had a Committee of the ſaid Parliament, under the name and title of the Committee of Eſtates of his Majeſty's Kingdom of *Scotland*.

As to the Defender, his alledged keeping correſpondency with *Cromwel* in the year 1650, as the ſame is irrevelantly libelled, no deeds nor acts of correſpondency being condeſcended on; ſo there was never any ſuch thing. And there was one named *Hamilton*, who vented this untruth, hanged at *Sterling*, and at his death did declare, *That the ſame was a moſt unjuſt calumny*; and it is not to be believed that at that time he would have charged his ſoul with a Lye; and in Law, the words of a dying man are oraculouſly believed.

As to the Act of the *Weſt Kirk*, the Defender (noways acknowledging the relevancy of the ſaid article, as it is libelled) was ſo free from having the leaſt acceſſion to the ſaid Act or Declaration; that ſo ſoon as he got knowledge thereof, to evidence his fidelity to his Majeſty, it is offered to be proved by witneſſes (for their loyalty above all exception), that when the firſt news came, that the Commiſſioners were about the drawing of the ſaid Act, the Defender gave advice to his Majeſty, to draw a fair Declaration, and to go ſuch a length, as in freedom he could, that thereby he might prevent the ſaid Act, and obviate the preſſing thereof. But as for the other that was preſſed, he was altogether againſt the ſame, and dealt with the Miniſter who came from the Commiſſioners of the Kirk, to forbear preſſing his Majeſty therewith; which alſo, if need were, might be proved.

As to the eleventh article, and ſubſequent articles, becauſe the ſame are for deeds of compliance after the Uſurpers had prevailed and were in poſſeſſion; before the Defender make particular anſwer, it is neceſſary to premiſe in general, that it being notoriouſly known to the world (to the eternal honour of this Kingdom) as for that damnable uſurpation of *Oliver*, not only we were not active in eſtabliſhing the ſame, but according to our bound allegiance to our Sovereign, were to the utmoſt poſſibility of our power in arms under his Majeſty; and otherways active againſt him, and in oppoſition thereto, many loſt their eſtates, many their lives, and all of us our liberties: and when we could do no more, being oppreſſed by the force of the ſaid Uſurper, (as a chaſte forced Virgin) we cried to God and Man, atteſting Heaven and Earth againſt Uſurpers, (even when their bloody ſwords were at our throats) he and his army, amongſt many other execrable miſchiefs, were alſo guilty of this uſurpation. We have ſuffered, and been only paſſive under that irreſiſtable force. And as this was the condition of the Kingdom, ſo ſpecially the Defender, who as he had been moſt active and inſtrumental in his Majeſty's home-bringing, (which was the only ground of the quarrel, and for which he was looked upon by them as one of their capital enemies) even ſo after it pleaſed God for our exerciſe and puniſhment, to ſuffer their power to prevail over all his Majeſty's forces and over this Kingdom, ſuch averſion had the Defender, even ſo much as to live under their power; much leſs to comply actively with them; that after *Worceſter* fight, the Defender offered to Mr. *David Dick*, if he could get his company, or the company of any other honeſt Miniſter, that he would never capitulate with any *Engliſhman*, ſo long as he could ſubſiſt in any part of *Scotland*, either in his lands, or iſles thereupon. It is humbly craved that Mr. *David Dick* may be examined. Neither did the Defender ever capitulate with them, in *Auguſt* 1652; having before that, endeavoured all that in him lay, to have perſuaded thoſe of *Athol*, *Monteith*, and others, his neighbours in the Highlands to have concurred with him, that they might have jointly made ſome probable force, for reſiſting the over-ſpreading power of the Uſurper; but all in vain. Likewiſe, long before that time, the whole forces and ſtrength of the Kingdom were ſurrendered, yea, the whole Kingdom, by their Deputies and Repreſentatives (who met at *Dalkeith*, with the Commiſſioners of the Parliament of *England*, ſo called) was forced to ſubmit to their power, and accept the tender of the Union of this Nation with *England*, proffered by them. Neither did he at the ſaid time, in *Auguſt* 1652, voluntarily come in, and capitulate with the ſaid *Engliſh*; but was ſurprized, (ſeveral Regiments of their forces, horſe and foot, having ſuddenly come about his houſe, where he was for the time lying deadly ſick) as can be teſtified by Dr. *Cunningham*, who was with him for the time, and is humbly craved to be examined thereon As alſo, notwithſtanding the ſaid ſurprizal, and the Defender's condition, though they threatened (notwithſtanding his ſickneſs) to carry him away priſoner, yet all their threatening could not prevail with him, but he did abſolutely refuſe to ſubſcribe the articles firſt offered, which contained the tender of the union, and an obligement upon his part to promote the ſame, and the Government as then eſtabliſhed, and to live peaceably; yea, ſuch jealouſy had they of the Defender, that by his capitulation he was priſoner upon demand. Neither during all the time of their power over this Kingdom, had he ever any favour of the ſaid *Engliſh*, but was always looked upon by them with a moſt jealous eye. And for evidencing hereof, the Defender humbly craves, that there be a commiſſion granted for examining of Lieutenant-Colonel *Utter*, (anent what was deponed by *Macnachtan*, and ſeveral others) *viz.* of the Defender's ſmall affection to the *Engliſh*, or any other authority but the King's. Likewiſe, it is notorious how unjuſtly he was perſecuted before the *Exchequer* here for the time, for payment of 4000*l. Sterling*, alledged to be due for by-gone feu-duties. This being the Defender's true caſe, it is hoped, that

that the honourable Court of Parliament will take conſideration how the Defender ſtood out as long as he could, till he was priſoner; and will have a different conſideration of Subjects acting under the lawful Magiſtrate in exerciſe of his authority by himſelf, or others lawfully conſtituted by him; and of the actions under cruel uſurpation and tyranny, the lawful Magiſtrate being forced, for his own ſafety, to abandon his Dominions and People to the luſt and oppreſſion of the unjuſt Uſurper (who was maſter not only of their fortunes and perſons, but their lives and all that was dear to them); and had for a long time detained the poſſeſſion of his unjuſt uſurpation, and devoured the lawful Magiſtrate. Which caſe is not only differenced by all who write on that ſubject, but alſo *Coke* in the third part of the Inſtitutes of the Laws of *England*, *cap.* 10. anent Treaſon, in expounding the Statute of the 25 *Edw.* III. upon the words of the Statute *le Roy*, puts ſuch a weight upon the King's being in poſſeſſion, or one of the ſame, that he expreſsly affirms, the Statute is to be underſtood of a King regnant, and in poſſeſſion of the Crown and Kingdom; as alſo, that in ſuch caſes, a favourable conſideration is to be had of the actions of a ſubject, who was particularly noticed, and jealouſly looked upon by the Uſurper, for his affection to the lawful Magiſtrate and his Government. All which being remitted to the Commiſſioner his Grace, and the honourable Parliament their conſideration, he now comes to anſwer to the eleventh article: againſt which eleventh article, and all the members thereof, as libelled, it is alledged, the ſaid article is general, not condeſcending on the day or month, nor on the particular year of God, of the committing of the deeds therein libelled, but only alternative *in anno* 1653, or 1654, and therefore (as has been oft before alledged) the ſame is inept, and there can be no proceſs thereon. 2. It is not condeſcended on, nor cleared, which of the Acts of Parliament libelled on in the propoſition, this article, and ſeveral members thereof, are ſubſumed; and therefore it is obſcure and general, and in that incertitude the Defender has reaſon to deny, that it can be ſubſumed on any of the ſaid Acts to infer the ſaid crime and pain.

As to that which is firſt libelled in this article, *That the Defender did not riſe in arms with the Commiſſioner his Grace, and the Earl of* Glencairn, *who were commiſſioned by his Majeſty*; the Defender repeats the two exceptions aforeſaid, againſt the whole article, being confident this cannot be ſubſumed on none of the Acts libelled on. And further alledges, that it is not relevantly libelled, to infer *(vel minimam culpam)* againſt the Defender, far leſs ſo high a crime, except it were libelled, that your Lordſhip's commiſſion had been ſhewed him, and he required, which was never done. And herein he may refer himſelf to the Commiſſioner his Grace's Declaration; and if his Grace does not remember, that the Defender ſent him word, ſhewing his deſire to have met with his Grace, and to have ſpoke with him about the buſineſs; but had never the honour to have his Grace's anſwer or appointment.

2. For further clearing, that his not joining, except he had been required, is no crime, it is evident from the fourth Act of the firſt Parliament *Jac.* I. that thoſe only are puniſhable, who do not aſſiſt the King's hoſt, being required thereto. And *Craig*, *page* 365, ſays, that becauſe the King has ſo many Vaſſals, they are not obliged, nor cannot be puniſhed; except the particular pain to be inflicted upon the away-ſtayer, be particularly expreſs'd in the edict, by which they are commanded to appear. And *page* 365, he ſays, that thoſe who come not, being warned by an edict, ſhall be puniſhed; and *page* 370, he ſays, that the Vaſſals ſhould not be obliged to appear at any ſuch ſervices, except they be deſired; which commands ſhall be proved by his Peers. Theſe edicts were particularly required by the fundamental Law, and were called *heri bona*, which is defined by *Cujas*, to be the calling and citation of the army, and is *lib.* 3. *cap.* 10. *quart. leg. franc.* to be the puniſhment of him who comes not to the King's hoſt, when he is called: and this aſſertion is clearly proved from *Ragué*, in his Treatiſe *de Jur. Reg. pag.* 53. Likewiſe by the ſaid Act of the firſt Parliament of King *James* I. it is expreſsly ordained, that thoſe who diſobey to defend the King againſt notorious Rebels ſhall be challenged:

1. If they be required by the King, as is ſaid;

2. And except they have for themſelves reaſonable excuſes. But ſure it is, the Defender not only was never required, as has been alledged, but there were even pregnant reaſons, as he humbly conceives, the which ſeemed very probable at that time. Albeit it be the duty of all his Majeſty's Subjects, to riſe for his Majeſty's Intereſt, in oppoſition to Uſurpers; yet it was not ſeaſonable, as affairs then ſtood, till either they had been defeated by ſea in the engagement, that they then had with *Holland*, (whereby both the forces might have been diverted, and the tranſportation of Victuals and Ammunition from *England*, *Ireland*, and the parts of *Scotland* under their command, and their army in *Scotland*, might have been incluſded;) or that *Spain* and *France* had concluded that peace, whereof there was then ſeveral reports: and thereupon his Majeſty's ſubjects in *Scotland* might have had hopes of ſome probable aſſiſtance in the undertakings in his Majeſty's ſervice; or that diviſion, and, in conſequence, confuſion, had fallen out in the *Engliſh* army amongſt themſelves; whereof there ſeemed to be but little hope, ſo long as the appearance for his Majeſty ſhould meet them as againſt a common enemy, as it was. Like as it would be thought it ſhould have no other effect; and as in effect the event proved, that that army never divided till they had no common enemy, againſt whom mutual preſervation doth neceſſitate a mutual concourſe, but all at amity one with another. And albeit a particular command had not been abſolutely neceſſary, (if his Majeſty had been there in perſon) yet in a juncture of time, wherein ſuch a war was improbable for many ſtate reaſons (which induces the Defender to believe, that there was no commiſſion granted at that time), which preſumptions *excuſant à dolo*; and without dole (as has been ſaid formerly) there can be no crime. And though he had been required, yet could not have been puniſhed for his not obeying, ſeeing in effect he was the enemies priſoner upon demand.

But this is conceived only to be libelled as an aggravation of what followed, which is, *That he joined in open hoſtility with the Uſurper's forces, eſpecially with the Colonels* Overton *and* Twiſleton, *at the leaſt* Cobbet *and* Twiſleton, *at the leaſt* Twiſleton, *when he was in the Highlands, and in oppoſition to the ſaid Earls.*

It is anſwered, 1. This member is general, not condeſcending upon the particular deeds of hoſtility, and therefore inept; for criminal libelling ought to be moſt clear, as is affirmed by *Damhaud*, *cap.* 30. *prax. coron. num.* 4. and ſhould contain all the qualities of the crime alledged committed. And as to the alternative, that he joined with one or other of them, it is moſt lax and obſcure, and therefore in that alſo this Dittay is inept. And for the alternative added (at the leaſt he gave counſel) *non relevat* (becauſe general), except the counſel were condeſcended on, and that it were ſuch as might fall under the Acts libelled on; and the moſt that can be alledged, if the time were condeſcended on of his alledged joining, is, that he was in company (it may be) with *Twiſleton*; and if it was, he was only going along with him to General *Monk* (being ſent for by him, and that when the Earl of *Glencairn* was under treaty with him; if not after the treaty was concluded, which he conceives will not be denied), and the Defender being their priſoner upon demand, by his capitulation with Major-General *Dean*.

It is alledged firſt, that a priſoner ſhould go in company (being commanded) with, and to thoſe whoſe priſoner he is, is nothing like a crime.

2. Though that had not been, yet he alledges in anſwer to that member of the alternative, anent his furniſhing of ſeveral pieces of great cannon to *Alured*, Governor of *Air*, *viz.* That the Defender and all that was his, or in his poſſeſſion, being under the abſolute power of the Uſurper, they might command him to go, or call him where they would, with whom to go along, or to bring whatever he had to them, had it been on his back, had he been able to carry it: and that cannot be imputed to him for any crime (otherwiſe who ſhould be innocent) when ſubdued; muſt they not give to their enemy of their goods, whatever he will have? And who in *Scotland* ſhould be innocent? Behoved not all to bring them; that is, in effect, did they not take what they pleaſed? But as for voluntary going, or joining in action with *Twiſleton*, or any of the others named in their ſervice, the Defender abſolutely denies the ſame.

Item, For his taking and relieving priſoners, *non relevat*, except the priſoner was ſpecially condeſcended on: ſpecially relieving of priſoners is not relevant to infer any crime, but on the contrary is a good office to the perſons and parties; except it is libelled that he, as an Officer under the *Engliſh* ſervice, took and relieved priſoners, which can never be made appear, whatever the ſame might import. But the truth is, the Defender meddled with no ſuch things; and the Defender ſhall truly relate the point of fact which he conceives hereby to be meant, which is as follows: The Defender hearing that his Iſle and County of *Roiſnaith* was pillaged, and going up the river *Clyde*, the boat wherein he was being followed by another boat; and the Defender having aſked what they were? they alledged they did belong to the Earl of *Glencairn*, but could ſhew no warrant; and thereupon the Defender having ſome ſuſpicion that they were rather robbers, than ſoldiers belonging to the Earl; and fearing that General *Monk*, whom the Defender was then going to, and whom he had never ſeen till that time, might get notice thereof, and make uſe of the ſame as a ſnare; the Defender adviſed them to ſecure their money and arms in the hands of one of his ſervants, upon aſſurance that the ſame ſhould be delivered to them, after he ſhould be certified what they were; and thereafter recommended them (fearing to incur the danger of a private priſon) to the Garriſon of *Dumbarton*, not under the notion of ſoldiers under the Earl of *Glencairn*, but as common Delinquents for injury done to the Country. And at his return after a few days (being tender that they ſhould incur no danger) procured their releaſement, and their names were never enrolled as priſoners to be exchanged; and according to his promiſe, he cauſed to be re-delivered their money and arms.

As to the following member of that article, *viz. That the Defender took pay from the Uſurpers, for a company of* Scots *under them, and in their ſervice:*

Adhering to the ſeveral exceptions againſt the relevancy of the propoſitions of the Dittay, and exceptions againſt this whole article, in the beginning of the anſwer thereto; ſpecially that it is not condeſcended, under which of the Acts libelled on this member is ſubſumed, till which be done, the Defender has reaſon to deny that it falls under any of them. Neither is it relevantly libelled, to infer any crime, unleſs it had been libelled, that the Defender, having commiſſion for that pretended company for the *Engliſh* ſervice at that time, had levied that company, or enrolled their names as a formed company, under the *Engliſh* and their Regiments, and engaged them to the Commonwealth and their ſervice; becauſe theſe are required in a ſoldier in any ſervice.

1. That he be *relatus in numeros*, that is to ſay, inrolled, *per lex eod.* 42. *Y. de Teſt. milit.*

2. *Ut præſtet Sacramentum*, that is, that they gave the oath, *ex milit.* 11. *F. eod. & Veget.* 2. *cap.* 6. or that the Defender had imployed them in the *Engliſh* military ſervice, or in execution of their orders, all which the Defender abſolutely denies; they never having been inrolled, given any oath or engagement, or imployed in their ſervice, as is ſaid.

But on the contrary, and the truth is, there uſed to be in the ſaid ſhire, and all other places in the *Highlands* in broken times, watches to keep off depredations, maſterful reifs, and other oppreſſions amongſt the country people themſelves and their neighbours in ſuch times. And accordingly, in the year of God 1653, or thereabout, the ſhire of *Argyle* not being able to entertain their watch, and pay ceſs alſo, (not being as yet well planted after the burning) General *Monk* was prevailed with, to help to entertain the ſaid watch (like as at the ſame time, alſo ſeveral other ſhires bordering upon the *Highlands*, as *Inverneſs*, *Perthſhire*, *Aberdeenſhire*, *Sterling*, *Dumbarton*, all of them had watches at the ſaid times, and allowance therefore from General *Monk*), who within two months did withdraw the ſaid allowance from the ſaid watch of *Argyleſhire*, becauſe they refuſed to engage againſt thoſe that were then in the hills, under the Defender's ſon and others, whom the ſaid General *Monk* alſo alledged they favoured; and thereupon withdrew his help and allowance for the ſaid watch, and ſpake of the Defender what his Grace pleaſed.

And to evince that this was nothing but a watch, the men were not in a formed company, but ſeveral Gentlemen in the ſhire had the ordering of ſeveral numbers of them at convenient and needful places of the ſhire, with proportionable entertainment, and without ſubordination as ordinary ſoldiers; all which is notorious, and, if need be, the Defender offers to prove. And the Duke of *Albemarle* it is hoped will remember, how much offended

he

he was, that the Defender would not engage the ſaid watch againſt the ſaid Lord *Lorne* and his parties; and what prejudice he did ſtill entertain againſt the Defender upon the ſaid publick account. As alſo Colonel *Robert Lilburn*, when the Lord *Lorne* and *Kenmure* went to *Kentyre* in the year 1653, the ſaid *Lilburn*, immediately upon the notice thereof, having come with a conſiderable party of the *Engliſh* army to *Dumbarton*; and ſent to the Defender to meet him, and to go along with him in *Argyle* towards *Kentyre*; if the ſaid Colonel does not know and perfectly remember, that the Defender ſhunned the meeting, and would not go; whereupon he returned back with the forces, after he was at the length of *Lochlomond*; whereupon the Defender humbly craves that he may be urged to declare. As alſo that the Counteſs of *Balcarras* may be examined, if the Defender did not aſſiſt her and her huſband, in their paſſage through *Argyleſhire*, as they were going to a meeting at *Finlarig* for the buſineſs in the hills, in the year 1653. Neither can it be alledged, that the Defender or any of his people did the leaſt prejudice to any perſon or party that profeſſed to be for his Majeſty's ſervice; albeit if he had been ſo diſpoſed, he had, and might have had ſeveral opportunities to have done the ſame.

As for the member following, *That the Defender called the actings of his Majeſty's forces againſt the Uſurper, rebellion:*

It is moſt general, neither condeſcending on time nor place, and therefore irrelevant and inept; but when condeſcended on, he nothing doubts, but that it ſhall appear he ſpoke no ſuch things, nor had he ever any ſuch conſtruction thereof.

As to the laſt deed in the ſaid article, *That the Defender* in anno 1654 *took upon him power to bring off ſuch as were in that ſervice, and to give remiſſions therefore, and particularly to* John Macdowgall:

It is general, neither condeſcended on time nor perſon brought off, and therefore inept and irrelevant. And if it be meant only of the perſon named, *viz. John Macdowgall* of *Dumolich*; it will never be made out that he was in that ſervice, when the Commiſſioner his Grace and the Earl of *Glencairn* were in the field; nor that there ever was a remiſſion granted by the Defender to him, or any other, in relation to that ſervice.

As to the twelfth article and firſt member thereof, anent the Defender's *countenancing and aſſiſting, by his perſonal preſence, the tyrannical and treaſonable Proclamation of* Richard *the Uſurper and Protector of his Majeſty's dominions, at the Market-Croſs of* Edinburgh *and* Dumbarton:

The Defender is ſo notoriouſly innocent of this member of the article, that he might with much confidence (in place of all other defence) ſimply deny it. But he will do no more for defence and clearing of his innocency, than where he is to propone his defence of *alibi*, that there month and day muſt be condeſcended on, whereof none is condeſcended on in this member of the article; and till this be condeſcended on, it is inept, and the Defender ought to be aſſoilzied therefrom. But the days of the ſaid Proclamation at *Edinburgh* and *Dumbarton* being condeſcended on; the Defender offers him to prove, that during theſe days he was *alibi*, and neither at the city of *Edinburgh* nor *Dumbarton* all theſe days.

As to the ſecond member, *anent the Defender's procuring himſelf elected a Commiſſioner for the ſhire of* Aberdeen; *and accepting a Commiſſion from them, to* Richard's *pretended Parliament, and ſitting and voting therein as a Member of his pretended Houſe of Commons:*

That the *Engliſh* uſurpation was one of the moſt horrid uſurpations that ever has been in *Europe*, againſt all divine and human Law, againſt the moſt uncontroverted right of the moſt illuſtrious of Kings, our dread Sovereign, and his moſt Royal Father of eternal, glorious memory, which none of common ſenſe or honeſty will controvert. Next, the ſaid Uſurpers having nothing but an unparalleled, unjuſt detention of that power, whereunto no manner of way they had the leaſt right to, or any title whatſoever; but in place of a title, armed violence and force: the only mean (for title they had none) whereby they both *de facto* attained, and violently detained that poſſeſſion unjuſtly, of that power whereof the only right was, and poſſeſſion ought to have been our dread Sovereign's: Whoſoever by arms, counſel, or otherways, aided or abetted that armed force, in eſtabliſhing *de facto*, of the power in the perſons of the monſters of men, and ſo in ſetting up of that abominable uſurpation; that he is guilty of the higheſt Treaſon, is heartily acknowledged. But the Uſurpers having treaſonably thruſt their and our Sovereign, his Majeſty, from all poſſeſſion of his juſt right, and having taken upon them the ſupreme power; and being poſſeſſed (though moſt unjuſtly) yet moſt peaceably therein, and keeping the ſame by force, as they had taken it; the caſe then became moſt ſingular, as to what the poor oppreſſed ſubjects under their force might do, *hoc rerum ſtatu poſito*, in this ſtate of affairs, wherein the Uſurper had treaſonably put them. *Lucklama*, a moſt acute *Juris Conſult. Eccleg.* 6. *membran. in L.* 3. *de Officiis prætorum* obſerves, learnedly, that *Diſtinctio fieri debet inter perſonam ejus qui Magiſtratum gerit (cum tamen jus ad Magiſtratum non habeat) & ipſum Magiſtratum quem geſſerit; perſona enim ejus eſt privata, hic publicus; & in publicis non tanta perſonæ quam utilitatis hic publicæ habenda eſt ratio, ut enim tutela, ait Cicero, p.* 1. *Offic. Sic procurato reipub. ad utilitatem eorum qui commiſſi ſunt, non ad eorum quibus commiſſa gerenda eſt, & ſapientes definiunt nihil aliud eſſe imperium niſi curam rei alienæ, ut ait Ammianus Marcellinus lib.* 29. that is, *ipſius reipub.* So *Lucklama* diſtinguiſhes betwixt the perſon of him who unjuſtly *de facto* attains the Magiſtracy (whoſe perſon is ſtill but in effect private, and in the caſe of uſurpation, a Traitor), and the Magiſtracy which he carries, which is publick.

Likewiſe, it ſhould be diſtinguiſhed betwixt acts concurring with the Uſurper, transferring *de facto* in his perſon the power he uſurps, (which are treaſonable againſt the lawful Sovereign) and acts, whereby the oppreſſed ſubjects make uſe of the power now uſurped; wherein the utility, not of the Uſurper, but of the ſubjects, is reſpected, as *Lucklama* obſerves, *ubi ſup.* And then *Grotius, lib.* 1. *de Jure belli & pacis, cap.* 4. *num.* 15. ſpeaking *de invaſore imperii*, of an unjuſt invader, while his poſſeſſion remains unjuſt, ſays, the act of power is binding for the good of the Commonweal; and becauſe it is probable the lawful Governor's will is, rather the Uſurper's command ſhould be obeyed, or take effect, than that Laws and Judgments ſhould fall in confuſion in their terms; *Reſtat ut de invaſore imperii videamus nunc poſtquam longa poſſeſſione vel pacto jus nactus eſt, ſed quamdiu durat in juſtæ poſſidendæ cauſa, & quidem dum poſſidet actus imperii quos exercet vim habere poſſunt obligandi, non ex ipſius jure, quod nullum, ſed ex eo quod omnino probabile ſit, eum qui jus imperandi habet ſive eſt Populus ipſe, ſive Rex, ſive Senatus, ſe malle interim rata eſſe quæ imperat quam legibus ſub tali ſummam induci confuſionem.* And *Leſſius*, who is one of the Authors *Grotius* cites upon the place, ſays, in the place cited, *viz. Lib.* 2. *de Juſtitia & Jure, cap.* 29. *dub.* 9. *F.* 37. That *Tyranni uſurpatione poteſtatis mandatis obtemperandum propter bonum commune*; which is, that the Tyrant and Uſurper is to be obeyed, even from the law of nature, for the publick good, in ſuch a ſtate of affairs; and adds, *alioque omnia eſſent plena latrociniis & furtis*; that is, all would be full of robberies, thefts and confuſion, in that ſtate of affairs, becauſe of the Uſurper's force the uſe of no other Government can be had. So that the neceſſity of the benefit of Government for the good of the ſubjects or common-wealth, eſpecially in what relates *ad reipublicæ ſtatum*, in things neceſſary for the ſtanding of the common-wealth, or to evite the ruin thereof; and the interpretative and preſumed conſent thereupon of the Prince, who has the right to the authority which the Uſurper has uſurped, but is excluded by the Uſurper from benefiting the ſubjects by it himſelf for the time, are the two grounds whereupon the making uſe of the power now in the hands of the Uſurper is founded, as is ſaid. Whereupon it is ſubſumed, that in our caſe the Invader and Uſurper *Oliver* having violently taken upon him the power, after he had put his and our Sovereign from the poſſeſſion thereof, oppreſſed by his armed force this Nation, and amongſt others the defender; and *Oliver* having kept the poſſeſſion all his time, and *Richard* continuing the ſame, the benefit of that power, which now he had uſurped, and whereof he was in poſſeſſion, was, as always it is, ſo neceſſary for the ſtanding of the common-wealth, that without it men become but as fiſh in the ſea, the leſſer a prey to the oppreſſion of the great: but eſpecially, the ſaid *Richard* having called a pretended Parliament, and commanded the Shires to ſend Commiſſioners thereto. Meetings and Repreſentatives of the Nation, as they are of great uſe at any time, for treating common affairs of common conſent, ſo tranſcendently at that time, for moderating the arbitrary tyranny of a Uſurper; and that not being able to expugn his force, they might by ſtrength of common-counſel overcome and perſuade his reaſon to things abſolutely neceſſary for the ſubſiſtence, at leaſt for the preventing the ruin of the whole body of the Kingdom, and of his Majeſty's Lieges therein: as was the ſtopping that miſerable union, which the defender knew that it would be, as it had been before, at even other Parliaments, ſo, at that, ſtrongly attempted, as indeed thereafter it was. Which union was that vortex wherein our Religion, our ancient Government, monarchick in his Majeſty's perſon and family, and the intereſt of the nobility and our liberties were wholly ſwallowed up; and under pretext of being united, we were really enſlaved to that pretended Common-wealth. The eaſing, if they could not perſuade him to the taking off of the maintenance and ceſs, (which upon *Scotland* was ſixtuple more than the proportion of *England*, and in itſelf ſo heavy, with the exciſe and other publick burthens laid by the Uſurper on it, that more was exacted in one month, than his Majeſty's royal Predeceſſors would have impoſed or taken of taxation for an age, ſo that the Country could not ſubſiſt under it;) as alſo taking off ſome of the forces under which we were kept in bondage, if that at leaſt could have been obtained: The prevention of the alteration and change of our whole laws, which was vehemently threatened, yea, and in general the confounding, and, *dolo optimo*, circumventing and defeating of the counſels, by which the event proved, it was more hopeful and eaſy to overcome that force, than by might or power. And as the liberty of the election of the members in *England*, at the time of *Richard*'s Parliament, made it ſerviceable to his Majeſty in it, and hopeful to all his Majeſty's friends and loyal ſubjects, ſo was it no ſmall encouragement to the defender to go there for the ſame end: And at the meeting in the Committee of *Scots* affairs, and ſeveral other meetings, when they were upon the debate of the ſaid union, the defender, on purpoſe to ſtop the ſame, did propone, that there could be no union, except it were agreed, that we might enjoy our Religion in *Scotland* without alteration, as it was eſtabliſhed by our own laws: and that we might be ruled and judged according to the ſame laws, and except our ceſs were proportioned according to theirs in *England*. All which concerns the defender knew would never be granted, and were indeed ſo utterly improbable at that time, that the propoſition thereof was conſtrued for no other end, than for the end aforeſaid, to ſtop the ſaid union: likewiſe it did ſo well ſucceed, as in effect it did obſtruct it, as the ſeveral perſons of quality that were preſent can, and, if need be, will declare. And at that meeting, the actings and uſurpation of the Uſurper *Oliver*, and the oppreſſions of that army were of purpoſe much called in queſtion, to make that government and them odious, which accordingly happily followed; and ſuch a breach and confuſion amongſt them was made, that their affairs thereafter could never come to any conſiſtency, which made conſiderably and evidently a way to his Majeſty's happy and glorious Reſtauration. To all which joining, that the call and command of the armed force has *parentis neceſſitatem*, a neceſſity of obeying lying upon perſons under their power; it will follow from what is alledged out of theſe above-cited Authors, founded ſtrongly on reaſon, the defender in that ſtate of affairs had neceſſity and ſome obligation to go and eſſay what could be done by counſel, wiſdom and prudence, ſince now there was no ſtrength nor might left, effectuate for the ſtanding; at leaſt, to evite the ruin of the Country, in the particulars above-mentioned, and others of that nature; at leaſt, the defender, as all of us, was under their force; and for eviting of his own and the Country's ruin, *habuit parentis neceſſitatem:* and by conſequence there was no deſign of treaſon therein, but by the contrary moſt loyal intentions, upon good ground of hope, and very probable appearance. And therefore it is hoped the Commiſſioner's Grace and the Eſtates of Parliament will not find this member relevant to infer ſo high a crime againſt the defender; *hoc maxime attento*, that beſide publick ends, it was even a neceſſary ſelf-preſervative act; for the Defender had ſeveral other things of perſonal intereſt; as that they had ordained him to pay to them about 4000*l. ſterling*, for alledged feu-duties, and in time coming ſo much, that both joined, he was not able to bear, and if need be,

be, it is offered to be proved, and that he was moſt rigorouſly perſecuted for the ſame; not only threatning to uſe real execution againſt his Eſtate, but alſo to impriſon his perſon.

For eviting whereof, he was behoved to go at that time to *London*, and could not have his perſon ſecured from arreſtments there, but by going in commiſſion: And it is known that his Majeſty is ſo gracious, as in not a few, to excuſe what they did of that nature, to evite though but their own perſonal ruin, not imputing it to unfaithfulneſs in them at ſuch a time; according to whoſe glorious and imitable example, it is with much confidence hoped, that the Commiſſioner's Grace, and honourable Eſtates of Parliament, will have a favourable conſtruction of what the defender did in that particular, being neceſſitated thereto both for publick and private intereſt; without any deceit or fraud, either in the intention or event, there being nothing at that time, while the defender was there, done, for confirming the uſurpation, or excluding his Majeſty's Intereſt.

Likewiſe it may appear, that it was only the concourſe both of publick and private intereſts and neceſſities aforeſaid, that moved the defender to go at that time; becauſe, though he was deſired oft-times before to go, yet he ſtill refuſed till then: He was one of the laſt that went to that, being the very laſt pretended Parliament under their power; not till long after that commiſſioners had gone for the Nation for ſeveral years, and that all had ſubmitted to their conſtitutions, and were of neceſſity made uſe of as laws for the time.

As for the aggravations of this member, and to the firſt, That becauſe of the defendant's nobility, he was incapable to have been elected, at leaſt might have refuſed:

It is anſwered, That it is notorious, nobility was not then reſpected at all, nor was any ground of excuſe, the meetings to the elections being commanded to all, as heretofore (and ſo noblemen and others heretofore met promiſcuouſly through all the Nation) as is notoriouſly to all known.

And whereas it is libelled, That he had not his reſidence within the Shire; it ought to be repelled as irrelevant, becauſe it is true, and was known to the Uſurpers, and their Miniſters and underlings, that he had land within the ſaid Shire, and that conſiderable. So that he could not decline the ſaid employment without prejudice, the will and luſt of the Uſurper at that time being uncontroulable, and tied to no rules of law or juſtice.

And whereas it is inferred, That ſitting and voting in that pretended Parliament, he acknowledged his Majeſty's power and intereſt to be in the Uſurper's perſon: It is anſwered,

1. He acknowledged the ſame no otherwiſe but as all the kingdom did, to wit, *de facto*, for *de facto* the Uſurper had taken or poſſeſs'd himſelf of the power; as his Majeſty is pleaſed to ſpeak of it in his proclamation anent commerce with *Portugal*, in *October* laſt, and had obtained the ſame for a long time: But neither the defender, nor any other loyal ſubject, ever did, or will acknowledge, that *de jure* the ſame belonged to him, or that he had any juſt right or lawful title thereto: as alſo *Leſſius* ſays in the above-written place, ſpeaking of them that ſeek from Uſurpers that uſe of Government; whereunto, he ſays, they are holden in and obliged, once taking on them the Government, (though ſinfully and unlawfully) they ſeek the benefit of it, ſays he, not abſolutely, but under a tacit condition, *viz.* if the Uſurpers will take upon them the Government: *Petunt*, ſays he, *ſub tacita quadam conditione, ſi velit ſe pro principe gerere*; ſpeaking of the Uſurper. And that the Uſurper would not give the uſe of the power he had taken upon him, but in the way he pleaſed, was his crime, which he continued during his uſurpation. In reſpect of all which, it is humbly craved, that the defender may be aſſoilzied from the crime of treaſon, libelled thereupon.

Like as for the defender's further clearing in this particular, it is humbly deſired, that certain miniſters and others above exception, whom the defender ſhall condeſcend on, may be examined, if after his return from *England, in anno* 1658, he did not expreſs with great joy his hopes, that buſineſs in *England* did tend toward his Majeſty's advantage.

Item, That a commiſſion be directed for examining Sir *Anthony Aſhley Cowper*, and ſeveral other *Engliſhmen* above all exception; how the defender expreſs'd himſelf in private anent his diſaffection to that uſurpation, during his being there the time of the ſaid Parliament, even though to his very great hazard at that time.

Item, That certain perſons, upon whoſe names alſo he ſhall condeſcend, may be examin'd, if the defender to their certain knowledge, at the time of Sir *George Booth*'s riſing (which fell out immediately after the defender's return from the ſaid Parliament) did not put himſelf out of the way, being informed that he was to be ſecured, and thereupon delay'd his journey to *Caithneſs*, and ſo be the readier to have laid hold of any opportunity that ſhould have offered for his Majeſty's ſervice and reſtitution; that time being the moſt probable that ever offered after *Worceſter* fight.

As for the precept of twelve thouſand pound ſterling, which is alledged the defender got from the Uſurpers;

It is anſwered, The defender did indeed obtain a precept, but not as a reward of any ſervice (which he never did, nor deſired to deſerve from them), but for what they had wrongfully intromitted with, of the half of the exciſe of wine and ſtrong waters, whereunto the defender had right by Act of Parliament, before they had any power in *Scotland*.

And as to the thirteenth Article, firſt, for the whole Article, it is not conſented on what Act of Parliament the ſame, conſiſting of three different members, is ſubſumed; and till it be condeſcended on, there can be no proceſs thereupon.

And as to the firſt member thereof, anent the words alledged ſpoken at *Innerary:*

1. No time is condeſcended on, and therefore the libel in that part is inept for the reaſons afore-mentioned, for which a criminal dittay ought to be ſpecial in the time, at leaſt year and month.

2. Whereas it is libelled, he rebuked the Miniſters for praying for the King, in the words libelled, or ſome ſuch like words; *non relevat* as to the miniſters, except the perſons were condeſcended on, whom he rebuked.

3. *Non relevat*, ſome ſuch-like words; ſome ſuch-like being moſt general, except the words were particularly libelled, alledged to be ſuch-like whereby the defender might adviſe his defences, and alledge why they were not ſuch-like, as he would, if any words ever he ſpoke were condeſcended on; for the truth is, he never ſpoke any ſuch words; and was ſo far from rebuking any for praying for the King's Majeſty, that after the defeat at *Worceſter* (which is the general time libelled, wherein he ſhould have rebuked the miniſters for praying for the King), he himſelf cauſed continual praying for his Majeſty both in his Pariſh-Church and Family, yea even in preſence and audience of the *Engliſh* when they came there, though it was to his great hazard ſo to do.

As to the ſecond member anent the words libelled and alledged to have been ſpoken by the defender at *London*, That he wondered how the people ſhould be ſo mad as to call home a family whom God had rejected, and would never reſtore; or ſome ſuch-like words:

Firſt, This is alſo general; neither time, that is, year nor month, nor particular place, condeſcended on.

Secondly, It is libelled, That it was in the preſence of perſons of quality, they ought to be condeſcended on.

Thirdly, In ſo far as it is libelled the defender ſaid, The people were mad to call home his Majeſty; it is general and inept, not condeſcending what people, and what was the occaſion; if there was any motion made of calling home the King, whereupon that ſhould have been ſpoken, and among whom it was. And *Damhaud*, *cap.* 30. *prax. com. num.* 4. and others, ſay, A criminal dittay ſhould be moſt clear, and contain *omnes criminis patrati qualitates*, *lib.* 30. *F. de accuſ.* and *Bart.* and others, *ibid.* that it ſhould contain all the qualities of crimes alledged to be committed.

Fourthly, Some ſuch-like words *non relevat*, except the words were ſpecially condeſcended on: which if they were, the defender would alledge and evince they were no-wiſe ſuch-like: for the truth is, he never ſpake any ſuch words, but on the contrary did all that he could there to make way for his Majeſty's happy Reſtauration; as has been at length cleared before.

And was a very ſuſpected perſon, in ſo far as in the year one thouſand ſix hundred fifty-ſeven, *Oliver* was ſo jealous of the defender, that he commanded him to ſtay at *London*, and not to return to *Scotland*, till his affairs, as he was pleaſed to expreſs, were ſettled. So that not without great difficulty, by the mediation of the Lord *Broughil* and *Charles Fleetwood*, he obtained his liberty: Whereupon the defender deſires the ſaid *Charles Fleetwood* may be examined, which he alſo deſired at *London*. And not only was ſuſpected, as odious to the *Engliſh* for his known affection thereunto, as is notorious, and has alſo before been expreſſed.

As to the third member of the ſaid article, anent the alledged ſpeech in *Maſtertonne*'s;

1. Neither the year nor month condeſcended on, and therefore general as to the time, and inept.

2. As to the firſt member thereof, That he would own any thing he had done;

Firſt, It is exceedingly general, and not relevant; except what were the things he had owned were ſpecially condeſcended, and what time, year and month: It is an unparalleled generality, and therefore till made ſpecial, no proceſs thereupon.

Secondly, It can import nothing in common ſenſe, wherein to own a thing is to acknowledge it for a man's own; but what he had acknowledged to be his own, whether word or deed, he would yet acknowledge; which is an expreſſion of ingenuity, and no crime: And this being the received ſenſe of owning, the word cannot be ſtrained to any other ſenſe; or if occaſion ſhould be taken ſo to do, and that another ſenſe could be put on that expreſſion, yet being *more interpretatio capienda eſt*, the moſt uſual interpretation is to be taken, *Perd. ea quæ S. I.* 1. *F. de reg. juris*, as being both juſteſt and ſafeſt by that law. And in ambiguous ſpeeches, or ſuch as may receive two ſenſes, every man is the beſt expounder of his own mind, and his interpretation ought to be admitted, *per leg. in ambiguis F. de reg. juris*, and other laws. But the ſenſe aforeſaid is ſo plain, that there is no place for caption.

As to what follows in the ſaid member, That if what he had owned or done were to do, he would do it again, albeit he had known that all that has been would have come.

1. As to what is alledged againſt the firſt part of this member, That this is exceedingly general as to the time and month he ſhould have ſpoken it on.

2. As to what the things are that he would do if they were to be done, and that time the things were done, or owned to be done, or that the ſaying that he would do if they were to do, is a crime.

3. What were thoſe things in particular that are underſtood, or may be ſubſumed under the general of all things that have come to paſs; whereupon it may be inferred, that that were a crime for the defender to have ſaid, that notwithſtanding of them he would do what he had done, if that were to do; and therefore the libel in this part of the member is alſo general, obſcure and inept. And to evince the ineptitude of this generality, ſuppoſe the defender were thus indicted; You are indicted for all that you have done the times by-gone, preceding your being in *James Maſtertonne*'s houſe, after your coming for *London:* were not that dittay without all controverſy irrelevant? Then is it not alſo irrelevant to be indicted for owning in general that he had owned, or ſaying in general, that he would do that he had owned during that time, if that were to do again, without any farther particular condeſcendance?

Like as, 4. There is a very clear, obvious and benign ſenſe theſe words may have, (if ever he ſpake, as he truly never remembers that he ſpake any ſuch words) that if it had been poſſible that times could have returned, and actions to be done under the ſame circumſtances and repreſentations they had then, it is probable theſe ſame might be the defender's actions again, though he had known what had come thereafter, not having connexion with, or neceſſary dependance on theſe actings, each does not ſo much as import his preſent thoughts or approbation thereof, but is very conſiſtent with a preſent diſapprobation of the ſame. And is it not ordinary to ſay, that if ſuch times were as have been, or ſuch motives or circumſtances of actions as have been, that it is very like I would be engaged in them as well as others, or as I have been myſelf; and yet to ſay with great conſiſtence I ought not ſo to do, like as truly it is known, and if need be, is offered to be proved, that the defender, on the juſt contrary, had ſaid to one of *Cromwel*'s Councillors, and to many other famous Gentlemen, that things had been done wherein he would

would have been very far from engaging in, if he had seen what followed, which was the product of the corruption of evil men, that had abused what was well intended, for accomplishing of their wicked ends, and (till they brake forth and could not be resisted) unknown designs. And the Defender hopes the sense aforesaid is very clear, and even though it were not so obvious, yet *rapienda est occasio quæ benignum præbet responsum*, *L. Rapiend.* 168. *F. de reg. juris:* That is, any occasion should be even taken, as it were, though there were some violence done to the words for a benign interpretation; and therefore by all means that interpretation of the words that may seem to infer a crime ought to be eschewed. Or if the word might be drawn to any other sense, yet *in dubiis benigniora præferenda sunt*, as has been said, in speeches dubious, the most benign sense is to be preferred, *pret. semp.* 56. *F. de reg. juris*; or where words are obscure, or may suffer two senses, the party's own interpretation is to be taken as the best interpreter of his own mind; *Per ea quæ ff.* 1. *F. de reg. juris.* And *odia sunt restringenda, favores ampliandi*; what is odious, (as that which may infer a crime against any) should be restricted, and favour amplified; and in general, the Judge is always to be more inclined to absolve than condemn, and so consequently take the sense that may absolve, rather than that which may condemn, *Leg. Corianus F. de oblig. & act.* 47.

5. The Doctors say, that *voluntas & propositum delinquentis distinguunt facinora per legem expressam*, *leg. qui in jur.* 53. *F. de furtis in præ.* that is, the will and purpose of him that commits a crime, distinguisheth it; but *velleitas*, or *voluntas inefficax*, as it is called, not a will, but a would, is no purpose to do, and can be the cause of no crime; especially being about things past, and qualified with an impossible condition, if things already done were to do, which is altogether impossible, that a deed done can return to have a new Being, and so to be done. And even there is some presumption of that mistake may be in this, from the place libelled, in which it is alledged to have been spoken, it being such as it is not improbable, that men may be very apt to fail both in judgment and memory, and so both wrong themselves and misconstrue others. And as for the aggravations that follow, that by speaking these words the defender took upon him by outward success, to give judgment upon the secret Counsel of the Almighty: 1. As it is in no wise true that the defender spoke any of the words libelled; so this does, as he humbly conceives, in no wise follow upon the words immediately going before, alledged spoken in *Mastertonne*'s, *viz.* That the Defender owned what he had done, or would do the same if it were to do again; for that is not any judgment given of any hidden counsels of the Lord's, but an expression at most of his own actions. And as for the words before these, albeit he had been so presumptuous as to say them, as he blesses the Lord he never was, yet it is not libelled, that any thing that is therein alledged to have been spoken, either at *Innerary* or *London*, was spoken or inferred from Providence and success. For the Defender blesses the Lord, he has been otherwise taught than to use, or rather to abuse so *Turkish* an argument, and which the Lord has by his Majesty's happy restoration so signally refuted.

And as to the last aggravation, that the Defender thereby hardened others, such as otherwise were not ill disposed, in their wicked courses towards his Majesty; it is indeed a sad reflection upon others herein not called. However, 1. It is so general, both as to these others and their courses, that it cannot, and the Defender hopes it shall have no weight; especially considering that, 2. The Defender oppones his defences before alledged, against all the members of this Article; whereby it is clear, that as they are libelled, they can infer no such thing, in respect of all which the Defender ought to be assoilzied also from this Article of the Dittay.

As to the last Article, 1. It is not condescended under which of the Acts of Parliament libelled on, it is subsumed; and till then, it is ineptly libelled, and there can be no process thereupon. Moreover, the Defender has the testimony of his own conscience, yea, and of an higher, that nothing libelled therein is true. Albeit if he had said, that the Usurper's hazard was great from his Majesty, and if his Majesty's designs took effect they were ruined, the same were notorious truths, and it ought to have been so; that is, it ought to be, and it was good, they were in hazard from his Majesty's designs; and it was most just that his Majesty's designs should take effect to their ruin. And what crime could be in so saying, he cannot apprehend: however, he never spoke any such words to *Cromwell* or *Ireton*, which *Ireton* he never saw with his eyes; and did far more abhor the least thought of giving counsel to challenge, or question his late Majesty upon his precious life; and his innocency shall rest confident, absolutely to deny the same.

And as to the last part of this Article, whereby it is libelled, that *in anno* 1649, in face of the Parliament then sitting, he told, that the Usurper *Cromwell* had told him, that *England* and *Scotland* would never be at peace till the King were put to death; the Defender adheres, as to this part, to the general exception against all this Article.

That it is not condescended under which of the Acts of Parliament libelled on it is subsumed, till which be done, there can be no process; and if it be intended that it be subsumed under the 43d Act, 2 Parl. *Jam.* I. and the 134th Act, Parl. 1. and 10th Act and 10th Parl. and 205th Act, 14th Parl. K. *Jam.* VI. all these Acts, as both by their titles and tenours, and by *Skeine* in his Index on the words Leasing-makers, appears; and it seems by their conjunction in this libel, they are understood also therein of lying and slandering his Majesty and his Progenitors: and the words libelled, though very horrid, yet seem to be of another nature. And 2. To that Act 205, Parl. 14. *Jam.* VI. whereon only any thing can be subsumed against him for concealing and not apprehending; 1. It is general as to the time when *Cromwell* should have told it to him, and therefore inept till the time be condescended on, which must be; especially seeing, if it be not condescended on to have been after the engagement was broken, nothing can be subsumed on the said Act thereupon against the Defender, nor on his not apprehending him; for he was not holden thereto by that Act expresly, except (according to Law it had been in his power. But so it is, it is known, that at that time it was not in the power of the whole Kingdom to apprehend him, whether his victory or strength be considered, or the Kingdom's low and weak condition at that time, wherein they lay open to ruin by him, if the Lord had not restrained him more than their power could effectuate. And as to the concealing and not revealing, the Defender ought to be assoilzied; because by the expres words of the Act, that revealing is declared to be such a revealing to some of his Majesty's Privy-Council, or some under-officer, &c. as that there-through the authors of slanderous speeches may be called, tried, and punished: But that cannot be subsumed, except it were subsumed that the speeches were spoken before witness; otherwise could not have been proved, and without probation could not have been so urged, as that sentence could have been given thereupon, and the Author punished according to the words of the Act, which is also according to Common Law, and which is hereafter cleared. Like as if the words thereafter should have been found treasonable, and the Defender not being found able to have proved them, he should have brought himself under the crime of treason, for accusing another of treason, and not being able to prove it, and therefore could not be holden so to do. As also, albeit the Defender had heard any such words as is libelled, (which he altogether denies) and that before witness, yet through his revealing thereof, the Author could not be tried or punished; for it is notoriously known, it was above the power of the Kingdoms at that time, as is said, or for many years thereafter, to punish him; and therefore the Defender's not revealing cannot be subsumed upon the said Act of Parliament, to infer the pain contained therein, or related unto.

Lastly, the pains of the said Act, and other Acts before-mentioned together therewith, is not the pain of treason, as has been oft before evinced; and therefore the Defender cannot be convened for treason, or the pain thereof, upon the said Acts, but ought to be assoilzied therefrom.

But if this member of this Article be intended to be subsumed under the last part of the proposition of the Dittay, whereby it is alledged, that by Common Law and Practice of this Kingdom, all concealers and not revealers of any malicious purpose of putting violent hands on the sacred person of his Majesty, or purposing of killing and putting him to death, are guilty of treason; the defender protesting his innocence in never concealing any such purpose, nor the words aforesaid libelled, which he abhors, he is so far from justifying thereof, judging the horrid murder of his Majesty to have been the very ruin of our peace and happiness: Yet as to the relevancy of that part of the proposition, in so far as is founded upon Common Law and Practice only, the Defender, because of the preparative, repeats what was before alledged in the answer to the proposition, in that part thereof: And adds further, *In crimine læsæ Majestatis*, in the crime of lese Majesty, *Num sciens tractatum proditionis contra principem vel patriam, & illum non relevans, sit puniendus pœna mortis*; that is, whether he that knows a treaty about treason against his Prince and Country, be punishable by death. *Clarus, l.* 5. *S. fus. pract. crim. quest.* 57. says, that many hold he is punishable by death: And that *Cognol.* in his *lib. Culpa caret F. de reg. juris num.* 2. that it is the common opinion, citing *Alciat. in lib. tacere F. de verb. sig. & m. l. bona fide, num.* 20. *F. de poss. & in lib.* 4. of *Cato num.* 30. *F. de verb. oblig.* related also by *Gigas, de crimine læsæ Majestatis fol.* 180. *num.* 10. *Roll. Conf.* 88. *num.* 10. *lib.* 2. *Carel. prac. crim. fol.* 253. *num.* 29, saith, that all others follow this opinion. And *Baldus* cries out in one certain counsel, that because *Bartol* held otherwise, therefore his soul for that, as a crime, is tormented in hell. Where it is clear, that even by *Clarus*'s acknowledgement (which is very high treason) is not Treason, by the common opinion of the Doctors, according as is asserted by the famous Authors he cites, and whom he contradicts not therein. 2. And *Clarus* nothing contradicting, but this is the common opinion, albeit he be of another mind with *Bartol*, that it is capital to conceal, and not reveal, yet it is only in two cases; to wit, *In tractatu qui fiat contra ejus personam vel statum*; that is, where he has been conscious to, and known any treaty or consultation against the Prince's Estate or Person. But as for other causes, he holds expresly, that the concealer, and not revealer, is not punishable by death, in these words; *In aliis autem casibus etsi sint comprehensi in crimine læsæ Majestatis non putarem esse puniendum pœna mortis subditum qui non revelaverit:* And that he counsels Princes even in these cases, to use clemency and humanity, rather than severity; and to excuse their subjects upon any probable cause, from the pain of death. Whence, 3. It is alledged, even according to *Clarus*'s opinion, concealing not relevant to infer the pain of death; except where the concealer has been conscious to, and heard some treaty, that is, deliberate consultation against the Prince or his Estate. But so it is, the words libelled, especially what is alledged to have been heard in Parliament, 1649, seems not to import that, being, as would appear, but *volitantia verba*, if any such thing had been heard, which the Defender absolutely denies; and importing indeed the Author *Cromwell*'s thought or opinion, that there would be troubles still so long as his Majesty *(horrendum dictum)* were not put to death. But *Clarus, lib.* 5. *prax. crim. F. fin. num.* 87. distinguishing betwixt *cogitationem nudam*, a naked thought, and *tractatum*, a treaty or consulting; he affirms that a naked or sole thought is not punishable in any crime, no, not in Lese-Majesty, except only heresy, when guilt is perfected in the mind. And thereafter, *num.* 2. he moves the question, *Sed pone quis non steterit in meris terminis cogitationis, sed ulterius etiam processerit ad tractatum cum aliquo de ipso maleficio committendo.* But, says he, put the case that any has not contained himself within the bounds of a thought, but has proceeded further to treat with any for committing the crime, &c. thereby making a clear difference betwixt a clear, sole thought, and a treaty about committing the crime. Now the words, as they are libelled, do not import any treaty with any for committing that horrid murder; but the signification only of *Cromwell*'s damnable thought, what might be the consequence of not taking the life of our dread Sovereign.

And hence, 3. It will follow, that these words cannot be subsumed relevantly, under that part of the proposition of the Libel; because that any sense these words seemed to have, as they are libelled, would appear only to import his naked thought of what might be the consequence of taking the life of our then dread Sovereign, but no purpose of his to take the same. Neither could any presume, albeit his thought anent that consequence had been true, (as it is most contrary to the truth) that yet any man, in whom there had been the least sparkle of common reason, or conscience, would have pur-

poſed to commit, or committed one of the higheſt evils of ſin, to evite, though very great evils of puniſhment, it being a received rule among men, at leaſt among Chriſtian men, that the leaſt of the evils of ſin ſhould not be committed, to evite the greateſt of the evils of puniſhment.

4. *Gomez*, a moſt excellent Lawyer, is clear in his third *tom. variar. reſolv. de crimine læſæ majeſtatis, num.* 8. that concealing even of treaſon, is only then puniſhable, when the concealer might prove it otherwiſe; not *per text. leg. noſtris, in fine cap. de calumniat. & L. quæ accuſ. capite, cap. de edendo:* whereby it is ſaid, that whoſoever counſels to accuſe, ſhould have his proofs ready, and who accuſeth falſely ſhall be puniſhed as the party accuſed would be, if the accuſation were proved. *Gomez* citeth the canon law, *Platia, Hippolatus*, and others for their exception, which *à fortiori* holds in our law, whereby the 49th Act Parl. 11. *Jam.* VI. accuſing any of treaſon, not being able to prove, ſo that the party accuſed be acquit, being ſo far reprobate by our law, that it is declared, that thereby the accuſer ſhall incur the ſame crime of treaſon whereof he accuſed the other; is a ſufficient warrant to the defender not to have revealed that of *Cromwel*, if there had been any ſuch ſpeech, as the defender never heard any ſuch, except he had witneſs to have proved it; which neither is libelled, nor can be alledged, and therefore he ought alſo to be aſſoilzied therefrom.

5. All theſe laws anent concealing and not revealing, (as the defender humbly conceives) muſt be underſtood where the treaſon is privately plotted, and the execution thereof is carried on by ſecret conveyance, and which by revealing might be cruſhed and prevented. But it is notorious that the Uſurper, as he had the power of armed force, ſo he had the unparalleled boldneſs to carry on his execrable treaſon moſt openly; and that his power was ſuch, as it was impoſſible for his Majeſty's poor ſubjects of this Kingdom to reſiſt (nor yet his Majeſty's other Kingdoms, though far more powerful, and that many thouſands of them from their ſouls abhorred the ſaid act) or prevent and impede the ſame. And if the defender had heard any ſuch words of the Uſurper (as he has juſt reaſon to deny he ever heard), whatever they ſhould import; what probable reaſon might have been for not revealing it at that time, from the prevalency and power of that enemy, the condition of our poor Country, and utter impoſſibility to bring him to puniſhment, beſide the want of probation: and ſo what place there were to *Clarus*'s counſel of humanity, the defender leaves to the Commiſſioner's Grace, and the honourable Eſtates of Parliament to judge.

6. Whatever relevancy there were in the defender's concealing, yet his acknowledgment thereof in Parliament, 1649, as libelled, *non relevat*, to infer or prove it. 1. Becauſe a confeſſion that prejudgeth a party muſt be prejudicial, that is, *In judicio, idque utroque jure & civili & canonico*; as ſays *Panormitan.* C. *ex parte decret. de confeſſ. num.* 16 that it muſt be in judgment in a proceſs, wherein he who confeſſeth is convened, as is clear by *Leg.* 6. *F. de confeſſ.* where the words are, *Si dum quis convenitur, confiteatur*; that is, If any be convened, confeſs, *&c.* and *Panormitan. ad dicto loco* ſaith, That to the end a confeſſion may prejudge him, who confeſſeth, it muſt be among other requiſites, *ſuper re litigioſa*, that is, on any thing litigious, or any thing in dependance or proceſs, *per L. in confeſſionibus, F. de Interrog. ait*; the words are, *Confeſſionibus falſis reſpondentes, ita obligantur, ſi ejus nomine de quo quis interrogatus ſit, cum aliquo ſit actio*; that is, any in making anſwer is obliged by falſe confeſſions, if there be any action or dependance againſt him, upon that whereupon he was interrogate and confeſſed: and *Panormitan* is expreſs, *ubi ſupra*, That *non valet confeſſio, facta coram Judice, tanquam in judicio, niſi Judex ad hoc ſedeat, per Bartol. in l. b. ſi confeſſus, F. de cuſtod. reor.* That is, a confeſſion is not valid, though made before a Judge, as in judgment, except the Judge be ſitting on that buſineſs. Whence it is clear, that the acknowledgment libelled is no ways relevant to infer againſt the Defender what is libelled to have been thereby acknowledged, except it were libelled, that he had been in judgment convened thereupon; or that there was a proceſs depending againſt the ſaid defender, wherein he had confeſſed what was libelled in judgment, and the Parliament had been ſitting on that proceſs. But ſo it is, that neither is it, nor can be libelled, and therefore his naked acknowledgment not relevant; and in effect, if in any diſcourſe before the Parliament, any ſuch word had eſcaped the defender, (which he in no wiſe acknowledges) yet that ſuch a paſſing and indeliberate word ſhould infer or prove a crime, or ſo high a crime againſt him, he is hopeful the honourable Court of Parliament will be very far from ever finding: For the very reaſon, why confeſſion has ſo much weight, is becauſe it is preſumed that no man will confeſs againſt himſelf in Judgment, that whereupon he is convened and proceſſed, without great deliberation: which holds not, if the acknowledgment be given out of any proceſs, there being no dependant action or proceſs upon the matter thereof. And therefore the defender is confident that he need not trouble the honourable Court with more legal diſpute againſt the relevancy of the alledged acknowledgment.

7. The words or acknowledgment libelled as ſpoken in Parliament, 1649, can never be obtruded to the defender; nor that he was conſcious to the Counſel of that horrid murder of his late Majeſty: becauſe it is notorious, and he offers to prove, if need be, that the whole members of the ſaid Parliament, 1649, and he himſelf, amongſt others, in plain Parliament, were purged by their ſolemn oaths of all knowledge of, or acceſſion to that wicked deſign in relation to the King's Majeſty and Houſe of Parliament.

8. And yet he is ſo confident he never ſpake any ſuch thing in Parliament, that the day being condeſcended on, and dyet of ſitting of Parliament, as by all doctors is agreed it ought to be, then the defender offers to prove his *alibi*: He offers to prove, (if need be) he was *alibi* all that dyet, and ſo not in Parliament, where he is alledged to have ſpoken theſe words. And yet that the defender's innocency, as to the acceſſion or knowledge of that horrid murder, may yet further appear, it is known to many perſons, and to ſome of the Members of this preſent Parliament, that when *Cromwel* was in *Scotland, in anno* 1650, notwithſtanding it is known what malice he had to the defender at that time, in this particular he expreſſed himſelf concerning the Marquis of *Argyle, That he thought him a man that had neither courage nor honour to have been upon ſuch a buſineſs:* And the defender thanks God he had ſo much honour and honeſty, as in no wiſe to be acceſſary thereunto, and to abhor the ſame.

9. The defender ought to be aſſoilzied from the two laſt Articles, as from all the other, from the year 1641, to his Majeſty's coming home to *Scotland, in anno* 1650, becauſe of the ratification and oblivion contained in his Majeſty's treaty at *Breda*, and moſt full and ample Act of ratification and oblivion at St. *Johnſton* and *Sterling, anno* 1650 and 1651.

And in regard the deeds libelled are either ſuch as preceded the Treaty and Act of oblivion, *in anno* 1641, and were thereby pardoned and buried in oblivion; for ſuch as intervened after the year 1641, before his Majeſty's home-coming, in the year 1650, during which time he is in his libel charged with ſeveral deeds which are irrelevant, and whereof the defender is moſt innocent. And for ſuch public actings as the defender is charged with, and had acceſſion to, the defender is alſo ſecured and pardoned by his Majeſty's treaty, and gracious condeſcendance at *Breda*, which was alſo thereafter ratified in Parliament; or are deeds of neceſſary compliance, both for the public and ſelf-preſervation in that unhappy juncture. Which compliance, as it was ſore againſt his inclination, if it had been in his power to have helped it, ſo it is not more than whole Kingdoms did, and far leſs than many condeſcended to: It is in all humility expected, that the defender ſhould not be brought under the compaſs of law for the ſame, which were as to make him the ſingular ſufferer in ſo univerſal a guilt; ſo there can be no precedent therefore inſtanced, either out of Scripture, or Holy Writ, the Hiſtories of our own, or of other Nations, that a ſubject not having contributed to the ſaid uſurpation, but to his power reſiſted the ſame, when the ſaid unjuſt uſurpation prevailed, expelled the lawful Magiſtrate, detained the unjuſt uſurpation for many years, and tyrannized over the people when the lawful Magiſtrate could not rule for the time, or protect or help; that the ſaid ſubject for his compliance, and uſing endeavours for neceſſary, public, and ſelf-preſervation, ſhould be indicted of ſo high a crime, is in all humility conceived without precedent or parallel, and quite contrary to the current of example and practice, that may be from Scripture and other Hiſtories adduced, and not ſo ſuitable to that goodneſs and natural clemency, whereof his Majeſty hath given ſo abundant proof to others, even the Uſurpers and Invaders, and who aided and abetted them, without envy be it ſpoken; and which is not only moſt agreeable to his Majeſty's gracious inclination, but very ſuitable to that advice given by his royal Father to him; in whoſe words, in one ſection, there are as follows, *Your Prerogative is beſt ſhewed and exerciſed, in remitting, rather than in exacting the rigour of the Law, than which nothing is worſe.* In reſpect whereof, and of the defences above-mentioned, the defender ought to be aſſoilzied from this Libel, and the whole Articles therein contained.

See *State-Trials, Vol.* II. *page* 428, 429, 430, and 431. for Biſhop *Burnet*'s Account of the further Proceedings on this Trial *; and the Marquis's ſpeech on the Scaffold.

* The Author of *an Apologetical Relation of the particular Sufferings of the faithful Miniſtry and Profeſſors of the Church of* Scotland, *ſince* Auguſt, 1660, in *page* 78, 79, 80, 81, and 82, gives the following Account of the Proceedings againſt this Nobleman.

This his compliance with them, at that time, by ſitting in their Judicatories, and their concurring with his advice and counſel, for the good of the land that was now under their feet, is the only particular ground upon which his ſentence is founded; and the particular, ſpecial cauſe pretended, for which he was condemned to loſe his head as a Traitor, and to have his head put on the top of the Tolbooth as an eminent Traitor. A ſentence which, queſtionleſs, at firſt view, may make all men of underſtanding aſtoniſhed, and to wonder how ever it could have entered into the mind of the Parliament of *Scotland*, to ſentence unto death ſuch a Peer of the Land, ſuch an uſeful Member of the Kingdom, and an Ornament, upon ſuch a ground, and for ſuch a cauſe. But if theſe four particulars be conſidered, the matter will yet appear more wonderful.

1. The matter of compliance with the *Engliſh* at that time, was ſo far from being accounted treaſonable, that ſeveral of the Lawyers, (among whom was one Sir *John Fletcher*, who was now advanced to be his Majeſty's Advocate, and did accuſe this worthy Nobleman of Treaſon) did ſwear and ſubſcribe an oath, to be faithful unto the Government, as it was then eſtabliſhed, without King and Houſe of Lords. Now if there had been treaſon really in this deed, either by the civil law, or by the municipal laws of the land, would not the lawyers have perceived it, whoſe daily work and ſtudy the laws are?

2. If this had been the deed of this nobleman alone, the matter had been leſs to have been wondered at; but it being ſuch a deed whereof few of the Nobles of *Scotland* were altogether free, yea, whereof many of the Members of Parliament his Judges were guilty, the matter is beyond a parallel. It is hard to make *ſocios criminis* ſit as Judges, and condemn the accuſed; reaſon would require that the table ſhould be purged. Is it not ſtrange for a Parliament to condemn one for ſuch a fault, for which many of their own Members might with as much juſtice and equity be condemned? And is it not ſtrange, how they being, by their own confeſſion, Traitors in the higheſt degree, could ſit and judge others? It is true, it will be replied, That his Majeſty might pardon whom he pleaſed: But then it will evidently appear, that not this, but ſomething elſe was the cauſe of this worthy nobleman's death. Whatever may be ſaid in point of law, yet it will be a diſpute in point of conſcience, If Kings may pardon ſuch crimes as do deſerve death by the law of God, or if ſuch crimes which Kings may pardon, of their own accord, and according to their own good pleaſure, do before the Lord deſerve death?

3. If the Parliament had thought this particular worthy to bear ſo much ſtreſs, why would they have ſpent ſo much of their time in ſearching for other grounds to go upon? and why did they not make uſe of this at the firſt? But it is like this had never once been mentioned, if they had been able to faſten treaſon upon any other of his actions. And this makes it ſo much the more to be wondered at, that they would condemn ſuch a nobleman for ſuch a particular, which they would never once have named, if they could have done their intended work otherwiſe.

4. Is it not ſtrange, that of all the compliers of *Scotland*, there was not one, except this nobleman, impannelled upon this account, much leſs put to death; yea, is it not ſtrange that thoſe noblemen were never once queſtioned, who being deſired by General *Monk*, when he was entering *England* with his army to encounter *Lambert*, did abjure King *Charles* and his intereſt, and this nobleman muſt die? Yea, is it not yet more ſtrange that one *William Purves*, who by complying had occaſioned almoſt ruin to many noblemen, burghs and gentlemen, ſhould have been abſolved by Act of Parliament, (as might be cleared, if there were a table of the unprinted Acts ſet down after their Acts, as is done always in other Parliaments) and yet this nobleman muſt be ſentenced to death, for complying for the good of the Country?

But to ſpeak unto the buſineſs in point of law, let theſe four or five particular Quære's be conſidered, and then any ſhall be able to perceive the iniquity of this ſentence.

1. By what Act of Parliament is ſuch a deed as this condemned as treaſonable? By what municipal law can any Member of the Kingdom be challenged upon the account of treaſon, for treating with a conqueror for life and liberty; and for ſitting in his counſels for the good of the country, after that he, with the reſt of the body of the land, had fought in the defence of King and Country till no more could be done; after the whole land had been overcome in ſeveral battles, and wholly over-run: and had acted nothing for the advantage of the enemy, and diſadvantage of the King and Country, before the victory obtained; but in all points had carried as became a loyal ſubject, contributing all the help by arms and counſel which was required? What Act of Parliament declareth ſuch a deed as this treaſonable, and ſuch a ſubject to deſerve death as a Traitor?

2. Was

2. Was there ever ſuch a *Practique* in *Scotland* ſince ever there was a King in it? Several times was the Kingdom of *Scotland* over-run by the Kingdom of *England*, particularly in the days of *Baliol*, and at that time King *Edward* cauſed the Nobles of *Scotland* to ſwear allegiance unto him. But when *Bruce* came to be King, was there any of the Nobles queſtioned for treaſon upon that account? And ſeeing there can no inſtance be produced out of the Hiſtory of *Scotland*, ſince ever it was a Kingdom, that any ſubject, nobleman or other, was accuſed of high-treaſon, for ſuch a cauſe, ſurely this nobleman's caſe is unparallel'd.

3. Is not this ſtrange, conſidering what the principle of Royaliſts is? They ſay, *That conqueſt giveth a juſt title to a crown;* ſo ſayeth *D. Ferne*, *Arniſæus*, and *Maxwell*, in his *Sacro-Sancta Regum Majeſtas*, *cap.* 17. And by this principle *Cromwell* was the lawful ſupreme Governor of the Kingdom of *Scotland*, and had juſt title and right to the crown thereof, having now conquered the ſame. And if this principle of theirs be true (which is much queſtioned by their oppoſites), no compliance with him could, by any law in the world, be treaſon againſt any Prince whatſoever; for obedience unto, and concurrence with a lawful ſupreme Magiſtrate, can be treaſon againſt no man living: How then could this nobleman be challenged upon the account of treaſon for compliance? Let all the Royaliſts anſwer this, without contradicting themſelves, if they can.

4. Is there any Lawyer who can produce ſuch a definition of treaſon againſt a Prince, or a ſupreme Magiſtrate, out of the Civil Law, as will condemn the deed of this worthy nobleman, and make compliance with a Conqueror for the good and ſafety of the Country, after all means of Defence are broken and loſt, an Act of Treaſon? And ſince the Civil Law can condemn no ſuch deed as treaſonable, the ſentence given out againſt this nobleman muſt be without all warrant of law.

5. Are there not many Countries, Kingdoms and Cities that have been over-run by their enemies, and have had their own lawful Governors put from them, and ſo have been forced to live under the feet of ſtrangers? And hath it not been uſual for them to comply with ſuch as had the preſent power in their hand, for their own ſafety and the good of the place? And was it ever yet heard, that ſuch were accuſed and condemned of treaſon againſt their own lawful Governors, thruſt from them ſore againſt their wills, for any ſuch compliance? And is it not wonderful that this eminent nobleman ſhould become a preparative to all the world.

XXIX. The Trial of the Lord Morley, for Murder, *April* 30, 1666. 18 *Car.* II. before the Houſe of Lords.

MEMORANDUM *, That upon *Saturday* the 28th of *April*, 1666, *Anno* 18 *Car.* II. all the Judges of *England*, *viz.* myſelf, *J. K.* Lord Chief-Juſtice of the *King's-Bench*; Sir *Orlando Bridgman*, Lord Chief-Juſtice of the *Common-Pleas*; Sir *Matthew Hales*, Chief-Baron of the *Exchequer*, my brother *Atkins*, brother *Twiſden*, brother *Tyrell*, brother *Turner*, brother *Browne*, brother *Windham*, brother *Archer*, brother *Raynsford*, and brother *Morton*, met together at *Serjeants-Inn* in *Fleet-ſtreet*, to conſider of ſuch things as might in point of Law, fall out in the Trial of the Lord *Morley* †; who was on the *Monday* to be tried by his Peers for a murder: and we did all, *una voce*, reſolve ſeveral things following, *par.* 1. Firſt it was agreed, That upon the letter of the Lord High-Steward directed to us, we were to attend at the Trial in our ſcarlet Robes, and the Chief-Judges in their Collars of SS, which I did accordingly. But my Lord *Bridgman* was abſent, being ſuddenly taken with the Gout; the Chief-Baron had not his Collar of SS, having left it behind him in the Country; but we all were in ſcarlet, but no body then had a Collar of SS, but myſelf, for the reaſons aforeſaid.

2. It was reſolved, That in caſe the Peers who are Triers, after the evidence given, and the Priſoner withdrawn, and they gone to conſult of their verdict, ſhould deſire to ſpeak with any of the Judges to have their opinion upon any point of Law, that if the Lord Steward ſpoke to us to go, we ſhould go to them; but when the Lords aſked us any queſtion, we ſhould not deliver any opinion, but let them know we were not to deliver any private opinion, without conference with the reſt of the Judges, and that to be openly done in Court. And this notwithſtanding the precedent in the caſe of the Earl of *Caſtlehaven*, was thought prudent in regard of ourſelves, as well as for the avoiding ſuſpicion, which might grow by private opinions, all reſolutions of Judges being always done in publick.

3. Although we were not all agreed in the precedent of the Lord *Dacre*'s caſe, cited by Sir *Edw. Coke*, in the Pleas of the Crown, *p.* 29. & 30. that the Judges may deliver any opinion in open Court, in the abſence of the Priſoner; yet it was agreed, that if the Lord Steward ſhould in open Court, demand any of our opinions in any thing, though in the abſence of the Priſoner, we were to give anſwer to the queſtion, the Lord High-Steward ſhould demand of us; we being call'd to aſſiſt the Court, and the demand of any queſtion in ſuch caſe being referr'd to the diſcretion of the High-Steward.

4. It was reſolved by us all, That in caſe any of the Witneſſes which were examined before the Coroner were dead, or unable to travel, and oath made thereof, that then the examinations of ſuch Witneſſes, ſo dead or unable to travel, might be read; the Coroner firſt making oath that ſuch examinations are the ſame which he took upon oath, without any addition or alteration whatſoever.

5. That in caſe oath ſhould be made, that any Witneſs who had been examined by the Coroner, and was then abſent, was detained by the means or procurement of the Priſoner, and the opinion of the Judges aſked whether ſuch examination might be read; we ſhould anſwer, that if their Lordſhips were ſatisfied by the evidence they had heard, that the Witneſs was detained by means or procurement of the Priſoner, then the examination might be read; but whether he was detained by the means or procurement of the Priſoner, was matter of fact of which we were not Judges, but their Lordſhips.

6. Agreed, That if a Witneſs who was examined by the Coroner be abſent, and oath is made that they have uſed all their endeavours to find him, and cannot find him, that is not ſufficient to authorize the reading of ſuch examination.

7. Agreed, That no words, be they what they will, are in Law ſuch a provocation, as if a man kill another for words only, will diminiſh the offence of killing a man, from murder to be manſlaughter. As ſuppoſe one call another ſon of a whore, or give him the lye, and thereupon he to whom the words are given kill the other, this is murder; but if upon ill words, both the parties ſuddenly fight, and one kill the other, this is but manſlaughter, for it is a combat betwixt two upon a ſudden heat, which is the legal deſcription of manſlaughter ‡: and we were all of opinion that the Statute of 1 *Jac.* for ſtabbing a man, not having firſt ſtruck, nor having any weapon drawn, was only a declaration of the Common Law, and made to prevent the inconveniencies of Juries, who were apt to believe that to be a provocation to extenuate a murder, which in Law was not.

8. Agreed, that if upon words two men grow to anger, and afterwards they ſuppreſs that anger, and then fall into other diſcourſes, or have other diverſions for ſuch a ſpace of time as, in reaſonable intendment, their heat might be cooled, and ſome time after they draw one upon another, and fight ‖, and one is killed, this is murder; becauſe being attended with ſuch circumſtances as is reaſonably ſuppoſed to be a deliberate act, and a premeditated revenge upon the firſt quarrel; but the circumſtances of ſuch an act being matter of fact, the Jury are Judges of thoſe circumſtances.

Lord High-Steward's Commiſſion.

CAROLUS ſecundus Dei gratia Ang. Scot. Fran. & Hiber. Rex, fidei Defenſor. &c. Clariſſimo Conſanguineo & Conciliario noſtro Edwardo Comiti Clarendon Dom. Cancellar. Angliæ Salutem. Sciatis quod cum Thomas Dom. Morley & Mounteagle nuper de parochia S. Egidii in campis in Com. Midd. coram nobis apud Weſtm. de felonia & murdr. per ipſum Thom. Dom. Morley & Mounteagle commiſſ. & perpetrat. per Sacram. probor. & legal. Hom. Com. præd. indictat. exiſtit. Nos conſiderantes quod Juſtitia eſt Virtus excellens & Altiſſimo complacens, eaq; præ omnibus uti volumus, ac pro eo quod officium Seneſcalli Angliæ cujus preſentia pro Adminiſtratione Juſticiæ & executione ejuſdem in hac parte firm. requiritur (ut accepimus) jam vacat, de fidelitate, prudentia provida, Circumſpectione & Induſtria veſtris plurim. confidentes, ordinavimus & conſtituimus vos ex hac cauſa Seneſcallum Angliæ ad officium illud cum omnibus eodem officio in hac parte debit. & pertinen. (hac vice) gerend. occupand. & exercend. Dantes & Concedentes vob. tenore preſentium plenam & ſufficientem poteſtatem & authoritatem & mandat. ſpeciale indictament. præd. eundem Thomæ Dom Morley & Mounteagle concernen. cum omnibus illud tangen. a delect. & fidel. noſtro Joh. Kelyng Milite Capital. Juſticiario noſtro ad placita coram nob. tenend. & aſſign. in cujus Cuſtodia remanent, recipiend. & illud inſpiciend. & ad certos diem & locum quos ad hoc providetis ipſum Thomæ Dom. Morley & Mounteagle coram vobis evocand. & ipſum ſuperinde audiend. & examinand. & reſpond. compellend. ac fine debito terminand. Nec non tot & toties Dom. Proceres & Magnates hujus regni noſtri Angl. ejuſd. Thomæ Dom. Morley & Mounteagle pares per quos rei veritas in hac parte melius ſciri poterit ad diem & locum præd. ex cauſa præd. coram vobis comparare aſtringend. veritateq; inde comperta ad Judicium per vos inde Seneſcall. noſtrum Angl. in hac parte reddend. ſecundum Legem & Conſuetudinem regni noſtri Angliæ (hac vice) verſus præfat. Thomam Dom. Morley & Mounteagle procedend. ſententiend. adjudicand. & Executionem inde fieri præcipiend. Ceteraq; omnia & ſingula quæ ad officium Seneſcalli Angliæ in hac parte pertinent & requiruntur (hac vice) faciend. exercend. & exequend. Et ideo vob. mandamus quod circa præmiſſa diligenter intendatis ac ea fac. & exequamini in forma præd. Damus autem univerſis & ſingulis Ducibus, Marchionibus, Comitibus, Vicecomitibus Baronibus, & aliis Officiariis, Miniſtris & Ligeis noſtris quibuſcunq; tenore preſentium firmiter in Mandatis quod vobis in executione præmiſſorum intendentes ſint conſulentes, aſſiſtentes, obedientes & auxiliantes in omnibus prout decet. Mandavimus enim præfat. Capital. Juſticiar. noſtro pred. quod Indictament. præd. cum omnibus illud tangen. ex cauſa præd. vobis deliber. Mandavimus etiam Locumtenenti noſtro Turris noſtr. London. ſive ejus Deputat. ibidem quod ad certos diem & locum quos ei ſcire fac. præfat. Thomam Dom. Morley & Mounteagle coram vobis venire fac. In cujus rei Teſtimonium has literas noſtras fieri fecimus patentes, teſte meipſo apud Weſtm. duodecimo die Aprilis Anno Regni noſtri decimo octavo.

Per ipſum Regem propria manu ſignat.

BARKER.

Breve de Certiorari.

CAROLUS ſecundus Dei gratia dilect. & fidel. noſtro Joh. Kelyng Milit. Capital. Juſtic. noſtro ad placita coram nobis tenend. aſſign. Salutem. Vob. mandamus quod quoddam Indictament. de Felonia & Murdro unde Thomas Dom. Morley & Mounteagle nuper de parochia S. Egidii in Campis in com. noſtro Midd. in noſtra curia coram nobis apud Weſt. indictat. exiſtit, & penes vos in cur. noſtra jam remanen. cum omnibus ill. tangen. Clariſſimo

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* *Kelyng*'s *Reports*, *page* 53.

† *Vide Moore*'s *Reports*, 621. Reſolved by all the Judges, that on a Trial by Peers, the Priſoner cannot challenge any of the Peers that are returned on his Jury.

‡ *Vide Crompton's Juſtice* 23. *a. b.* Two play at tables, and fall out ſuddenly, and one with a Dagger kill the other. If there be a quarrel, and a reaſonable time before they fight, it is murder.

‖ Two fall out ſuddenly, and fight preſently, and one kill the other, it is but manſlaughter: ſo if after they have quarrelled, they preſently go into the field and fight, one kills the other, 'tis but manſlaughter; for all is one continued act of fury. But if two fall out ſuddenly, and before any blows, preſently appoint to go to the field and fight, and one kill the other, this is murder; becauſe it appeareth by chooſing a fit place to fight, their reaſon was above their paſſion, and ſo a deliberate act. *Vide Crompton's Juſtice*, *page* 25.

Conſanguineo & Conſiliar. noſtro Edwardo Comiti Clarendon, Cancellar. noſtro Angl. & hac vice Seneſcallo Angl. ſub ſigillo noſtro deliberetis indilate, una cum hac brevi ut ipſe Seneſcallus inſpectit Indictament. præd. & ceteris ill. tangen. ulterius inde (hac vice) fieri fac. quod de jure & ſecundum Legem & Conſuetudinem regni noſtri Angl. firmit. faciend. Teſte, &c.

BARKER.

Breve de venire fac.

CArolus ſecundus, &c. dilecto & fidel. noſtro Joh. Robinſon Militi & Baronetto Locumtenenti Turris noſtr. London. vel deputat. ſuo ibidem Salutem. Vobis mandamus quod Thomam Dom. Morley & Mounteagle nuper de parochia S. Egidii in Campis in com. noſtro Midd. de Felonia & Murdro indictat. & veſtra in Cuſtodia infra Turrem noſtram London. præd. detent. coram Chariſſimo Conſanguineo & Conſiliar. noſtro Edwardo Comiti Clarendon Dom. Cancellar. noſtro Angl. & hac vice Seneſcallo Angliæ ad certum diem & locum quos idem Seneſcallus vobis ſcire fac. ſuper præmiſſis reſponſur. ſalvo & ſecure venire fac. Et hoc nullatenus omittatis. Teſte, &c.

BARKER.

EDwardus Comes Clarendon Dom. Cancellar. Angl. & hac vice Seneſcallus Angl. Joh. Kelyng Militi Capitali Juſtic. Dom. Regis ad placita coram ipſo Rege tenend. aſſign. Salutem. Virtute Literarum Dom. Regis Patentium mihi direct. vobis mando firmiter injungend. quod quoddam Indictamentum de Felonia & Murdro unde Thomas Dom. Morley & Mounteagle nuper de parochia S. Egidii in Campis in com. Midd. in cur. Dom. Regis coram ipſo Rege apud Weſtm. indictat. exiſtit, & penes vos in cur. præd. jam remanen. cum omnibus ill. tangen. adeo plane & integre prout coram dicto Dom. Rege nuper capt. fuit quocunq; nomine præd. Thomas Dom. Morley & Mounteagle nuncupetur, in eodem coram me præfat. Seneſcallo ſub ſigillo veſtro apud Weſtm. in magna Aula placitor. ibidem die Lunæ (viz.) triceſimo die inſtantis menſis Aprilis ad horam octavam ante meridiem, ejuſq; diei liberetis una cum hoc præcepto ut ulterius inde fieri faciam, quod de jure ad ſecundum Legem & Conſuetud. Regni Angl. fuerit faciend. Dat. ſub ſigillo meo apud Weſtm. 14 Die Aprilis Anno Regni Dom. Caroli ſecundi, Dei gratia Angl. Scot. Fran. & Hiber. Regis fidei Defenſoris, &c. decimo octavo.

Per Seneſcallum,

FANSHAW.

EDwardus Comes Clarendon Dom. Cancellar. Angl. hac vice Seneſcallus Angliæ Joh. Robinſon Militi & Baronetto Locumtenenti Dom. Regis Turris ſuæ London. vel Deputat. ſuo ibidem Salutem. Virtute Literar. Dom. Regis Patent. mihi direct. tibi mando firmiter injungendo quod Corpus Thomæ Dom. Morley & Mounteagle nuper de parochia S. Egidii in Campis in com. Midd. in Priſona Dom. Regis ſub Cuſtodia tua detent. ut dicitur, una cum cauſa detentionis ſuæ quocunque nomine idem Thomas Dom. Morley & Mounteagle in eodem cenſeatur, habes coram me præfato Seneſcallo, apud Weſtm. in magna Aula placitor. ibidem die Lunæ (viz.) 30. die inſtantis menſis Aprilis, ad horam octavam ante meridiem ejuſdem diei, ad ſubjiciend. & recipiend. ea omnia quæ Cur. Dom. Regis de eo tunc ibidem conſideraverit: in hac parte, & habeas ibi tunc hoc præceptum. Dat. ſub ſigillo meo apud Weſtm. 14 die Aprilis, Anno Regni Dom. Car. ſecundi Dei gratia Angl. Scot. Fran. & Hiber. Regis Fidei Defenſoris, &c. 18.

Per Seneſcallum,

FANSHAW.

EDwardus Comes Clarendon Cancellar. Angl. hac vice Seneſcallus Angliæ Rogero Harſnett Arm' ſervien. Dom. Regis ad Arma Salutem. Virtute Literar. Dom. Regis Patent. mihi direct. tibi mando firmiter injungendo quod ſummoneas tot & toties Dom. Proceres & Magnates hujus Regni Angl. Thomæ Dom. Morley & Mounteagle nuper de parochia S. Egidii in Campis in Com. Midd. Pares per quos rei veritas de Felonia & Murdro unde idem Thomas Dom. Morley & Mounteagle indictat. exiſtit melius ſciri potuit quod ipſi perſonalit. compereant coram me præfat. Seneſcallo apud Weſtm. in Com. Midd. in Magna Aula placitor. ibidem die Lunæ (viz.) 30 die inſtantis Menſis Aprilis ad horam octavam ante meridiem ejuſdem diei ad faciend. tunc & ibidem ea quæ in hac parte fuerint faciend. & habeas ibi tunc nomina prædictor. Dom. procerum, & Magnat. & hoc præcept. Dat. ſub ſigillo meo apud Weſtm. &c.

Per Seneſtallum,

FANSHAW.

THE Lord-Chancellor being then Lord-Steward, came from *Worceſter-houſe* in his coach, having (beſides his uſual attendance) Sir *John Eaton*, his Majeſty's chief Gentleman-Uſher, carrying a white ſtaff nine foot long; and Sir *Edward Walker*, Garter King at Arms in his Coat of Office, attending on him. And he was met at *Weſtminſter-hall-gate* with five Maces more, who all went before him into the Court, where he took his place in a Chair of State; the five Maces placed themſelves on each ſide of the State; and Serjeant *Lee* went into the body of the Court, and there laid down his Mace; and he ſupplied the place of Marſhal or Crier of the Court. Sir *John Eaton* with the white Staff, and Sir *Edward Walker* ſtood at the lower-end of the State; Sir *John Eaton* on the right-hand of the Lord-Steward, and Sir *Edward Walker* on the left.

The Clerk of the Crown in Chancery, ſtanding at the lower-end of the Court, with three obeiſances coming up to the Lord-Steward, on his knee preſented the Commiſſion unto him.

Sir *Thomas Fanſhaw*, Clerk of the Crown in the *King's-Bench*, with the like reverence, came and received the Commiſſion from the Lord-Steward, and returned to his place in the midſt of the Court.

Serjeant *Lee*, after an O-yes, made Proclamation, *viz.* the Lord High-Steward of *England* doth command all perſons to keep ſilence, while his Majeſty's Commiſſion is reading.

Sir *Thomas Fanſhaw* read the Commiſſion.

Then Sir *John Eaton* and Sir *Edward Walker* carrying the white Staff between them, on the knee preſented it to my Lord Steward, and he delivered it back to Sir *John Eaton*, who placed himſelf with it on the lower-end of the State, on the right-hand of the Lord-Steward, and Sir *Edward Walker* on the left, on a ſeat even with the body of the Court, having a ſpace between them for the Lord-Steward to ſee the Priſoner; on which ſeat alſo ſat the Clerk of the Crown in *Chancery*, and Mr. *Kips*, the Seal-bearer, the Seal being laid at the lower-end of the State before the Lord-Steward.

O-yes again, and Proclamation made; The Lord High-Steward of *England* doth command all perſons whatſoever, except Peers, Privy-Councillors, and Judges, to be uncovered.

Serjeant *Barcroft* called to make return of the precept to him directed, who came into the body of the Court, and delivered it to Sir *Thomas Fanſhaw*, and he read the return on the backſide of the precept.

O-yes again, and the Lords required to anſwer to their names.

The Lords Triers called by the liſt, Mr. *Waterhouſe*, aſſiſtant to Sir *Thomas Fanſhaw*, reading their names, and Serjeant *Lee* calling,

John Lord *Roberts*, Keeper of the Privy-Seal.
Edward Earl of *Manchester*, Lord-Chamberlain.
Henry Lord *Arlington*, Secretary of State.

Aubery Earl of *Oxford*.
William Earl of *Bedford*.
James Earl of *Suffolk*.
Richard Earl of *Dorſet*.
John Earl of *Exeter*.
John Earl of *Bridgwater*.
James Earl of *Northampton*.
Henry Earl of *Peterborough*.
—— Earl of *Thanet*.
Nicholas Earl of *Scarſdale*.
John Earl of *Bath*.
William Earl of *Craven*.
Thomas Viſcount *Falconbridge*.
John Viſcount *Mordaunt*.
Philip Lord *Wharton*.
William Lord *Paget*.
William Lord *Maynard*.
Francis Lord *Newport*.
John Lord *Lucas*.
Charles Lord *Gerrard*.
John Lord *Berkley*.
Horatio Lord *Townſhend*.
Anthony Lord *Aſhley*.
John Lord *Freſhevile*.

O-yes again, and the Lieutenant of the *Tower* called, to make return of his Precept, and bring in his Priſoner.

The Priſoner brought to the Bar, and the precept delivered to Serjeant *Lee*, and by him to Sir *Thomas Fanſhaw*, who read the return on the backſide of the precept.

Then the Lord-Steward made a ſpeech to the Priſoner, telling him the cauſe of his being brought thither.

The Indictment read by Sir *Thomas Fanſhaw*, and the Plea made in the *King's-Bench*, where he had pleaded *Not guilty*, and put himſelf upon his Peers.

Then the Lord-Steward made a ſpeech (by way of charge) to the Peers.

O-yes, and Proclamation made; If any will give evidence for our ſovereign Lord the King, againſt *Thomas* Lord *Morley* and *Mounteagle*, they ſhall be heard; the Priſoner ſtands at the Bar upon his deliverance.

Lord-Steward ſaid, he heard the Lord *Morley* was lame, and therefore bid the Lieutenant of the *Tower* ſet a chair for him to eaſe himſelf.

Lord *Morley* deſired to be heard; but the Lord-Steward told him, that it was uſual to hear the evidence firſt, and after that he might and ſhould be heard any thing he had to offer; whereupon he ſat down.

Serjeant *Glynn*, the King's eldeſt Serjeant, opened the Indictment, then Mr. Attorney-General *Palmer*.

Several Witneſſes examined; the Priſoner aſking them what queſtions he pleaſed.

Two Witneſſes ſwore, that the Lord *Morley* run him into the head.

One Witneſs ſwore a former grudge *.

Another, that when he had run Mr. *Haſtings* through the head, he ſwore, *God-damme*, I promiſed thee this, and now I have given it thee. And that the quarrel begun at the *Fleece-Tavern* about an Half Crown that the Lord *Morley* ſaid he had laid down.

Mr. Sollicitor-General *Finch* deſired the depoſitions of ſome Witneſſes taken before the Coroner (who were ſince dead) might be read; which the Priſoner oppoſed, deſiring that no evidence might be given againſt him, but face to face.

The Lord-Steward demanded the opinion of the Judges, who by the Lord Chief-Juſtice *Kelyng* delivered their opinion; that upon proof made that the Witneſſes were dead, and oath by the Coroner, that the depoſitions were unaltered, they ought to be read; which was done.

The depoſitions of three Witneſſes read.

Serjeant *Maynard* deſired, that the depoſitions of a material Witneſs taken at the Coroner's Inqueſt (who had now abſented himſelf, ſo that they could not find him) might be read.

The Priſoner oppoſed it, and the opinion of the Judges being required; the Lord Chief-Juſtice delivered the opinion, That if the Court upon any evidence were ſatisfied, the Witneſs was withdrawn by the procurement of the Priſoner, the depoſition ought to be read, otherwiſe not. Whereupon

Thomas Harding ſworn, depoſed, That *Thomas Snell*, his apprentice, was lately run away from him, and that his fellows ſaid, he told them, before he went away, that the Lord *Morley*'s Trial was to be ſhortly, but he would not be there.

The Court not thinking this evidence ſufficient, the depoſition was not read.

Lord *Morley* deſired ſome witneſſes might be heard on his ſide, on his behalf, who were admitted, but not upon oath.

Lord *Morley* heard to ſay what he pleaſed for himſelf.

Mr. Sollicitor ſummed up the evidence as follows, *viz.*

* Mr. *Haſtings* and his brother had ſome time before met Lord *Morley* in the ſtreet, and groſsly affronted him; whereupon Lord *Morley* complained to the Houſe of Peers, who ordered them firſt into cuſtody, and then committed them to the *Tower*, from whence they petitioned the Lords, who diſcharged them upon their entering into Recognizances for their good behaviour. *Vide* Lords Journals of that time.

April 30, 1666.

The Speech of Sir *Heneage Finch*, Knt. the King's Sollicitor-General, at the Trial of the Lord *Morley* (the Earl of *Clarendon*, Lord Chancellor, being then Lord High-Steward of *England*, *pro tempore)* who ſumm'd up the Evidence, *&c.* *

THAT a man is ſlain is not denied by my Lord *Morley:* the manner how it came to paſs we have proved for the King. His Lordſhip hath endeavoured by his witneſſes to difference the caſe in ſome circumſtances: the queſtion will now be reduced to this; Whether this fact be murder, as it is charged upon him in the Indictment, or any leſs offence than that; in which I ſee, my Lord *Morley* placeth his hopes, that it will fall? My Lord, becauſe that this is a queſtion of Law, ariſing from fact; I will, with your Grace's permiſſion, and the favour of my Lords the Peers, preſume in the firſt place, to lay down ſome principles or concluſions in Law, wherein, I think, I am not deceived; and would be loth to prevaricate in a caſe of blood. And when I have laid down the concluſions, I ſhall proceed to apply them to the fact now in proof before you, and compare it to ſuch a proof as his Lordſhip hath produced. There are in Law but three caſes imaginable, which are any way capable of excuſe for the death of a man. Theſe are, *Firſt*, when a man kills another in his own defence. *Second*, when he doth it upon miſadventure and meer accident. *Third*, when he doth it in heat of paſſion, or any ſudden adventure (for that which is done in proſecution of Juſtice hath no affinity with the preſent queſtion). The two firſt of theſe do excuſe *à Toto*, 'tis not ſo much as felony; the laſt *à Tanto*, 'tis felony, but within Clergy. But yet, my Lord, the Common Law, the ancient Common Law of *England*, would not endure to hear of any excuſe at all for the death of a man. By the antient Law, before the Statute of *Marlbridge*, he that killed a man in his own defence; and after that till the Statute of *Glouceſter*, he that had killed a man by the moſt innocent misfortune in the world (the glance of an arrow, or any thing elſe than that) muſt have died for it, as a murderer. For murder is a ſin ſo contrary to the genius and temper of the *Engliſh* nation, that whatſoever looks but like it, hath ever been proſecuted by our Law, by a moſt ſtrict and ſpeedy vengeance. When the Law began to let in ſome kind of excuſes in theſe caſes, yet they were circled in with as wary cautions and obſervations; and bound and limited with as nice diſtinctions and differences as could be. And therefore, he that kills a man *ſe defendendo*, muſt not plead that he did it ſo; but he muſt plead *not guilty:* for it is a maxim in the Law, that the death of a man can never be juſtified; nay, the Jury cannot find him to be *ſe defendendo*, but they muſt find the ſpecial fact, and leave it to the Court to judge, whether it were *ſe defendendo*, as in circumſtances. For if the fact be ſo, that the man did not fly to the wall, or his laſt refuge, before he did give the mortal wound, he is a felon ſtill. He that kills a man by accident or miſadventure, muſt take care that the action he was about were abſolutely lawful and neceſſary too: for if there were an unneceſſary meddling with edge-tools, or fire-arms; if there were unneceſſary recreation in the act which produced this event, he is reſponſible to the Law for the utmoſt conſequence. And at this day, if a man that kills another in the city eſcapes out of the city, the city is to be amerced for letting a notorious malefactor eſcape. Hitherto your Lordſhips ſee, that in theſe two caſes, which are moſt pardonable of any, yet the Law is very ſevere; and therefore in caſes of an higher nature, it is ſtill more rigorous. Now, becauſe the hope of this caſe is, that it will end in manſlaughter, and becauſe that manſlaughter is only diſtinguiſhed from murder, in that it is not deſigned, but otherwiſe, it is in itſelf an act as wilful and as violent, (though not ſo malicious) and ſo borders upon murder: I ſhall proceed to ſhew your Lordſhips how the Law watches upon manſlaughter, with all the jealouſies and circumſpections imaginable; and therefore it is an undoubted principle of Law (and all the men in *England* hold their lives upon very miſerable terms, if it were otherwiſe), if any man ſhall meet a man in the ſtreet, and kill him without any viſible provocation, the Law ſuppoſeth there was malice precedent, and judgeth this act murder. *Secondly*, As it is murder, to kill without any provocation, ſo if the provocation be ſlight and trivial, it is all one in Law, as if there were none. For the Law of *England* allows no man to value himſelf at ſuch a rate, as if the blood of his neighbour were a fit ſacrifice to expiate every mean and ſlight affront. This was the caſe that fell out in the time of the moſt reverend Chief-Juſtice, the Lord *Popham:* A Gentleman of *Kent* came by another, and made wry mouths and laughed, and made ſuch ſigns as uſually put men into paſſion; the other preſently fell upon him and killed him: and my Lord Chief-Juſtice *Popham* and his brethren delivered their opinions, that it was murder: for this was not a competent provocation; and the man was hanged upon an appeal of murder. *Thirdly*, As no provocation makes it murder, and a ſlight one, is all one with none; ſo if the provocation be great and high, and ſuch as might be capable of excuſe in itſelf, yet if a man be not ſlain in the very heat and bent of paſſion; if there be any interval of time, as a night's reſt, and ſleeping upon it, the Law knows no ſuch period: but if there be ſuch an interval, that the Law ſuppoſes the blood might, and ought to have been cooled again; that a man might have come to himſelf, and then he falls on the perſon that gave him the provocation, that which was paſſion at the firſt, is malice at the laſt; and that which would have been manſlaughter then, is murder now. This I ſubmit to your Lordſhips judgments, who hear me now; and if I did not think the Law was clear in theſe points, I would not preſume to affirm it in ſo great and ſolemn an Aſſembly. To come to the matter of fact; I deſire your Lordſhips to conſider what Mr. *Haſtings* hath done, and what he hath ſuffered. *Firſt*, There appears to be ſo little of provocation, that the poor Gentleman that is murdered, offered any man five pound to tell him what the quarrel was. His Lordſhip makes his defence, that he hopes his Peers will conſider, that there is no other provocation than the half-crown. I am ſorry for it. I am ſure the Laws of *England* allow no man to take away another's life for half-a-crown, without being guilty of murder. The firſt thing that is ſaid Mr. *Haſtings* ſhould do is this: he is in a manner ſuſpected, and hears my Lord quarrel about an half crown, and ſaith, I wonder a perſon of honour ſhould make ſuch a-do about an half crown, and then throws down four half crowns upon the table to make ſatisfaction: preſently ſwords are drawn, and Mr. *Brommidge* draws his firſt, and hectors it for my Lord; then they are put up again: there is one interval and recollection of time. My Lord proceeds to quarrel with Mr. *Haſtings*, and calls his ſins to remembrance; and knowing that Mr. *Haſtings* had been guilty of killing a man not long before, preſently tells him, We come not here to ſtab folks; which was a bitter reply. Mr. *Haſtings* is grieved to ſee himſelf ſo openly reproached by my Lord, and could not chuſe but tell him, he was a Gentleman (and ſurely *Haſtings* is a confeſſed Gentleman, and a noble name in this Kingdom, and always muſt be); but at laſt goes a little farther, and ſaith, As good a Gentleman as my Lord. This is not comparable to laughing at my Lord, nor to making wry mouths; and yet if *Haſtings* had done this, and his Lordſhip had killed him for it, he had ſtood guilty of murder. Obſerve, I beſeech your Lordſhips, how Mr. *Haſtings* is treated; he is four times drawn upon, twice by *Brommidge* in the houſe; in the ſtreet, *Brommidge* draws upon him again; and juſt under the arch in *Lincolns-Inn-Fields* he draws the fourth time. Now ſaith Mr. *Haſtings*, I have no quarrel to you, Captain; if there be any, it muſt be diſputed between me and my Lord. This is not ſuch a ſpeech to make a quarrel, but to prevent one: What could a Gentleman do leſs, that found himſelf four times aſſaulted? For if he would decline the quarrel, the beſt way was to put *Brommidge* out of the caſe, as a likely expedient. When that would not do, to the field they come. And here, my Lord *Morley* hath produced ſome witneſſes, who being not to be ſworn, have ſaid freely, that Mr. *Haſtings* preſſed my Lord to fight, and ſaw him draw, and attack with the three on the other ſide. *Street* ſaid, he reſolved to fight my Lord; and another, that my Lord ſaid he would not fight. This they bring, to make my Lord *Morley* purely paſſive, and only drawn to fight. Under favour, we muſt ſubmit to the judgment of your Grace and your Lordſhips his Peers. The thing that is ſaid here is not probable. 'Tis plain, Mr. *Haſtings* had ſaid, he would give any man five pounds that would tell him what the quarrel was: Would he that knew no quarrel have the blood of my Lord *Morley?* But then, compare this with the witneſſes, which we have brought and ſworn; all three expreſsly ſay, they ſaw the fight and the beginning of it. But with ſubmiſſion to your Grace, a fight it cannot be called; in truth, it is a direct aſſaſſination: for three witneſſes ſwore, there were two upon one all the while; *viz.* upon Mr. *Haſtings*. And Mr. *Haſtings* being thus preſſed ſteps back to get a little ground; then my Lord takes him at the advantage, and ſhortens his ſword, and runs him in the head. Now they that ſay, my Lord *Morley* went away firſt towards his own houſe, have forgot that he came back again and killed the man. I preſs this caſe upon the bare want of provocation, becauſe the conſequence is great in Law: I preſs it, as if the proof were to be ſet here, and no more were to be ſaid; and do preſume to affirm, it is malice in the Law, and murder in his Lordſhip. But yet we ſhall not reſt here; but if we go a little farther, your Lordſhips will ſee, here is malice apparent, malice confeſſed and moſt evident. As ſoon as Mr. *Haſtings* was ſlain, my Lord *Morley*, with a moſt deſperate imprecation, throws the ſword upon him, *God damn me*, there you lie. Another ſwears his Lordſhip ſaid, I have promiſed, and now you have it. Can your Lordſhips doubt now, whether my Lord killed Mr. *Haſtings* with a deliberate hatred? You ſee, he confeſſeth it was in diſcharge of a promiſe; and my Lord is to be believed againſt himſelf. And the brother of the Gentleman hath made a ſad comment upon theſe words, and tells us, how the promiſe aroſe, and how it came to be performed. Mr. *Haſtings* tells his brother, that he once had the unhappineſs to have a quarrel with my Lord many years ago, almoſt ten, and that fighting with my Lord, he had the misfortune to give him an hurt; and though the witneſs ſpeaks only out of his brother's mouth, yet he teſtifies, that his brother told it him in the anguiſh of his ſpirit, as a ſecret that troubled him, and which he did not tell out of deſign, but by way of lamentation. And yet if Mr. *Haſtings* had been found bleeding in the field, and been aſked who killed him, and had ſaid, my Lord *Morley* had ſlain him; it had been good evidence, though no other witneſſes were, and though it came out of his own mouth. The brother ſwears farther, that my Lord *Morley* coming by, and his brother paying his Lordſhip due reſpect, my Lord received it with ſo much contempt, that his brother ſaid preſently, he knew not what it meant, I doubt he bears me a grudge. This was a year and an half before his death; but within a quarter of a year before, the witneſſes ſay, his brother, his father, and my Lord, were at an ale-houſe; no ſooner was his brother gone down ſtairs, but when he came up again he finds my Lord with a ſword drawn, and ſwears that his brother then told him, that my Lord was always urging him to drink; and then would ſeek all occaſions he could to give and take offence. So then, it ſeems, it was my Lord's cuſtom to urge Mr. *Haſtings*, and to give him frequent provocations, as if he had ſought an occaſion for manſlaughter, that he might kill him within the protection of the Law. This is the moſt deſperate complication of malice that can be. To this purpoſe, I ſhall preſume to put a caſe (which our books ſpeak), and which will highly concern the point in this caſe. If my Lord *Morley* had fled to the wall, and had ſlain Mr. *Haſtings* when he had fled to the wall, that would not have ſerved his turn, as this caſe is; for our books tell us of one, who bore malice to another, and then provoked him to draw his ſword; ſeeing the ſword drawn, he fled away, to tempt the adverſary to purſue, and ſtill retired till he came to the wall; now ſeeing himſelf at his laſt refuge, he thought to kill him legally and ſafely in his own defence. But ſince the pretence of Law was but an art to diſguiſe the malice of his heart, which he now executed freely, the book ſays it was murder: ſo 'twill be here. Your Lordſhips will give me leave on this occaſion to tell you, that it is either the misfortune or the juſt reproach of ſome governments in foreign ſtates, that there are places abroad, where murder is a cheaper ſin than theft; and the ſame people, that will riſe up in arms as one man to purſue a pilferer, will yet make a lane through the midſt of them,

* Taken from the *Norfolk* Collection in the Royal Society Library.

them, for the Man-ſlayer to eſcape. Hence it comes to paſs, that Men are ſlain every day for any thing, for nothing; inſomuch that a learned Civilian writing of thoſe Republicks, tells us plainly, *Frequentiores ſunt hominum cædes, quam nativitates.* But however it be in theſe Commonwealths, yet we, who have the happineſs to live under a monarchy, (the beſt of Governments) and under a King, (the beſt of monarchs) have all our lives ſecur'd to us, by his Majeſty's own royal and immediate protection; and therefore no corruption of manners will ever be able to bring this ſin into faſhion and credit amongſt us, nothing will ever naturalize it here. I do acknowledge to your Lordſhips (for why ſhould I conceal any thing that makes for my Lord *Morley*'s advantage?) I do confeſs that an affront, or indignity offered to a Peer, is much more heinous, than that which is offered to a private Gentleman. But I muſt needs ſay withal, that the Law hath provided another manner of reparation for a Peer, than that which it gives a Gentleman. The ſame words that being ſpoken of a Gentleman, will bear no kind of action; when they are ſpoken to a Peer, become *Scandalum Magnatum.* The Peer recovers great damage; the King inflicts fine or impriſonment: ſo that upon the matter the offender is bound in chains, and brought and laid at my Lord's feet. Now for him, whoſe honour is thus guarded by the Law, to avenge himſelf by his ſword, is a moſt unpardonable excuſe: I do not pretend, I do not offer to ſay, that the killing of a man, is more capital in caſe of a Peer, than would be in the caſe of a private Gentleman: but I do preſume to affirm, that no provocation in the world, can make that to be but manſlaughter in the caſe of a Peer, that would be murder in the caſe of a Gentleman; that is this caſe. Will your Lordſhips therefore give me leave to turn the tables, and ſuppoſe Mr. *Haſtings* had killed my Lord *Morley*, upon ſo ſlight and groundleſs a pretence; as ſuppoſe, my Lord *Morley*, in his life-time, had with grief of heart complained to his brother, that Mr. *Haſtings* did bear him a ſecret hatred, becauſe in a former combat his Lordſhip had worſted Mr. *Haſtings*, and given him an hurt: Suppoſe, my Lord *Morley* had long before this complained farther, that he ſaw the effect of Mr. *Haſtings*'s malice upon every occaſion, and when his Lordſhip did but offer to ſalute Mr. *Haſtings*, and give him a reſpect, Mr. *Haſtings* receiv'd it ſullenly and unmannerly, and return'd it with contempt; ſuppoſe that his Lordſhip had complain'd farther, that Mr. *Haſtings* did nothing but ſeek occaſions and pretences of a quarrel; and ſuppoſe that within a quarter of a year of my Lord *Morley*'s death, Mr. *Haſtings* had been found in an alehouſe, with my Lord *Morley*, and had there drawn his ſword upon my Lord; and then my Lord had complain'd to his Brother, that he did believe Mr. *Haſtings* would do him ſome miſchief ſome time or other: And ſuppoſe, after all this, that my Lord *Morley* had been ſlain juſt in ſuch a manner, as Mr. *Haſtings* hath been, would your Lordſhip, would the Kingdom have thought this a ſufficient account for noble blood, if Mr. *Haſtings* had been only found guilty of Manſlaughter, and eſcap'd by his Clergy, and a burning in the hand? My Lords, the quality of an offender may ſerve to inhance the crime; but ſince the world ſtood, it never was counted any abatement. The ſame duty to the King, the ſame obedience to his Laws, the ſame reverence to human nature, the ſame care to avoid effuſion of Chriſtian blood is expected from a Lord, which is required from the meaneſt Commoner of *England.* 'Tis the caſe of all the people of *England*, who are highly concern'd in the preſent example; if they put their truſt in the Law, as the great avenger of blood in the world, and once find themſelves deceived, who knows the conſequence that may follow? What feuds in private families? What maſſacres it may produce at laſt? And therefore, no doubt, but all the Kingdom will obſerve, and mark the iſſue of this day; and will be curious to know, what will become of a Lord, in whoſe eyes the blood of a Gentleman hath been ſo vile and inconſiderable; if it were poſſible, I ſay, if it were poſſible, that ſo great a Tribunal as this ſhould either miſtake the fact, or miſunderſtand the Law, what Judicature is there left on this ſide Heaven for mankind to rely on? I pretend not to aggravate the matter: this is the place where no deteſtation of the crime, no paſſion of the Proſecutor, and no compaſſion of your Lordſhips towards a Peer of the Realm, is to have any ingredient in the verdict. And therefore, having obſerv'd to your Lordſhips, that there is malice imply'd by the Law, and in a manner confeſs'd by the party, beſides the direct and formal malice which hath been prov'd; I ſhall now ſubmit all to the Judgment, which the Law hath wiſely placed in your Lordſhips moſt noble breaſts; with this only conſideration, 'tis the voice of blood that crieth, I know your Lordſhips will give it ſuch an audience as it ought to have; ſuch an audience as may quiet it, and keep it from crying any more; ſuch an audience as may cleanſe the land from blood, and be a means to continue to your Lordſhips that due veneration, which all men have to your Lordſhips moſt righteous and impartial proceedings.

After him Serjeant *Maynard* ſpoke.

Lord-Steward deſired the Lords to withdraw into the Court of Wards, and conſider of their evidence; but he did not ſum up the evidence.

Lieutenant of the *Tower* bid to withdraw his Priſoner.

The Lords and the Priſoner being withdrawn; Serjeant *Lee* brought wine and biſcuits to the Lord-Steward, and then round the Court.

The Lords ſtayed about three hours, and then returned into the Court, and took their places.

Sir *Thomas Fanſhaw* firſt called them according to their precedence; and all being preſent, he then called them again, beginning with the loweſt, who anſwering to his name,

The Lord-Steward aſked him, ſaying, my Lord *Freſhevile*, is my Lord *Morley Guilty or not Guilty?* Who laying his hand on his breaſt, anſwered, *Not Guilty of Murder, but Guilty of Manſlaughter.*

And in the ſame manner aſking them all ſeverally, they all gave the ſame anſwer, except two, the Lord *Wharton*, and Lord *Aſhley*, who anſwered, *Guilty of Murder.*

The Lords having delivered their verdict, the Lieutenant of the *Tower* was commanded to bring in his Priſoner.

The Lord-Steward told him, his Peers had found him *Guilty of Manſlaughter*, and asked him, what he could ſay for himſelf?

He anſwered, he deſired the benefit of the Clergy, and the benefit of the Statute.

Lord-Steward ſaid, he muſt have the benefit of the Clergy: and that he conceived the Statute was clear in his behalf; and asking the opinion of the Judges, they all bowed in token of conſent.

The Lord-Steward making a ſhort ſpeech of admoniſhment to the Priſoner, told him he was diſcharged, paying his Fees; and then diſmiſs'd the Court, and broke his Staff.

XXX. The Proceedings in the Court of *King's-Bench*, *Exchequer*, and *Houſe of Peers*, in the Caſe of Sir SAMUEL BARNARDISTON, Bart. againſt Sir WILLIAM SOAME, Sheriff of *Suffolk*, concerning the Election of Members to Parliament, 1674, 26 *Car.* II.

A Copy of the Record *inter Soame* and *Barnardiſton.*

Placita coram Domino Rege apud Weſtmonaſterium de Termino Sancte Trinitatis Anno Regni Domini Caroli Secundi nunc Regis Anglie, &c. *viceſimo ſexto, Rotulo* 1577.

Midd. ſſ. MEmorandum quod alias ſcilicet Termino Paſche ultimo preterito coram Domino Rege apud Weſtmonaſt. venit Samuel Barnardiſton Baronet. per Tho. Ditchfield Attornatum ſuum & protulit hic in curia dicti Domini Regis tunc ibidem quandam Billam ſuam verſus Willielmum Soame Militem nuper Vicecomitem Comitatus Suffolcie in cuſtodia Marreſcalli, &c. de placito tranſgreſſione ſuper caſum & ſunt pleg. de proſ. ſcilicet Johannes Doe & Ricardus Roe. Que quidem Billa ſequitur in hæc verba ſſ. Middl. Samuel Barnardiſton Baronettus queritur de Willielmo Soame Milite nuper Vicecomite Comitatus Suffolcie in cuſtodia Mar. Marreſcal. Domini Regis coram ipſo Rege exiſtentem pro eo, videlicet, quod cum Dominus Rex nunc octavo die Februarii Anno Regni dicti Domini Regis nunc viceſimo quinto per breve ſuum gerend. dat. eiſdem die & anno emanans extra Cancellariam ſuam apud Weſtmonaſterium predict. in dicto Com. Middl. adtunc exiſtent. tunc Vicecomit. Com. Suffolcie predict. directum, recitando per idem breve, quod cum Henricus North Baronettus nuper elect. fuerat unus Mil. Com. predict. pro adtunc preſent. Parliamento dicti Domini Regis inchoat. apud Civitatem ſuam Weſtmonaſterii octavo die Maii Anno Regni dicti Domini Regis tertio decimo, & ab inde per diverſas Prorogationes uſq; triceſimum diem Octobris Anno Regni ejuſdem nunc Regis viceſimo quarto continuat. & ab eodem triceſimo die Octobris idem Parliamentum uſq; quartum diem tunc inſtantis Februarii ulterius prorogat. fuerat, ibidem tunc tenend. & pro ſequend. Quodque ipſe ſic elect. & debito modo retornat. juxta formam Statuti in hujuſmodi caſu edit. & proviſ. in domo inferiori communitate Regni dicti Domini Regis Anglie conſtitut. fuerat, prout per Record. dicti Parliamenti ſui in Cancellaria ſua reſidend. plenius conſtabat, ac idem Henricus North unus Militum pro Com. predict. exiſtend. diem ſuum clauſit extremum ut dictus Dominus Rex acceperat, cujus pretextu ſubditi dicti Domini Regis Com. Suffolcie pred. de uno Milite ad tractandum pro utilitate ejuſdem Com. deſtituti fuerunt, idem Dom. Rex nolens tamen quod Communitas Regni ſui in dicto Parliamento ſuo ad negotia dicti Domini Regis & ſtatum Regni ſui & Eccleſie Anglicane aggregat. ex cauſa predicta immoraretur ſeu extenuaretur, quo minus negotia illa debitum ſorcierentur, effectum eidem Vicecomit. dicti Com. Suff. per breve ill. precipiſſet quod loco predicti Henrici in pleno Com. ſuo immediate poſt receptum brevis illius unum alium militem gladio cinctum idoneum & diſcretum Com. predict. (proclamatione prius de premiſſis ac de die & loco facta) libere & indifferenter per illos qui hujuſmodi proclamation. ill. intereſſent juxta formam Statuti inde editi & proviſi eligi faceret, & nomen ejuſdem Militis in quibuſdam indenturis inter predict. Vicecomitem & illos qui hujuſmodi Electioni intereſſint inde conficiend. (licet hujuſmodi eligend. preſens eſſet vel abſens) inſeri eumq; ad dictum Parliamentum venire faceret, ita quod idem Miles ſic eligend. plenam & ſufficientem poteſtatem pro ſe & Communitate Com. predict. haberet ad faciend. & conſentiend. hiis que in Parliamento de communi conſilio dicti regni ſui (favente Deo) contingerent ordinari ſuper negotiis ante dictis (noluit dictus Dominus Rex tamen, quod predictus Vic. Suff. nec aliquis alius Vicecomes dicti Regni ſui aliqualiter eſſet electus) & Electionem illam ſic factam diſtincte & aperte ſub ſigillo ejuſdem Vic. & ſigillis eorum qui Electioni ill. intereſſent dicto Domino Regi in Cancellariam ſuam certificaret indilate remittend. Dicto Domino Regi alteram partem Indenture predicte eidem brevi conſuetam, una cum eodem brevi prout in eodem brevi plenius continetur. Quod quidem breve poſtea ſcilicet duodecimo die Februarii Anno Regno dicti Domini Regis nunc viceſimo quinto ſupradict. apud Gippovicum in dicto Com. Suff. prefato

prefato Willielmo Soame tunc Vic. dicti Com. Suff. exiſtens deliberatum fuit in forma juris exequendum quodq; predictus Will. Vic. Com. predicti tunc exiſtend. ad prox Com. ſuum ejuſdem Com. Suff. poſt receptionem dicti brevis, ſcilicet, viceſimo quarto die Februarii Anno Regni dicti Domini Regis nunc viceſimo quinto ſuuradicto, ac vigore brevis illius in pleno Com. ſuo tunc tent. apud Gippovicum predict. in dict. Com. Suff. coram eodem Williel. adtunc Vic. ejuſdem Com. breve illum legi feciſſet nec non publicam Proclamationem de die & loco in brevi predicto in ea parte content. feciſſet nec non de uno milite gladio cincto magis idoneo & diſcreto Com. predict. juxta formam & exigentiam brevis illius eligend. adveniend. ad Parliamentum predictum in pleno Com. ill. prout ill. per breve ill. precept. fuit & ſecundum formam ill. precept. fuit, videlicet int. horam octavam & horam undecimam antea meridiem ejuſdem viceſimi quarti die Februarii Anno viceſimo quinto ſupradicto ſuper quo proceſſum fuit tunc ibidem in pleno Com. ill. ad Electionem unius alius Militis pro eodem Com. in loco predicti Henrici, per Gentes in Com. illius reſidentes ac eidem Proclamationi intereſſentes, ac licet idem Samuel in eodem pleno Com. tent. apud Gippovicum predict. (qui tunc & diu antea fuit Miles gladio cinctus in predicto Com. videlicet apud Brightwell commorans & converſans & in eodem Com. Suff. natus) ſecundum exigentiam brevis predicti debite electus & nominatus fuit eodem viceſimo quarto die Februarii inter horam octavam & horam undecimam fore Militem Com. illius in loco predicti Henrici North pro prédicto Parliamento adveniend. pro eodem Com. ad idem Parliamentum per majorem numerum Gentium tunc reſidentium infra dictum Com. Suffolciæ, predicto tempore Proclamationis predicti tunc & ibidem preſent. eidem Proclamationi intereſſentium quorum tunc quilibet expendere potuit quadraginta ſolidos liberi tenementi & ultra per annum infra Com. ill. Ac licet predictus Willielmus adtunc Vict. dicti Com. Suffolciæ exiſtens premiſſa ſatis ſciens, poſtea ſcilicet eodem viceſimo quarto die Februarii anno regni dicti domini Regis nunc viceſimo quinto in Cancellarium dicti domini Regis nunc apud Weſtmonaſterium predictum in dicto Com. Middl. breve predict. retornabit ſimul cum quadam Indentura inter ipſum Vicecomitem & predict. Electores ipſius Sam. de pred. Electione ipſius Sam. fact. ſecundum exigentiam brevis pred. Predictus tamen Williel. adtunc Vicecomes predicti Com. Suff. exiſtens Officii ſui debitum minime ponderans, ſed machinans & malitioſe intendens ipſum Sam. in hac parte minus rite pregravare ac eundem Samuelem de fiducia & officii unius Militis Comitatus predict. in dicto Parliamento exercend. omnia fruſtrare & deprivare, & predictum Samuel. ad diverſas magnas & grandes pecuniarum ſummas expendend. cauſare, contra debitum officii ſui predicti falſo, malitioſe & deceptive adtunc in eandem Cancellariam apud Weſtmonaſterium predictam retornavit, una cum Indentura predicta quandam aliam Indenturam eidem brevi ſimiliter annex. ſpecifican. ill. fore fact. inter prefatum Willielmum adtunc exiſten. Vicecomit. dicti Comitatus Suffol. ex una parte & diverſas alias perſonas dicti Comitatus in Indentura illa ſpecificata & continens, quod dicte alie perſone ut major pars totius Comitatus predicti in predicto pleno Comitatu Suffol. apud Gippovicum predictum dicto viceſimo quarto die Februarii anno ſupradicto eligerunt quendam Lionel. Talamach Baronettum alias dictum Dominum Huntingtowre in Regno Scotie in loco predicti Henrici North un. Militem Comitatus Suffol. predicti pro Parliamento predicto adveniend. eidem Parliamento pro Comitatu illo ubi (re vera) predictus Lionel. non fuit elect. per majorem partem Comitatus illius fore Mil. in loco predicti Henrici pro Comitatu predicto, prout per ultimam Indenturam predictam falſo ſupponitur, ratione cujus quidem falſi retorn. de predicta alia Indentura per predictum Willielmum Vicecomitem dicti Comitatus Suffol. exiſten. in forma predicta fact. idem Samuel in domo inferiori pro Communitate hujus regni Anglie in dicto Parliamento ad predict. retorn. predicti brevis & diverſa tempora poſtea aſſemblat. apud Weſtmonaſterium pred. conſtitut. admitti non potuit, quouſque idem Samuel ſuppetitionem ſuam Communitati dicti Parliamenti pro remedio ſuo congruo in ea parte exhibit. & poſt diverſas ingentes denar. ſummas in & circa manifeſtationem & verificationem dicte Electionis ipſius Samuelis coram dicta Communitate expend. & diverſos labores in ea parte per ipſum Samuelem ſuſten. poſtea ſcilicet viceſimo die Februarii anno regni Domini regis nunc viceſimo ſexto per Communitat. dicti Parliamenti in domo Communitat. præd. admiſſus fuit, & electio ipſius Samuelis præd. per Communitat. præd. declarat. fuit fore bona, unde idem Samuel dicit quod ipſe deterioratus eſt & dampnum habet ad valentiam trium mille librarum & inde producit ſectam, &c. Et modo ad hunc diem, ſcilicet diem Veneris proximam poſt craſtinum ſancte Trinitatis iſto eodem Termino uſque quem diem præd. Williel. habuit licentiam ad billam præd. interloquendi & tunc ad reſpondendum, &c. coram Domino Rege apud Weſtmonaſterium venit tam præd. Samuel per Attornatum ſuum præd. quam præd. Willielmus per Johannem Needham Attornatum ſuum, & idem Willielmus defendit vim & injuriam quando, &c. & dicit quod ipſe non eſt inde culpabilis, & de hoc ponit ſe ſuper patriam, & præd. Samuel ſimiliter, &c. Ideo ven' inde Juratores coram Domino Rege apud Weſtmonaſterium die Veneris proximo poſt tres ſeptimanas ſancti Michaelis & qui nec, &c. ad recogn. &c. quia tam, &c. idem dies datus eſt partibus præd. ibidem, &c. De quo die jurata præd. inter partes prædictas de placito præd. poſita fuit inde inter eas in reſpectum coram Domino Rege apud Weſtmonaſterium uſque diem Jovis in craſtino ſancti Martini ex tunc proximo ſequente pro defectu Juratorum, &c. Ad quem diem coram Domino Rege apud Weſt. venit tam præd. Samuel quam præd. Williel. per Attornatos ſuos præd. & Juratores jurat. illius exact. ſimiliter ven. qui ad veritatem de & ſuper premiſſis dicend. elect. triat. & jurat. dicunt ſuper Sacramentum ſuum quod præd. Williel. eſt culpabilis de præmiſſis præd. modo & forma prout præd. Samuel ſuperius verſus eum queritur & aſſidunt dampna ipſius Samuelis occaſione premiſſorum præd. ultra miſas & cuſtagia ſua per ipſum circa ſectam ſuam in hac parte appoſita ad octingentas libras, & pro miſis & cuſtagiis illis ad quadraginta ſolidos. Sed quia curia dicti Domini Regis nunc hic de judicio ſuo de & ſuper premiſſis reddendum nondum adviſatur dies inde ulterior datus eſt partibus præd. coram Domino Rege apud Weſtm. uſque diem Veneris proximum poſt Octobas Purificat. beate Marie de judicio ſuo inde audiend. eo quod curia dicti Domini Regis hic inde nondum, &c. Ad quem diem coram Domino Rege apud Weſtm. venit tam præd. Samuel quam præd. Williel. per Attornatos ſuos præd. ſuper quo viſis & per curiam dicti Domini Regis nunc hic plene intellectis omnibus & ſingulis premiſſis maturaque deliberatione inde habita, conſideratum eſt quod præd. Samuel Barnardiſton recuperet verſus præfatum Williel. Soame dampna ſua præd. per Juratores præd. in forma predicta aſſeſſ. necnon nonaginta & octo libras pro miſis & cuſtagiis ſuis præd. eidem Samuel per curiam dicti Domini Regis nunc hic aſſenſu ſuo de incremento adjudicat. Que quidem dampna in toto ſe attingunt ad nongentas libras & præd. Williel. in miſericordia, &c. Poſtea ſcilicet die Sabbati viceſimo quarto die Aprilis Anno Regni Domini Regis nunc, &c. viceſimo ſeptimo tranſcript. Record. & proceſſ. præd. inter partes predictas de placito præd. cum omnibus ea tangentibus pretextu cujuſdam brevis dicti Domini Regis de errore corrigend. per prefat. Williel. Soame in premiſſis proſecut. coram Juſticiariis Domini Regis de Communi Banco & Baronibus de Scaccario dicti Domini Regis de gradu de le Coife in Cameram Scaccarii juxta formam Statuti in Parliamento Domine Elizabethe nuper Regine Anglie apud Weſt. viceſimo tertio die Novembris Anno Regni ſui viceſimo ſeptimo tent' edit. a predicta curia dicti Domini Regis hic coram ipſo Rege tranſmiſſa fuerunt, predictuſque Williel. Soame in eadem curia Camere Scaccarii comparen' diverſas cauſas & materias pro errore in Recordo & Proceſſu præd. pro revocatione & adnullatione Judicii præd. aſſignavit, ad quas præd. Samuel Barnardiſton in eadem curia Camere Scaccarii præd. ſimiliter comparend. placitavit, quod nec in Recordo nec in Proceſſu præd. nec in redditione Judicii præd. in ullo fuit errat. Poſtmodumq; ſcilicet die Sabbati decimo die Junii Anno Regni dicti Domini Regis nunc viceſimo octavo viſis premiſſis & per curiam Camere Scac. præd. diligent. examinat. & plenis intellectis tam Record. & Proceſſ. præd. quam Judicio præd. ſuper eiſdem reddit. videbatur curia Camere Scac. præd. quod judicium præd. vitioſum & defectivum in lege exiſtit. Ideo adtunc & ibidem per eandem curiam conſideratum fuit quod judicium præd. in omnibus reverſetur, adnulletur & penitus pro nullo habeatur, & quod præd. Williel. ad omnia que occaſione judicii præd. amiſit reſtituatur, ſuper quo Record. præd. nec non proceſſ. præd. juſticiar. dicti Dom. Regis de Communi Banco Baron. de Scacc. dicti Dom. Regis coram eis in premiſſis habit. coram Domino Rege ubicunq; &c. remittebantur ſecund. formam Statuti præd. & in eadem curia dicti Dom. Regis hic coram ipſo Rege jam reſident, &c. Poſtea ſcilicet viceſimo quarto die Maii Anno Regni Domini Gulielmi & Marie nunc Regis & Regine Anglie primo Record. & Proceſſ. præd. inter partes præd. cum omnibus ea tangentibus pretextu cujuſdam brevis de errore corrigend. per prefat. Samuel. Barnardiſton in premiſſis præd. proſecut. dicto Domino Reg. & Regine in preſent. Parl. à præd. curia dicti Dom. Reg. & Regine hic tranſmiſ. fuit, predictuſq; Samuel in eadem curia Parl. comparens, diverſas cauſas & materias pro erroribus in Recordo & proceſſu præd. pro revocatione & adnullatione Judicii præd. aſſignavit; & poſtea, ſcilicet viceſimo quinto die Junii Anno dictorum Dom. & Dom. Reg. & Regine ſupradict. in præd. curia Parliamenti viſis & per curiam ibidem diligenter examinat. & plenius intellectis tam Record. & Proceſſ. præd. judicio ſuper eiſdem reddit quam præd. errore ſuperius aſſignat. pro eo quod videtur curie Parl. præd. quod Record. ill. in nullo vitioſum aut defectivum exiſtit & quod Record. ill. in nullo fuit erratum. Ideo adtunc & ibidem conſideratum eſt per eandem curiam Parl. præ quod Judicium præd. in omnibus affirmetur & in omni ſuo robore ſtet & effect.

Sir *Samuel Barnardiſton* againſt Sir *William Soame*, late Sheriff of *Suffolk*, in B. R *.

CASE, and declares that a writ iſſued out of Chancery to the defendant, then Sheriff of *Suffolk*, to elect a Knight of the County for the Parliament: and that the Plaintiff was choſen by the majority of Freeholders, and that the Defendant returned the Writ with an Indenture of the ſaid Election, but maliciouſly intending to deprive the Plaintiff, *de fiducia & officio præd' falſo & deceptive, una cum indentura præd' retornavit unam alteram indenturam in cancellaria præd' ſpecificant' quod aliæ perſonæ liberi tenentes vel major pars liberorum tenentium elegerunt quendam Lionellum Tolmach, ubi re vera præd' Lionellus non fuit electus per majorem numerum liberorum tenentium*; *ratione cujus*, the Plaintiff was kept out of the Houſe of Commons, and put to great charge to prove his election in the Houſe of Commons. The Defendant pleaded *non culp.* and upon trial at bar, *Twiſden*, *Rainsford*, and *Wylde* held, and ſo directed the Jury, That if this double return was made maliciouſly, they ought to find for the Plaintiff, which accordingly they did, and gave him 800*l.* damages; though the evidence, as to the malice and falſity, was very ſlender. For the Poll was granted; upon which the matter ſeeming doubtful, whether ſome of them who voted for the Plaintiff had ſufficient freehold to qualify them to give their votes; the Sheriff, by advice of Counſel then preſent, and of ſome Members of Parliament there alſo, made this double return, to prevent an action for a falſe return, in caſe it ſhould appear that ſome Freeholders that voted for the Plaintiff had ſufficient freehold. And after, upon examination in Parliament, the election of the Plaintiff was adjudged good, and the Defendant committed by them for making this double return: And now 'twas moved in arreſt of judgment by *North*, Attorney-General, and *Scroggs*, King's Serjeant, that this Action lies not, and that no ſuch Action was ever yet maintained in this caſe; for the caſe of *Nevil* and *Stroud* was never reſolved, but in reſpect of difficulty ſent to Parliament, where it never received a determination. And the reaſons they urged againſt the Action, were, *Firſt*, Becauſe the falſity or verity of the return is only examinable in the Houſe of Commons, who are the ſole Judges, and will puniſh ſuch falſities; and accordingly they have ſo done in this caſe, by committing the Sheriff, and he ought not to be twice puniſhed for the ſame fault. And before the Statute of *H.* VI. no Action lay for a falſe return, and that only gives an action of debt for 100*l.* *Secondly*, The right of the party is not conſiderable in this caſe; for this is not an office of profit, but of truſt, concerning the State. *Thirdly*, What the Sheriff does in this caſe, he doth as a Judge; for he is Judge of the election, and therefore no action lies againſt him. *Fourthly*, What the Sheriff doth in this caſe is *propter difficultatem*, upon his doubtfulneſs of the matter, and Judges of Aſſize may, *propter difficultatem*, adjourn an Aſſize: the Sheriff hath done no more in this caſe than laid the matter before the Houſe of Commons, that the validity of the votes may be there deliberately examined. To which 'twas anſwer'd by *Maynard*

* *Levinz*'s Reports, Part. II. 114. *Keble*'s Reports, Vol. III. 365, 369, 389, 419, 428, 442, 664.

King's

King's Serjeant, and Sir *William Jones*, Sollicitor; *Firſt*, That here was malice and falſity in the Sheriff, and thereby damage and charge to the plaintiff, and all this found by the Jury, which is ſufficient to maintain an action in all caſes, whether there has been a like action in ſuch caſe or not before; for actions upon the caſe are founded upon the particular caſe, which is moſtly new. And the caſe of *Nevil* and *Stroud* was not for a double return, but for making no return; for there two were elected, and the Sheriff made no return as to one, and for that he brought the action. *Secondly*, The commitment by the Parliament is only to puniſh the contempt of the Sheriff, as to them and the State, but not to repair the party for the damage he ſuſtained; and thus in ſeveral reſpects, one may be twice puniſhed *pro uno delicto*. As it falls out often in many caſes, particularly in criminal matters, wherein the party is puniſhed for the King by indictment, and by the party for the ſpecial damage he ſuſtained. *Thirdly*, The Sheriff is not a Judge of the election in this caſe, but a miniſter to take the polls; of which, in point of ſufficiency, the Houſe of Commons is Judge. *Fourthly*, Though the Statute of *H.* VI. gives to the party the 100*l.* penalty, that will not prove this action does not lie at Common Law. The Parliament intended only to give a certain penalty to the party, which was conſiderable then, though not ſo conſiderable now, and not leave them to a Jury's diſcretion altogether for damages. *Et adjornatur ad proximum terminum*, when *Hale* being in Court, he, *Twyſden* and *Wylde*; foraſmuch as the return is ſaid to be *falſo & malitioſe & ea intentione*, to put the plaintiff to charge and expence, and ſo found by the Jury; held the action lay, and gave Judgment for the plaintiff; *Rainsford* doubting.

Upon this a writ of Error was brought in the Chequer Chamber, where ſix Judges were for reverſing the Judgment, and two for affirming it.

Their Arguments here follow.

Barnardiſton verſus *Soame*. *In Caſe*.

The Caſe.

ON the death of Sir *Henry North*, one of the Knights for *Suffolk*, a writ was iſſued forth for the election of a new Member; and Sir *Samuel Barnardiſton*, and my Lord *Huntingtowre*, were the two candidates; but Sir *Samuel* carried it by 78 voices, and was returned: And my Lord *Huntingtowre* having made an intereſt with the Sheriff, got the Sheriff to return him too; and he ſat in the Houſe till the election was there determined for Sir *Samuel*. Whereupon Sir *Samuel Barnardiſton*, for this double Return, brought an action upon the caſe againſt the Sheriff, and tried it at the *King's-Bench* bar, 12 *Nov.* 1674, before my Lord Chief-Juſtice *Hale*, and recovered 1000*l.* damages: and afterwards a writ of Error was brought in the *Exchequer* Chamber, and there the Judgment in the *King's-Bench* was reverſed; only *Atkins* and *Ellis* were for affirming it.

Judge *Ellis*'s Argument is as followeth:

Firſt, The Declaration does conſiſt of the writ to the Sheriff, his Return, and the Averment of the plaintiff's damage.

The writ does ſhew the great import of what was to be done, and what he ſhould do.

Now as to the Return:

1. It is impoſſible to be a true Return, but it is a falſe Return; for that *ſimul & ſemel*, both ſhould be choſen at the ſame time, that can't be: So then he hath not obſerved the writ.

2. The writ requires that the Houſe ſhould be full, and have a Member of Parliament, but by this Return neither can ſit in Parliament; for it appears, that from the 24th of *February*, 25 *Car.* II. until the confirmation, he was kept out. So the end of the writ not at all obſerved, and the buſineſs of the Parliament retarded as much as could be.

3. It may be ſaid, This may be done by miſtake, he may miſtake the law; but when the plaintiff comes and ſays, That he knowing the Plaintiff was duly elected, and on purpoſe to keep him out of the Houſe, did *falſo & malitioſe* make this Return; then here is a falſe and malicious Return, and made knowingly upon him: Then an Action lies.

Then to conſider the Caſe,

1. At Common Law; and I conceive it will lie.

2. The Acts of Parliament have not taken away the Remedy which the Common Law gave.

1. That the Common Law gave remedy; for that it was falſely and maliciouſly done, we muſt not doubt it: It is a matter of fact, and the Jury have found it ſo, and that there was a wrong done to *Barnardiſton*, and it is of the Sheriff's own knowledge: Then,

2. When I ſuffer an injury, joined with a loſs, the Common Law gives me a remedy for it.

Cooper and *Andrews*'s caſe, *Hob.* 43.

Then take it as done by an Officer of Juſtice, and a ſworn Officer, one of the greateſt in the Kingdom: If it ſhould not lie in that caſe, there would be a failure of Juſtice, but no failure of wrong.

Second, That in caſes of far leſs concern, as to Officers, it will lie, and then we ſhall ſee in this caſe what it will do.

Powle and *Godfrey*'s caſe, *Rolls*, lib. 1. 63. Co. lib. 12. 128. In that caſe, becauſe there was a temporal loſs to the party, though for a ſpiritual wrong, the law gave him damages.

Rolls 1 lib. 1. 108. 24. *Ford* and *Hoſchin*'s caſe againſt an Archdeacon, F. N. B. 47. and yet an Archdeacon is a ſpiritual Officer: So that if he do not induct the Parſon, he may have his remedy; for where he ſuffers a loſs, the Law gives him his remedy.

Now here is *injuria & dampnum*, he does complain about the nature of his election, and the undue return of an election; and to a Court that never yet did give damages to the party.

3. Then when there is a colour of Juſtice, and a man does proceed in a legal way, yet *falſo & malitioſe*, an action lies, *Hob.* 266. *Waterer* and *Freeman*'s caſe. If a man will arreſt one, and put him to ſpecial bail, a ſpecial action of the caſe lies againſt him.

Cro. 3. 130. *Windham* and *Clere*'s caſe againſt a Juſtice of Peace: Whereas in truth the Juſtice never had any complaint. An action will lie againſt him, becauſe he did *falſo & malitioſe*.

Id. 21 *E.* IV. 22, 23. If a miſinformation be in a Court of Juſtice, an action lies againſt him. Now here is a very great miſinformation given to the Chancery upon this return.

Obj. This is a new caſe, and a caſe of a great deal of danger, and therefore we muſt have a great deal of care of making new laws.

Anſw. It were endleſs to put caſes where there never was a caſe before; yet an action will lie, if damage: there was no precedent for an action of the caſe for falſely and maliciouſly accuſing one of treaſon, before *Smith* and *Craſhaw*'s caſe. *Rolls Abr.* l. 1. 1131.

Bulſtr. 2. 270. *Jones* 93. *Cro.* 1. 15. Though there it was objected, that never any precedents were, that this action was brought for maliciouſly and falſely accuſing one of treaſon, and the danger of that action would lie, yet the Judges reſolved otherwiſe, being falſely and maliciouſly; and though never any precedents could be ſhewn, yet they gave judgment expreſsly that the action would lie.

2 *Cro.* 534. *Moor* and *Blackwell*'s caſe: Objected, That no precedent could be found where inſufficient returns have been amended; yet the Court ſaid, If there never was a precedent, they would make a precedent thereof. The firſt precedent had a beginning, and there was none at firſt.

2. There is a great difference where the Law is ſilent in the caſe.

Before *Stade*'s caſe they never could ſhew any action of the caſe upon an *Indebitatus aſſumpſit*; multitudes of actions of debt, but none of the caſe, yet adjudged it would lie: For where there is *eadem ratio*, there is *eadem lex*: and will any man doubt where there is a falſe return, whether an action will lie? In actions of the caſe there is leſs reaſon to expect precedents than in other things; they grow as the invention of man grows; according as new frauds and new deceits ariſe, ſo ſhould new remedies.

Obj. Never an action brought for ſuch a return; and *Littleton*'s rule is, That if ſuch an action could be brought, it would have been brought before now.

Anſw. 1. My Lord *Coke* ſays, The not uſer of an action does not take away the action, but ye may bring the action if ye have cauſe.

2. May it not be ſaid as it was ſaid to the former caſes? There were accuſations of treaſon, and falſe ones too, and no actions brought; therefore no action ought to lie now. I cannot ſee, if ye reverſe this judgment, ye muſt reverſe many more of the ſame nature.

'Tis true, there is a great difference, that if the nature of the thing be ſuch as it cannot be falſely and maliciouſly, the adding theſe words will not change the nature; but if the nature of the thing be ſo, and the Jury do find *falſo & malitioſe*, the action will lie. As for the firſt part, as for a falſe accuſation of ſtealing an apple off a tree, an action will not lie, though the declaration is *falſo & malitioſe*, for the nature of the thing will not permit it; ſo *Moor*, 491. *Palmer* and *Porter*'s caſe, there no action will lie upon that reaſon: But in our caſe, the nature of the thing is of ſuch a wrong, that an action may lie.

Then though the Acts of Parliament may give remedy, yet that takes not away the remedy at Common Law, which was his ancient remedy. *Plow.* 113. puts many caſes to that purpoſe; and the difference is plain, for if it were no crime and offence at Common Law, but given by the Act, then no action could lie but upon the Act; but where there was another remedy, he may take either that at Common Law, or the other upon the Act.

The Common Law gave an action of the caſe upon too little iſſues returned by the Sheriff, the Statute gives an averment, yet he may take the action ſtill.

Now conſider the remedy this Act gives, and ſee whether it be ſo good a remedy: For firſt, He muſt bring his action within the time limited by the Act, or elſe he is out of the Act; now if there be a double return depending in the Houſe, no man will bring an action, depending that return undecided, and the Judges will not countenance ſuch an action; ſo the party is quite deprived of his remedy. Then, ſecondly, As this caſe is, the Sheriff is not within the Act at all, for he has returned the Plaintiff. Now if this ſhould be ſuffered, there would be an evaſion out of the Statute, and the Statute would give no remedy at all. Thirdly, It is the ſame miſchief to the plaintiff; if my Lord had been ſingly returned, he might have vindicated his election as much as in this double return, and have been in the Houſe as ſoon.

Obj. This is a general matter, and all the ſubjects of *England* are concerned in it; and *Co. Rep.* 3. *Williams*'s caſe, where there is a general nuiſance, every man ſhall not have an action.

Reſp. Where there is a general concern, and no particular damage, every man ſhall not have an action; but when there is particular damage, there he may. Here is a particular damage to the Plaintiff, and ſo he is well intitled to his action. *Rep.* 9. *Marie*'s caſe. 1 *Inſt.* 59. *Powell*'s caſe. 3 *Cro.* 664. *Fineux* and *Hoveden*'s caſe.

Obj. This matter is matter proper to be determined in Parliament, and a hard caſe the Sheriff ſhould be condemned for that he could not help.

Reſp. As to the Right of election that is determinable there, and it was ſo; but for his damage, it neither was, nor could be examined there. If the Houſe of Commons had given damages, and the Parliament had broken up, how ſhould he have recovered them?

1. Here is no action brought againſt a Member.

2. No action brought for any thing done in Parliament.

3. The return is into Chancery; the Sheriff's work was ended in Chancery; it was filed in Chancery, and there remains, and there muſt remain. So that all the malice and falſity was done in Chancery; and the action is not brought for any right of election, but for what was done to put him to charges.

If there had been an equality of voices, he muſt have returned ſo; nor is here a little miſtake; but what is done, is done falſely and maliciouſly, and with an intent to put him to charges.

Obj. The Sheriff is not concerned himſelf for what was done in the Commons Houſe.

Anſw. He was not charged with it there; this action is not brought purely for a double return; yet if ſo, and he does it knowingly, an action will lie, the return is plain, for the Sheriff is a great Officer, and the law does give that credit to him, that it will not ſuffer any averment againſt his

his return, but an action of the case will lie, *Rep.* 11. *Bagg*'s case; and the Sheriff is a sworn Officer, and the law imposes this Man upon me, and the law is my caution in that case, and gives me a remedy.

Obj. Here is no double return, for it is no return at all, it not being under seal; and the Statute says, all returns shall be under the seal of the Electors: So here is no harm at all; he might have gone into the House, if he had pleased.

Answ. At the Common Law there was no necessity the return should have been under the seal of the Electors: So it is a good return until avoided, and not a void return. If it were not good unless under the seal of all those that elect, what will become of those that sit now? It was never done yet, if he makes a return without seal, it is good, *primâ facie*.

As to the exceptions taken to the declaration, it is well laid in strictness of pleading; he says, *secundum exigentiam brevis*; and tho' he says *per aliam indenturam factam*, it was as much as *factum indentatum*, 1 *Inst.* 103. *Leo.* 310. *Maydwell* and *Andrewe*'s case. How should it be a return, unless it be as it should be? And ye must intend so as it should be, 3 *Cro.* 737.

The pleading of *Bulkley*'s case is the same with this, and no exception taken to it: But if it had been upon a demurrer, there might have been more said for the exception; but now it is an exception upon a verdict, and it shall be intended, that they that tried it had the right of the return. 2 *Bulst.* 41. *Yelv.* 247. after a verdict a vicious plea shall be made good, *Allen* and *Naske*'s case, 3 *Cro.* 53. *ibid.* 371. *Southwell* and *Brown*'s case, and *Fulwood*'s case, 4 *Rep.* is a stronger case than has been cited, and yet adjudged good.

Though there be no seal, yet when he returns this, and a man suffers damage by it, and all the mischief that may happen, who is the party would take advantage of it? he that has done the wrong? No, he cannot, 21 *E.* IV. 22. 15 *E.* IV. 18, 19.

So therefore, both becaufe the declaration is well laid, and the party well entitled to his action,

The Judgment ought to be affirmed.

An Argument in the great Case concerning Election of Members to Parliament, by Sir Robert Atkins, *Knight of the honourable Order of the* Bath, *and late one of the Judges of the Court of* Common-Pleas.

Trin. 26 Car. II. *In the Court of* King's-Bench, Rot. 577.

Sir *Samuel Barnardiston*, Bart. Plaintiff; Sir *William Soame*, Defendant.

In Trespass upon the Case.

THAT whereas the King, 8 *Feb.* 25. of his reign, by a writ out of the Chancery, directed to the then Sheriff of *Suffolk*, commanded that he should cause an election to be made of another Knight for the said Shire, in the place of Sir *Henry North*, lately dead; and that he should certify the election under his own seal, and the seals of those that were present at the election, into the Chancery.

Which writ, 12 *Feb.* 25 *Car.* II. was delivered to the defendant, then Sheriff.

And, 24 *Feb.* 25 *Car.* II. in full County, by the people resident in that County, the writ was read.

And altho' the plaintiff was duly elected to be Knight for that County, by the greater number of the people then resident in the said County, every one whereof could spend 40 *s. per annum* within that County:

And altho' the defendant, then Sheriff of the said County, *premissa satis sciens*, afterwards the same 24 *Feb.* 25 *Car.* II. returned the said writ into the Chancery; together with an Indenture between him the said Sheriff, and the aforesaid Electors of the plaintiff, of the aforesaid Election of the plaintiff, made according as the said writ requires.

Yet the defendant, then Sheriff, *Officii sui debitum minime ponderans, sed machinans & malitiose intendans ipsum Samuelem in hac parte minus rite prægravare*, and to deprive the plaintiff of the trust and office of one of the Knights of the Shire, to be exercised in Parliament; and to cause the plaintiff to expend great sums of money against the duty of his office:

Falsely, maliciously and deceitfully returned into the Chancery, together with the aforesaid Indenture, another Indenture annex'd to the said writ, purporting the same to be made between him the said defendant, then Sheriff, of the one part, and divers other persons; containing, That the said other persons, as the greater part of the said County, did chuse one Sir *Lionel Talmach*, Bart. otherwise *Lionel* Lord *Huntingtowre*, as Knight of the Shire, to come to Parliament.

Whereas in truth, the said *Lionel* was not chosen by the greater part.

By reason of which false return of the said other Indenture, the plaintiff could not be admitted into the Lower House at the return of the said writ, and a long time after.

Till the plaintiff, upon his petition to the Commons, and till after he had spent divers great sums of money about the proving of his election, and divers pains and labours in that behalf sustain'd, afterwards, *scil.* 20. *Feb.* 26 *Car.* II. he was admitted, and his election was declared to be good.

To his damage of 3000 *l.*

Plea. Not guilty.

Verdict. *Pro quer' dam.* 800 *l.*

Judgment. *Pro quer'* Sir *Samuel Barnardiston*, in the *King's-Bench*, for the 800 *l.* damages, and for the 98 *l.* costs.

The defendant, Sir *William Soame*, sued a writ of Error before the Justices of the *Common-Bench*, and the Barons of the *Exchequer*, in the *Exchequer-Chamber*, to reverse the said judgment given by the Judges of the *King's-Bench*.

And two of the Justices of the *Common Bench*, *viz.* Sir *Robert Atkins*, and Sir *William Ellis*, upon argument, were of opinion, That the said judgment was good in law, and were for affirming that judgment.

But the other two Judges of the *Common Bench*, and the four Barons of the *Exchequer*, holding the said judgment in the *King's-Bench* erroneous, were for reversing the said Judgment.

And the said Judgment still stands revers'd; but needs a redress by error in Parliament.

Sir *Samuel Barnardiston*, Bart. Plaintiff, Sir *William Soame*, Defendant, *in an Action upon the Case.*

I Shall divide the Record into the several parts of it:

1. There is first, the occasion, or as we commonly call it, the inducement to the action; that is, Sir *Henry North*, who served in Parliament as Knight of the Shire for *Suffolk*, died; and a new writ issued to chuse another in his place.

2. In the next place, the right that accrued to the plaintiff, Sir *Samuel Barnardiston*, he was duly elected Knight of the Shire.

3. The injury done him by the defendant, with the aggravations of it, *viz.* Although the defendant well knew the plaintiff was duly elected, and tho' he did return him; yet contrary to the duty of his office as Sheriff, and intending to oppress him, and to deprive him of the right he had, and on purpose to put him to great expence and charges,

He did falsely, maliciously, and deceitfully return another Indenture with the former; importing, that another person was chosen by the greater part of the County.

4. The damage sustained by the plaintiff, after the writ was returned.
   1. He could not for a long time be admitted to sit to do his duty, and discharge his trust.
   2. He was put to great charges to prove his election.
   3. He did sustain great pains and labour.

5. The right done him at last, and the satisfaction and amends made him;
   1. By the House of Commons. His election was declared good, and he was admitted to sit.
   2. By the Jury. They have found the wrong done by the defendant, and the damage sustained by the plaintiff; and they have repair'd him with 800 *l.* damages.
   3. By the Court of *King's-Bench*. They have given judgment for the plaintiff.

And the question before us, is, whether this judgment be erroneous? I hold the judgment not to be erroneous. I am for affirming of the judgment.

1. I conceive the matter set forth in the plaintiff's declaration, to be actionable. 2. That the wrong and injury complained of, is such for which the Law gives him a remedy. And 3. That he has taken his proper remedy, by bringing this action upon the case.

All this being in the affirmative, the proof of it lies upon me.

My ground and foundation is this, That where one person does injury to another, and the person to whom the wrong is done sustains particular damage and loss by the injury, there the Law gives a remedy, by action, to the party injur'd.

But here is an injury done.
And here is a particular damage sustain'd.
Therefore an action lies.

I shall first prove the ground or foundation, which is the major proposition, That where a wrong or injury is done, and a particular damage sustained, there the Law gives a remedy by action.

1. From the nature and quality of the Law; which is to do right to all, and to give relief and redress to those that receive wrongs. And should there be any case where a person might receive an injury and damage, and yet have no remedy nor redress, the Law would be defective; which would be a reproach to the Law and Government.

The Law has appointed several Courts, and given them several powers and jurisdictions; so that in the one or the other, every person that has suffered injury and damage may make his complaint, and have right done him.

Sir *Edw. Coke*, in his *Mag. Chart.* fol. 405. in his *Expos.* upon the *Stat.* of *W.* II. *c.* 14. says, It is an ancient maxim of the Common Law, *Non recedant quærentes a curia Regis sine remedio.* Whoever has just cause to complain, shall have their just remedy. And *curia Regis non debet deficere in justitia exhibenda.*

Both these rules and maxims, which have one and the same sense, are remembered in that *Stat.* of *Mag. Chart. c.* 24.

In *Pinchon*'s case, 9 *Rep. fol.* 88. *b. adjud.* That an action upon the case lies against executors for a debt, due by the testator upon a simple contract. And in the argument of that case it is said, That by that resolution, *Justice and right is advanced*, and the creditor paid his just debt; and if the debt should be discharged by the death of the debtor, it would (say the Judges) be a great defect in the Law, that there should be a right, and no remedy for it: And the Judges urge the maxim I mentioned but now, *curia Domini Regis deficere non debet conquerentibus in justitia exhibenda.*

In *Meriel Tresham*'s case, 9 *Rep. fol.* 3. it is urged as an absurd thing in law, that a man should have wrong done him, and yet should be without remedy: And the reporter does observe, that the Judges in all ages have endeavoured to put the rule of *W.* II. in execution, *Curia domini Regis non debet deficere conquerentibus in justitia exhibenda.*

Nay, the Law has so great a zeal for redressing of wrongs, that as sacred as the maxims and rules of the Law are, yet if there were any rules or maxims that stood in our way to hinder, the Law would break through those rules and maxims, rather than suffer an injury to be without remedy. 4 *Inst. fol.* 71. about the middle, *No wrong or injury, either public or private, can be done, but it shall be reform'd or punish'd in one Court or other, by due course of Law.* And in the lower end of that folio, *A failure of Justice is abhorred in Law.*

Sir *Fran. Bacon*, amongst the elements of the Law, *fol.* 51. delivers this as a principle, *Receditur a placitis juris potius quam injuria & delicta remaneant impunita*; which he himself expounds in this sense, The Law will dispense with some maxims, rather than wrongs should be unpunished.

2. My next argument to prove this position, *That where an injury is done, and damage sustained, the Law gives remedy*, shall be taken from the nature of an action, which is the ordinary remedy the Law gives for the repairing of a private wrong.

Now what the nature and definition of an action is, we learn from the most ancient authors of the Law, as *Bracton*, and *Fleta*, and the *Mirror* of the Justices, as they are collected by Sir *E. C.* 2 *Inst. fol.* 40. and they all agree almost in the same words:

Actio nihil aliud eſt quam jus proſequendi in judicio, quod alicui debetur, & quod naſcitur ex malificio, vel quod provenit ex delicto vel injuria.

It is nothing elſe but a means or remedy for a man to have right done him, that has ſuffered wrong and injury.

It is the argument commonly uſed, and the reaſon given to maintain an action, and in particular an action upon the caſe, *viz.* That there is an injury done, and a damage ſuſtained.

Sir *E. C.* 12 *Rep. fol.* 128. *reſ. p. tot. cur.* If a *Sumner* return one ſummoned, or cited into the *Spiritual Court*, where in truth he was never ſummoned, and he is pronounced *contumax*, and thereupon excommunicate; he ſhall have an action upon the caſe againſt the Sumner: And the reaſon given is, becauſe there is *injuria & damnum*. 'Tis the ſame caſe that is reported in *Rolls* 1 *Rep. fol.* 63. by the name of *Powle* and *Godfrey:* which I ſhall have further occaſion to mention before I have done: You have the ſame caſe reported by Sir *Francis Moor*, *fol.* 835.

This may ſuffice to prove the major propoſition, *That where wrong and injury is done to any man, and particular damage ſuſtained by it, there the Law entitles him to an action.*

For the minor propoſition, That in the caſe before us, there is a wrong and injury done to the plaintiff, and a particular damage ſuſtained by him: To make this out, I ſhall need to do no more than barely to relate the very fact; and put it as a queſtion to any plain man, that has but a common capacity, and no learning, nor acquired parts; and to ſtand to his judgment in the caſe.

And the caſe is no more than this: The plaintiff had the honour to be choſen to that great truſt and employment, of a Knight of the Shire, by his Countrymen, to ſerve in Parliament; by which he was juſtly entitled to ſeveral great privileges, and to wages for the time he ſerved. And 'tis an honour and employment we all know is highly eſteemed, and generally deſired and ſought after; and he that deſires it, deſires a good office. The defendant having the office of a Sheriff, and being bound by his office and oath to do juſtly and truly, *Et præmiſſa ſatis ſciens*; that is, well knowing the Plaintiff had the only right to be returned, and that no other had the leaſt colour for it, and where there was not the leaſt doubt or difficulty in the caſe:

Yet falſely, deceitfully, and maliciouſly to deprive him of his truſt and office, on purpoſe to put him to great charges, he returned another perſon with him.

And after all, the Queſtion is, Whether he has done him any wrong or no?

By occaſion of this, the plaintiff was hindered from ſitting in the Houſe, and was put to great expence, and underwent great trouble and labour. And the Queſtion is, Whether the Plaintiff has been at any particular damage?

Shall I have my action for a halfpenny treſpaſs *pedibus ambulando?* Does the Law give me an action of aſſault and battery, if a man does but lift up his hand to ſtrike me? Or for a few ill words, that will break no bones? And ſhall I recover damage for theſe petty things, and ſhall no action lie for ſo notorious an injury as is done in this caſe?

But our greateſt work is to anſwer the many objections that have been made againſt this action; which yet, I will be bold to ſay, have much more of wit than of weight in them.

And the difficulty rather lies in the great power and intereſt of the parties to the action, and of thoſe that concern themſelves in the example and conſequence of it, upon a politick account, than from any uncertainty of the Law: that is, there is a deſign to model the Parliament to the humour of the Court.

Sir *Ed. Coke*, in his preface to *Rep. fol.* 6. in the beginning of the *folio*, affirms, That he never ſaw any caſe of great value proceed quietly, without many exceptions in arreſt of judgment.

Object. 1. This is a matter that concerns the Government, and is of a publick nature; the employment of a Parliament-man, conſiſting *in negotiis regem, ſtatum, & defenſionem Regni & Eccleſiæ concernentibus:* And therefore the puniſhment of an offence committed, in reference to this, ſhould be by a publick proſecution, and not to be appropriated to any particular private perſon; nor the amends and ſatisfaction made to any one man.

Anſw. It muſt be agreed, That publick injuries wherein all, or very many are concerned, are proper for a publick proſecution; as in the name of the King, or by a preſentment at a Leet, or Quarter-Seſſions, *&c.* But if any particular man receive a particular damage by the publick offence or injury, he ſhall have his action; and this is conſiſtent enough with the proſecution for the publick. As the caſe of 27 *H.* VIII. *fol.* 26, 27. *Br. Abr. Act. Sr. Ca. Plac.* 6. If a man make a ditch upon the King's highway, this is a wrong to every man that has a right to paſs that way; and he is preſentable at a Leet for this offence; but if I and my horſe happen to fall into the ditch, riding along the way, and ſo receive a particular damage, I may have an action upon the caſe againſt him that made the ditch. 9 *Rep.* 113. 5 *Rep.* 72, 73. It is the ordinary caſe, *A* makes an aſſault and battery upon *B.* this is but one ſingle act, *but it has a double aſpect*; 'tis a breach of the King's peace, and for that *A.* is indictable, and may be fined to the King, and impriſoned. *It is a particular wrong to B.* for which *B.* may have an action of aſſault and battery, and recover damages; and both of them conſiſtent.

So in our caſe, this falſe and malicious double return, it was an injury to the King and Kingdom, and to the Houſe of Commons, in that while the election by this means was under diſpute, they wanted the plaintiff's ſervice and aſſiſtance. It was a wrong to the County of *Suffolk*, for the Knight of a Shire has *plenam poteſtatem pro ſe & communitate comitatus ad faciendum & conſentiendum*; but it was more particularly an injury to the plaintiff, in that he was for ſome time deprived of the honour done him by his Country; who by their electing of him, ſettled that character upon him, that he was *magis idoneus & diſcretus*; for the writ commands ſuch to be choſen.

He was hindered from diſcharging his truſt, committed to him by his own Country; hindered from doing ſervice to the King and Kingdom; hindered of his wages.

The *Stat.* of 27 *H.* VIII. *c.* 26. which unites *England* to *Wales*, enacts, That for every Shire in *Wales* there ſhall be choſen one Knight to ſerve in Parliament, and one Burgeſs for every Borough; and that the Knights and Burgeſſes ſhall have like dignity, pre-eminence, and privilege, and ſhall be allowed ſuch fees as other Knights and Burgeſſes of the Parliament have, and are allowed: by which it appears there are dignities, pre-eminences, privileges and fees, belonging to ſuch as ſerve in Parliament; of all which the plaintiff, for a time, was hindered by this falſe return.

And that it does concern the Government, it argues the greater injury done to the plaintiff; for every member of Parliament, for the time he ſerves there, is inſtrumental in carrying on the Government: which is an high honour to him. *Tu regere imperio populos, Hæ tibi erunt artes.* 'Tis a noble employment.

And ſince it does ſo nearly concern the Government, we that are Judges ſhould be the more careful to diſcourage all abuſes committed by Sheriffs in elections: It is of vaſt concernment to the Kingdom that elections ſhould be fair, and returns duly made, without partiality and indirect means uſed. And we, by Judgments, ſhould encourage all remedies againſt ſuch abuſes and practices.

Beſides all this, the plaintiff has been put to great expences, and undergone great labour and trouble; which is a private and particular damage, and therefore entitles him to his particular action.

A Juſtice of peace may have an action of ſlander in relation to his office, yet that was not an offence at Common Law neither; and yet it concerns the Government.

The *Stat.* of 7 *H.* IV. *cap.* 1. recites, That the Commons made a grievous complaint to the King, of the undue elections of the Knights of the Counties, *which* (ſays the Preamble) *be ſometimes made by affection of the Sheriffs*, to the great ſlander of the Counties, and hindrance of the buſineſs of the Commonalty of the ſaid Counties.

By which it appears, how great the miſchief was in thoſe days, and whence it came principally, *viz.* from the partiality of the Sheriffs: And that *Stat.* to prevent the abuſes, does appoint the return of Indentures under the Seal of the Sheriff, and the ſeals of the Electors: But the defendant in our caſe has practiſed an abuſe even in the very remedy, by returning ſeveral Indentures, and ſo evading the good proviſion made by that Statute.

The *Stat.* of 11 *H.* IV *c.* 1. obſerves, That *no pain is ſet in ſpecial* by that *Stat.* of 7 *H.* IV. upon Sheriffs, if they make returns contrary to that Statute, and give power to Judges of Aſſize to puniſh them, and to inflict the penalty of 100*l.* upon the Sheriff; and the Knights unduly returned are to loſe their wages: And all this depends upon the enquiry made by the Judges of Aſſize. At this time ſurely this matter of elections, and the examining and determining of the right, was not held ſo ſacred and ſo incommunicable a thing as ſome would have it now; for by this *Statute* 'tis referred to the Judges of the Aſſize.

But the principal *Statute* in this matter, is that of 23 *H.* VI. *c.* 15. which ſets out the great abuſes by Sheriffs committed in elections; it recites, That of late divers Sheriffs, *for their ſingular avail and lucre*, have not made due elections of the Knights. One would think by thoſe words *(for their lucre)*, that there was money ſtirring upon theſe occaſions, even in thoſe times; and that ſome men paid dear to be choſen Parliament-men: Or elſe, how could a Sheriff make profit to himſelf by an election? And to be a Parliament-man, it ſeems, was a very deſirable thing in thoſe days.

And foraſmuch (ſays that Statute) *as a ſufficient pain, and convenient remedy* for the party in ſuch caſe grieved, is not ordained in the ſaid Statutes againſt the Sheriffs: It therefore provides a better remedy.

But let us, to our purpoſe, obſerve by the way, that it mentions *the Party grieved*; ſo that *there is a Party grieved:* It is not merely a publick offence, but an injury to ſome particular perſons, and to ſome one perſon; for it ſays the party grieved, but it does not mention who that party grieved is. So that it may be objected, that thoſe words (the party grieved) refer to every Elector, as well as the Knight elected.

But the enacting Clauſe expounds the words, and declares whom the makers of that Law meant; for it makes the firſt offer of the forfeiture to every perſon choſen Knight, and not duly returned: So then 'tis plain, that the *Knight elected, and not returned, is the Party grieved.* If he have a particular wrong done him, then it follows he ought to have a particular remedy and ſatisfaction: And he was a party grieved before theſe Statutes made, and this penalty and remedy given; for theſe Statutes do not firſt make him a party grieved, but mention him as being ſo before. If he were ſo before, ſurely the Law gave him ſome remedy, or elſe there was a *Gravamen* without *Remedium*; which would have been a defect in the ſame.

Object. 2. Is that which I think is moſt relied upon, and that has moſt weight laid upon it, *viz. That this action concerns an election of a Knight to the Parliament, and therefore belongs to the juriſdiction of the Parliament, and ought to be determined there, and not by any Court inferior to it.*

Anſw. To this it has been truly anſwered, That though in this caſe we have often occaſion to ſpeak of the Parliament, and to mention an election to Parliament, yet the right of election is not called in queſtion, nor was it to be tried in this action, but was determined by the Houſe of Commons; and this action is purſuant to that deciſion of the right of election by the Parliament, and grounds itſelf upon it.

I ſhall, however, take this occaſion, in the firſt place, to ſhew in what matters that concern the Parliament, the Judges of *Weſtminſter-hall* have in all times, and muſt meddle, and take cognizance of them. And in the next place, what they have declined and left to the Parliament.

1. They have debated and reſolved, *what is a good Seſſion of Parliament, and what is not, and what makes a Seſſion*, as in *Tr.* 12 *Jac.* in *B. R. Rolls, Rep.* 29. There were ſeveral Acts of Parliament that had paſſed at a former Parliament, which were continued only to the firſt Seſſion of the next Parliament; and in that caſe they held thoſe acts then ſtill in force: for though the Parliament had met, yet no Act paſſing, they therefore adjudged it was no Seſſion, and there was a neceſſity that the Judges ſhould determine this. For though the King and Parliament make Acts, yet the Courts in *Weſtminſter-hall* put thoſe Acts in execution, and therefore muſt firſt ſatisfy themſelves.

2. Whether they are in force or not ſo, in the Prince's caſe, 8 *Rep.* whether the charter made by King *Ed.* III. to the Prince, were an Act of Parliament or not, is here argued and reſolved. So 4 *H.* VII. 18. 6 and 7 *H.* VII. 14, 15.

3. In *Rolls Ab. 1ſt part. fol.* 93. *ca.* 19. under the Title of *Action upon the Caſe*, there is cited 17 *E.* III. in *B. R. Rot.* 69. where an action is brought by *John Bokeland*, Knight of *Wiltſhire*, againſt the Sheriff of that county, for not levying 10*l.* 4*s. pro expenſis ſuis in attendencia ſua in Parliamento.* Now, in order to the recovery of this Action, many things relating to the Parliament, as, When the Parliament began? How long his

his attendance was? and divers other queſtions relating to the Parliament, muſt of neceſſity be incident.

10 *Eliz. Dy. fol.* 275. The very lower end of that *folio*, there is an action brought againſt the Keeper, for letting a Burgeſs of Parliament go at large by writ *de privilegio Parliamenti*, who was in execution: The Lord *Dyer* ſays nothing there, what became of it; but Sir *Francis Moor*, in his *Rep. fol.* 57. at the lower end of that *fol.* reports, that it was held by *Dyer*, that if one condemn'd in debt or treſpaſs be choſen to the Parliament, and after taken in execution, that he ſhall not have his privilege of Parliament. And, as he ſays, it was ſo held by the Sages of the Law, in the caſe of *Ferrers*; and that tho' his privilege was indeed allow'd, yet, (as they held) it was *minus juſte*; which caſe of *Ferrers* was the ſame here mentioned before to be in *Dy. fol.* 275. as appears by Mr. *Crompton* in his juriſdiction of Courts, *fol.* 8. *b.*

So that ſome things relating to the Parliament, the Courts of *Weſtminſter-hall* muſt determine; and the Judges cannot avoid it, if they will do juſtice.

2. But ſome things there are concerning the Parliament, which the Courts of *Weſtminſter-hall* may determine if they think fit; or they may at the diſcretion of the Judges ſuſpend their further proceeding, and refer them till the Parliament meets to determine them.

33 *H.* VI. *fol.* 17, 18. It is there debated by the Judges, whether it were a perfect and *legal Act* that paſs'd in Parliament againſt Sir *John Pilkington*, for a rape committed by him; and it depended upon the courſe of the two Houſes, in their tranſmitting of Bills from one to another, and of indorſing the Bills; and they ſent for the Clerk of the Parliament and conſulted with him about it; and there, *Forteſcue*, Chief-Juſtice, held the Act in queſtion to be a good Act of Parliament; but, ſays he, peradventure the matter, or queſtion, ſhall wait till the next Parliament meet, and then we may be certified by them of the certainty of the matter. By this it appears, that the Judges did not diſown the juriſdiction of that cauſe, that was ſo nearly depending upon the uſage of Parliament, but that it belonged to them, and not to the Parliament; yet it was convenient to be adviſed by the Parliament, and to wait till then.

And Sir *Ed. Coke*, in his 2 *Inſt.* 408. tells us, that matters of difficulty were uſually adjourned to Parliament.

3. Some things there are that concern the Parliament, wherein the Courts of *Weſtminſter-hall* muſt not intermeddle, but the juriſdiction belongs to the Parliament only.

By the Statute of 4 *H.* VIII. *c.* 8. tho' all in that Act that concerns one *Richard Strode* is a private Act, yet there is one clauſe which is a general Act, and is declaratory of the ancient law and cuſtom of Parliament, *viz.* It is enacted, *That all Suits, Accuſements, Condemnations, Executions, Fines, Amerciaments, Puniſhments, Corrections, Charges, and Impoſitions, at any time from thenceforth, to be put or had upon any Member, for any Bill, ſpeaking, reaſoning, or declaring of any matter concerning the Parliament, to be communed or treated of, be utterly void and of none effect.* This concerns none but Members of Parliament, and it provides for freedom of debates in matters that are proper to be treated of in Parliament.

The Lords, for themſelves only, and for their own Houſe, made claim of this privilege and juriſdiction, 11 *R.* II. *numb.* 7. Sir *Robert Cotton's Abr. fol.* 321. but it is limited only to matters moved in Parliament, and the King allowed it in full Parliament.

And Sir *Ed. Coke*, in his 2 *Inſt. fol.* 15. ſays, That *pari ratione*, the like belongs to the Houſe of Commons *: And this is the reaſon, ſays Sir *E. C.* that Judges ought not to give any opinion of a matter of Parliament, becauſe it is not to be decided by the common Laws uſed in other Courts, but *ſecundum legem & conſuetudinen Parliamenti.*

So likewiſe in caſe of the privilege of a Member of Parliament, againſt ſuits and executions, ſitting the Parliament, the Judges have refuſed to give their opinion, tho' demanded by the Lords; as they did in the caſe of *Thorp*, Speaker of the Houſe of Commons, who was taken in execution between two Seſſions of Parliament, of which the Commons made Complaint to the Lords, and the Lords asked the advice of the Judges, whether the Speaker ought to be delivered by privilege of Parliament? The Judges anſwered, *That they ought not to determine the privilege of the High Court of Parliament:* the caſe is 31 *H.* VI. *fol.*---. *Rolls Ab. 2d part.* 94. *ca.* 1. See 39 *H.* VI. Sir *Robert Cotton's Abridg. num.* 6.

Concerning departure from Parliament, (ſitting the Parliament) and not attending according to their duty; the caſe ſeems doubtful, whether any other Court than the Parliament can determine of that offence, it ſeeming to be of a middle nature. For tho' it be an offence committed by a Member, and that in Parliament-time, which argues for their privilege, and againſt the juriſdiction of any inferior Court, eſpecially while the Parliament ſits, who undoubtedly may take cognizance of it, and puniſh it: Yet on the other ſide, when the Parliament has not taken cognizance of it, and the Parliament is riſen, why ſhould not that offence, at the King's ſuit, be puniſhed in the Star-chamber, while that was a Court, and now in the *King's-Bench?* And why ſhould privilege protect againſt non-attendance, when the true ground of privilege is by reaſon of attendance. And Mr. *Plowden*, who was a very learned Lawyer, ſubmits to the juriſdiction, but traverſes his departure; as the caſe of the Biſhop of *Wincheſter*, 3 *E.* III. remembered by Sir *Ed Coke*, in his 2 *Inſt.* in his *Chapter of Parliament*, (as far as he reports it) ſeems rather to be an authority againſt the juriſdiction of any other Court beſides the Parliament itſelf, in ſuch caſe of proceeding againſt a Member to puniſh him for non-attendance: For the Biſhop being impleaded by original writ at the King's ſuit, (which I ſuppoſe was in the *King's-Bench*) *quia receſſit à Parliamento ſine licentia Regis.*

The Biſhop pleaded *quod ipſe eſt unus de paribus, & dicit, quod ſi quis eorum deliquerit in Dominum Regem in aliquo Parliamento, in Parliamento debet corrigi & emendari, & non alibi in minori curia.* And ſo Sir *E. C.* ſeems to leave the victory on the Biſhop's ſide, and that his plea ſucceeded. But Sir *Francis Moor*, 779, 780 reports the caſe of the Lord *Sturton*, and the Lord *Mordant*, how they were deeply fined in the Star-chamber, 4 *Jac.* for abſenting from Parliament, at the complaint of the Attorney General, *ore tenus.* And there were then preſent in the Star-chamber, the Lord-Chancellor, Chief-Juſtice *Popham*, *Fleming*, and *Walmſly*. And for precedents to juſtify the proceeding againſt them in that Court, they cite the caſe of the Earl of *Cornwal*, 4 *H.* III. and the Biſhop of *Wincheſter's* caſe, (which I mentioned but now) 3 *E.* III. how that for departing from Parliament, without licence, their lands were ſeized.

But the objection in our caſe is, *concerning a matter of election of a Knight of a Shire* to ſerve in Parliament: that no other Court but the Parliament muſt meddle in it, as the objectors would have it.

Anſw. It is not impertinent, therefore, to enquire briefly of the true Juriſdiction in this matter.

Sir *Robert Cotton* affirms, that writs of Summons for Knights of the Shire to ſerve in Parliament, began 49 *H.* III. and that the admittance of Commoners into the Parliament, was purpoſely to leſſen and curb the power of the Lords, after the daring Earl of *Leiceſter* was ſlain in the battle of *Eveſham* (which was that very year), and the Barons were totally routed by Prince *Edward*, (afterwards King *E.* I.) and K. *H.* III. was reſcued out of their hands. And to back that opinion, it is obſerved, that the firſt writ to the Sheriffs, to ſummon two Knights out of every Shire that is to be found upon record, is that of the cloſe Roll 49 *H.* III. (the very ſame year) *dorſo* 10 and 11. Thus Mr. *Prynne* affirms, in his preface to the Abridgment of the Records of the Tower, *fol.* 11. in the beginning of that *fol.* and *fol.* 13. *b.* in the middle of that *fol.*

But we muſt not be governed by Hiſtorians in matters of law; and therefore, notwithſtanding this obſervation of Sir *Robert Cotton's* and Mr. *Prynne's*, we muſt preſume that the Houſe of Commons, and elections of Knights of the Shire, are as ancient as the Common Law, and have been time immemorial; becauſe we find no written law that does firſt begin any ſuch Inſtitution.

But to come cloſer to the objection, and to enquire who are the proper Judges of the right of elections?

Mr. *Prynne*, in the ſame Preface, *fol.* 14. *b.* in the middle of it, (as I myſelf have folio'd it, for the print has no *folios* to the Preface;) "The "King and Lords (ſays he) were anciently ſole Judges of the legality "of elections of Members of the Houſe of Commons, till the time of "King *Henry* VII."

And in Sir *Robert Cotton's* Abridgment, *fol.* 392. the year 1 *H.* IV. *num.* 80. at the prayer of the Commons, the King declares, that the Commons were only petitioners, and that all judgments apertain to the King and Lords, unleſs it were in Statutes, Grants, Subſidies, or ſuch like; the which order the King would from that time to be obſerved.

But we know that the Houſe of Commons is now poſſeſs'd of the juriſdiction of determining all queſtions concerning the election of their own Members; ſo far at leaſt, as is in order to their being admitted or excluded from ſitting there. But how far their judgment is concluding to all others to other purpoſes, I have now no juſt occaſion to examine; for, as has been obſerv'd, the Plaintiff in this caſe grounds his action upon his original right of election, and mentions the determination of the Houſe on his ſide; and not only alledges that he was duly elected, but ſo returned by the Defendant himſelf: And that tho' he were for ſome time hindered from ſitting, by occaſion of the falſe return, made by the Defendant on purpoſe, and the election was under queſtion by it, yet he prov'd it clearly to the Houſe, and was admitted, and his election declared good; and taking it for granted that he was duly elected, he ſues in the *King's-Bench*, by this action to recover damages for the injury done him by the Defendant, for which the Houſe of Commons could not have help'd him. For to that purpoſe they have no juriſdiction, for they cannot examine a witneſs upon oath, nor can they act the part of a Jury to give damages, nor have they any power to award a trial, or to cauſe the Sheriff to impannel a Jury.

Obj. 3. This is an action of a new invention, and *primæ impreſſionis*, and never any ſuch was brought before, ſave that of *Nevil* againſt *Stroud*; which never had any determination.

Anſw. 'Tis true 'tis new, in the particular circumſtances, but not in the main, nor in the ſubſtance; 'tis new, in that 'tis brought by one elected Knight of a Shire againſt the Sheriff, for a falſe and malicious return of another Indenture, whereby the plaintiff was put to great expence and trouble; *but 'tis not new in the general nature of the action.* For nothing is more frequent then actions upon the caſe, where an injury is done and damage ſuſtained; nay, 'tis very frequent for actions upon the caſe to be brought againſt Sheriffs, for mere falſe returns, and that where there is no malice, nor any of thoſe great aggravations that appear in this caſe.

For this I refer you to the caſe in *Rolls's Abr.* 1. *part. fol.* 99. *Getin, Palmer* and *Marſhal*, in the *King's-Bench*, where the Bailiff of a Franchiſe was newly removed; but tho' he were removed, took upon him to anſwer, but made a falſe anſwer to the Sheriff's warrant, to execute a *Fieri fac'* againſt an Adminiſtrator, and the Sheriff made that Return to the Court; and thereupon an action upon the caſe brought againſt the Sheriff, and adjudged it lies: And that the Sheriff at his peril muſt take notice who is the rightful Bailiff of the Franchiſe, and accept of no anſwer to his warrant from any other.

19 *H.* VI. 29. An Action upon the caſe againſt a deputy Sheriff, for *embezzelling a Writ.*

19 *H.* VI. 38. by *Paſton.* If a Sheriff upon a *Venire fac'* return a Jury that is inſufficient to pay iſſues, the next Sheriff to whom the iſſues are eſtreated to be levied, muſt charge himſelf with the iſſues, and muſt not return a *Nihil*, but ſhall have an action upon the caſe againſt his Predeceſſor, for his falſe return; yet here is no malice, but at the moſt a neglect, or a miſtake only.

39 *E.* III. 7. *Brook.* action upon the caſe, 67.

An action upon the caſe againſt a Sheriff for not ſummoning and warning a man in due time, upon a writ of *Præmunire* or attachment, whereby he ſuſtained damage, as judgment given againſt him, or the like. This is but a bare neglect or omiſſion, and ſeems to be the leaſt or loweſt ſort of injuries; and yet being accompanied with a particular damage to the party, tho' without any malice on the Sheriff's part, the action will lie.

3 *E.* IV. 20. *Brook.* action upon the caſe, *pl.* 91. by *Danby* and *Pigot*, for a falſe return only.

If a *Nihil* be returned againſt me who have land, *F. N. B.* 93. 31 *E.* III. *Fitz. Abr. Proces* 55.

So for not returning a writ of ſecond deliverance, which is a mere neglect and *non-feaſance*, tho' there be no malice, 21 *E.* III. 43. *Br. Act. ſ. ca. pl.* 48. 5 *Rep.* 32. *b.* 91. 7 *Rep.* 1.

So againſt a Biſhop, if he falſely return, that an executor has not refuſed the executorſhip, when *re vera* he has refuſed it, 2 *Leon.* 221.

So againſt an Eſcheator, 9 *H.* VI. 60. 21 *E.* IV. 23. 27.

Much more ſhall the action upon the caſe lie againſt the Sheriff, as the circumſtances of this caſe are, where the return is not only falſe, but he

* Sir *John Elliot*, and *Denzil Holles*, pleaded the like Plea to the juriſdiction of the *King's-Bench.* *Ante p.* 242.

knew

knew it to be falſe, and he did it maliciouſly, with a purpoſe to hinder the plaintiff from ſitting, and to put him to expence, and where the plaintiff has had ſo great a damage. And the Sheriff by his oath is oblig'd to do right as well to poor as to rich, in all that belongeth to his office. 2. To do no wrong to any man for favour nor hate. 3. To diſturb no man's right. 4. Truly to return, and truly to ſerve all the King's writs, as far forth as ſhall be within his cunning. And the Jury by their verdict in this caſe, have found the defendant to fail in every one of theſe clauſes of his oath. And tho' the circumſtances that do diverſify all caſes are new in this caſe; yet 'tis very frequent in actions upon the caſe, to have new caſes and new circumſtances; and there is nothing more frequent than this variety and novelty.

Sir *Fran. Bacon*, in his Book of advancement of learning, ſpeaking of caſes omitted in law, *fol.* 38. ſays, *That the narrow compaſs of man's wiſdom cannot comprehend all caſes which time hath found out*; and therefore caſes omitted and new, do often preſent themſelves, but every new caſe does not require a new law; for then the legiſlative power muſt be continually exercis'd: But tho' it differs from former caſes in circumſtances, yet it may fall under a general rule, or be proceeded upon by parity of reaſon; *ubi eſt eadem ratio, ibi idem eſt jus.*

And the Statute of *W.* 21. *cap.* 24. has made ample proviſion for all ſuch new caſes that fall under a general rule, but have no formed writ, or writ of courſe, that fits it in all the particulars and circumſtances. *In conſimili caſu, ſimili remedio indigente, fiat breve*, ſays that Statute.

In the 8th *Rep. fol.* 48. *Jehu Webb*'s caſe, there you have the diſtinction of writs; ſome are *brevia formata ſeu de curſu*, and from thence the Curſitors have their name, becauſe they have the drawing of thoſe writs.

Some are *brevia Magiſtralia quæ nec ſunt de curſu nec formata*, i. e. *de aliqua certa forma, ſed ſæpius variant ſecundum varietatem caſuum, factorum & querularum*; as are actions upon the caſe, *&c.* which have not any certain form, but are upon occaſion drawn by the Maſters of the Chancery, and from thence are called *Magiſtralia*; all this is by virtue of the words of the Statute of *W.* II. *c.* 24. *Concordant clerici in Cancellaria de brevi faciendo.* 2 *Inſt.* 405, 406, 407.

And many new caſes may be put, that have no parallel caſes to be found in our Books, if all the particulars and circumſtances be regarded, as the caſe, 8 *Car. Croke* 291. in the King's Bench, where an action upon the caſe is brought againſt an *Apparitor*, for what he did in his office, *viz.* for falſely and maliciouſly preſenting one, and that in the *Spiritual Court*, for incontinency. This was againſt an officer for what he did in his office, and to which his oath obliged him; and this was for a thing done in the Spiritual Court, *viz.* the Conſiſtory Court at *Exeter*, and for a matter merely of eccleſiaſtical cogniſance, *viz.* incontinency, wherein the Common Law had nothing to do; and this caſe had no parallel nor precedent before it: and yet being an injury and damage to the party preſented, and done falſely and maliciouſly, and without colour, and for which the party injured could have no recompence in any other Court, but at Common Law, it was adjudged the action lay. This caſe, tho' it had no parallel before it in all the circumſtances, yet in many reſpects it is a parallel to the caſe before us. There is the like action againſt conſtables for making a falſe preſentment, *Croke Car.* 467. and the caſe I cited before againſt a Sumner. 12 *Rep.* 128.

And for that objection and obſervation concerning the novelty of this action, this more may be ſaid in anſwer to it; That till of late years Sheriffs have given no occaſion for the like action of this; for double returns, upon elections to Parliament, have not been in ancient times.

Mr. *Prynne*, in his *Brevia Parliamentaria Rediviva*, *fol.* 137. obſerves, that there were not above two or three caſes of elections queſtioned from 49 *H.* III. till 22 *E.* IV. for aught appears by the returns, or Parliament-Rolls, and not ſo much as one double return or indenture.

And the common law does comply with, and conform to the general opinion and genius of the Kingdom, and values what they generally eſteem and value, and diſeſteems what they value not.

Heretofore an election to ſerve in Parliament was not a thing ſo deſirable, and ſo much ſought after as now-a-days it is; and it is not the deſire or ſeeking after it that is to be diſlik'd or condemn'd, for he that deſireth the office of a Biſhop (ſays the *Apoſtle*) deſires a good office; but it is the undue means uſed, or the ill ends for which it is deſired, that makes the ſeeking bad.

Mr. *Prynne*, *ut ſupra*, *fol.* 165. *anno* 1 *E.* III. a writ iſſued to elect two Knights for the county of *Northumberland*, and the Sheriff returned this anſwer, *communitas commit. Northumbriæ ſic reſpondet, quod ipſi per inimicos Scotiæ adeo ſunt deſtructi, quod non habent unde ſolvere expenſa duobus militibus profiſciſſuris ad conſilium apud Lincoln. tenendum.*

In his fourth part of his Regiſter of Parliamentary writs, is mentioned a Patent of exemption granted 42 *E.* I. to the town of *Torrington* in *Devonſhire*; which Patent recites in its preamble, *that the men of that town never uſed to ſend Burgeſſes to Parliament*, till the Sheriff, 21 *E.* I. *ſummonitos fuiſſe malitioſe retornavit.*

So that a malicious return to Parliament is no new thing, but has been formerly done; and as the plaintiff in this action has well ſued the Sheriff for returning another with him, ſo I make no doubt but as the caſe then ſtood with the general humour and opinion of the people, thoſe of *Torrington* might have had their remedy againſt the then Sheriff for returning them ſummoned.

And the Law is ſtill the ſame, in that it ſtill ſets a price and eſteem upon that which the people generally eſteem and value.

And ſeveral caſes have been put to prove, that new Statutes have given occaſion to new actions upon the caſe, which actions could not have been ſued at the Common Law; and yet thoſe new Laws and ſtatutes do not give thoſe new actions, but only occaſioned them.

Barnes verſ. Carey 12 *Jac.* King's-Bench, *Rolls*'s *Rep. fol.* 47.

The plaintiff there brought an action upon the caſe againſt the Sheriff of *Briſtol*, for ſuffering *J. S.* to eſcape out of his cuſtody, *J. S.* being committed by the Commiſſioners of bankrupts, for refuſing to anſwer Interrogatories, the plaintiff being one of the creditors, and *J. S.* a bankrupt; and after many exceptions taken to the declaration, the Court gave judgment for the plaintiff. And yet there was no ſuch thing as a commiſſion of bankrupt at the common Law; but the common Law takes occaſion by the ſtatutes of bankrupt, to give ſuch an action upon the caſe, which before thoſe ſtatutes could not have been ſued.

In like manner the common Law takes occaſion by thoſe ſtatutes that give the action of waſte againſt tenant for life, or years, againſt whom it lay not by common Law, to give an action upon the caſe againſt ſuch tenants, if they will not permit their Leſſors to enter upon the thing demiſed, to view whether waſte be done or not. *Croke* 2 *part*, 478.

Object. 4. That there is not one caſe in Law parallel to this caſe, for a Sheriff to be ſued for returning the whole truth, and ſomething more than the truth: tho' actions for falſe returns are frequent.

Anſw. This is an action for a falſe return, and ſomething more. That it is for a falſe return, appears by that allegation, that he did falſely make his return, and the Jury have found it ſo, and we muſt believe it. And it was falſe in this, in that he returned an Indenture pretended to be under the hands and ſeals of divers perſons, as the greater part of the ſaid county, purporting the choice of another than the plaintiff to be Knight of the Shire. The plaintiff does not alledge, that there ever was any ſuch Indenture ſealed by any perſon; but that the defendant did falſely return another Indenture, purporting the ſame to be made by divers perſons, *&c.* So that we may reaſonably underſtand it, that in truth there never was any ſuch Indenture ſealed by any but the Sheriff himſelf, and not by any others that were preſent at the election. 2*dly*, Tho' the Sheriff have returned the whole truth, yet together with that truth he returned a falſehood; and till it was re-examined, it could not appear which was the truth; and in the mean time the plaintiff ſuſtained all his damage.

Object. 5. That the Sheriff acted herein as a Judge, and therefore if he err, he is not to be ſued for it, but his error may be reformed; and the Law will not ſuffer an averment tending to the diſcredit of a Judge. *Pl. comment.* 491. *b.* and *Dy.* 89. *b.*

Anſw. All this is true, as to one that is a Judge of Record, in reſpect of the greatneſs of his authority, and the great truſt the King and the Law repoſe in a Judge of Record; but the Sheriff is no Judge at all in what he acts in the election of Knights for the Shire, but is only an officer upon Record, 9 *H.* VI. 53. and 60. *Br. Ab. Tit. Act. ſ. ca. plac.* 6. tho' in ſome particular caſes indeed, the Sheriff is a Judge, as in a *Juſticies*, 6 *Rep.* 12. *ad. fin.* and a Judge of Record, as in a *Re-diſſeiſin*, by the Statute of *Merton*, *c.* 13.

Object. 6. The Statute of 23 *H.* VI. *c.* 15. has provided a remedy againſt the Sheriff for any abuſe committed by him in elections, *viz.* the penalty of an hundred pound, in caſe of Knights of the Shire, to the Knight injured: And it does recite in the preamble, that a convenient remedy for the party grieved is not ordained in the former ſtatutes; and from hence it is inferred, that there was no remedy for the party grieved at the common Law, nor before this ſtatute.

Anſw. I have already proved, that there was a remedy at the common Law, and before this ſtatute; and this ſtatute is an argument to prove it, for this ſtatute mentions a party grieved, and there could be no grief without a remedy, otherwiſe the Law would have been defective. And it cannot be denied, but that if there were a remedy at the common Law, this ſtatute being in the affirmative does not take it away, only it gives another remedy.

And for the words of this ſtatute of 23 *H.* VI. that *a convenient remedy* for the party grieved is not ordained by the formed ſtatutes; this does not argue that there was no remedy at the Common Law, nor does it argue that there was no remedy at all; but that there was no *convenient* remedy by thoſe former ſtatutes, and thereupon the ſtatute of 23 *H.* VI. gives an hundred pound to the Knight injured by an undue return.

I ſhall put ſome like caſes where Acts of Parliament give remedies, where yet there were other remedies before at common Law, and the party may ſue for either; *Rolls' Ab.* 1. *part. fol.* 93. *caſe* 20.

A *Diſtringas* is awarded to the Sheriff to diſtrain the defendant in an action, and the Sheriff returns too ſmall iſſues, tho' an averment lies by the ſtatute of *W.* II. *c.* 43. yet the plaintiff may well have his action upon the caſe againſt the Sheriff, becauſe it appears by the words of the ſtatute, that it is a falſe return. Obſerve the argument there uſed, *viz.*

If the action upon the caſe did not lie, in ſuch caſe the plaintiff had not any remedy at the common Law, which was greatly miſchievous; and the ſtatute (as is there obſerved) tho' it gives a new remedy, and takes no notice of any remedy that was before in the caſe, yet it does not reſtrain the plaintiff from any remedy that he had at the common Law. 'Tis there indeed made a *Quære*; but Serjeant *Rolls* has this Note upon it, that *Tr.* 3 *Car.* one Mrs. *Bennet*, upon good advice, brought ſuch an action upon the caſe againſt the Sheriff of *London*, for returning too ſmall iſſues againſt the Mayor and Commonalty of *London.*

The ſtatute of *W.* II. *c.* 24. (Sir *E. C.* 2 *Inſt. fol.* 404, 405.) firſt gives an aſſize of *nuſance* againſt the Alienee of him that levied that *nuſance*; and that ſtatute ſeems (as Sir *E. C.* obſerves) to underſtand that the party grieved was without any remedy before; for it provides in theſe words, *de cetero non recedant quærentes a curia Regis ſine remedio:* yet Sir *E. C.* takes notice, *fol.* 405. of his 2. *Inſt.* at the lower end of that *folio*, upon the words (*a curia*) *That the makers of that Act knew well that the party injured by the nuſance* might enter upon the ground of the wrong-doer, not only when it was in his hands, but after it was aliened too, and abate the nuſance, and ſo prevent himſelf of the remedy by aſſize of nuſance given by this Act. And beſides this, he had another remedy by action, *viz.* If he had any particular damage (ſays Sir *E. C.*) he might bring his action upon the caſe, and recover damage, *ne quærentes recederent a curia ſine remedio.*

Object. The ground of this action againſt the Sheriff is for making a double return. Now the declaration ſets forth only one perfect return, and that is of the plaintiff's election, which the declaration ſays, was *ſecundum exigentiam brevis*; and it was by Indenture, under the ſeal of the Sheriff and Electors: And tho' the plaintiff alledges, that the late Sheriff and the Electors returned another Indenture of the election of another perſon, (which is the *gravamen* that he complains of) yet that appears to be no return; for it was not ſaid, *that that Indenture was under any ſeals.* And the ſtatutes of 7 *H.* IV. *c.* 15. and 8 *H.* VI. *c.* 7. require Indentures enſealed by the Electors to be tack'd to the writ, which Indentures ſo ſealed and tacked, ſhall be holden for the Sheriff's return.

Anſw. This other Indenture laſt mentioned, muſt be underſtood an Indenture enſealed, in like manner as the former; for the declaration juſt before mentions

mentions the firſt Indenture, whereby the Plaintiff was returned to be choſen, and that it is ſaid to be ſo enſealed, as the Statutes require; and then the declaration ſays, that the Sheriff, together with that Indenture, return'd another Indenture: ſo that it muſt be reaſonably underſtood, to be an Indenture, in like manner enſealed.

And then 'tis ſaid by the declaration of this laſt Indenture, that it was annexed to the Writ; and ſo return'd by the Defendant the Sheriff, which muſt therefore be preſum'd to be an Indenture enſealed, or elſe to what purpoſe did the Defendant annex it to the Writ, and return it?

And further the declaration ſays, that by reaſon of the falſe return, the Plaintiff could not be admitted into the Lower Houſe, till he had made proof of his Election. Now, if that other Indenture were not enſealed, it could not be ſaid to be a falſe return; for it would indeed have been no return, and it could not have hindered the Plaintiff from being admitted, nor put him to the proof of his Election.

And that the Indenture muſt be underſtood an Indenture enſealed, by thoſe that were preſent at the Election, appears by the Writ; the form whereof you will find in *Crompt. Juriſdiction of Courts, fol.* 1. *b.* the Clauſe is this; *Et nomina eorundem militum, ſic electorum, in quibuſdam Indenturis, inter te & illos qui hujuſmodi Electioni interfuerint inde conficiendis, inſeri.* And in another Clauſe, *Et Electionem illam ſub ſigillo tuo & ſigillis eorum qui Electioni illi interfuerint nobis in Cancellariam certifices, remittens nobis alteram partem Indenturar. predictar. preſentibus conjutam una cum hoc breve.*

The Lord Chief-Juſtice *North*'s Argument, in the Caſe between Sir *William Soame*, Sheriff of *Suffolk*, and Sir *Samuel Barnardiſton*, Bart. adjudged in the Court of *Exchequer-Chamber*, upon a Writ of Error, containing the Reaſons of that Judgment.

SIR *Samuel Barnardiſton*, the Plaintiff, brings an action upon the caſe in *Banco Regis* againſt the Defendant, Sir *William Soame*, late Sheriff of *Suffolk*, ſetting forth, that a Writ iſſued for the chuſing of a Knight for that County, to ſerve in the then Parliament, inſtead of Sir *Henry North*, deceaſed; that at the next County Court the Freeholders proceeded to an Election, and altho' the Plaintiff was duly choſen *per majorem numerum gentium tunc reſident. infra dict. Comitat. quorum tunc quilibet expendere potuit* 40s. *libri ten'ti & ultra per annum infra Comitat. illud, ac licet prædictus* Willielmus, *præmiſſa ſatis ſciens, poſtea brevem præd. in cur. Cancellar. retornavit, ſimul cum quadam Indentura inter ipſum Vicecomitem & prædict. Electores ipſius* Samuelis *de prædicta Electione ipſius* Samuelis *fact. ſecund. Exigentiam brevis prædict. Prædictus tamen* Willielmus *adtunc Vicecomes Officii ſui debitum minime ponderans, ſed machinans & malitioſe intendens ipſum* Samuelem *in hac parte minus rite prægravare, ac eundem* Samuelem *de fiducia & officio unius Mil. Comitat. prædict. in dict. Parliamento exercend. omnino fruſtrare, & deprivare & prædict.* Samuelem *ad diverſas magnas & grandes pecuniarum ſummas expend. cauſare, contra debitum officii ſui præd. falſo, malitioſe, ſcienter & deceptive, adtunc in ead. Cancellar. apud* Weſtmonaſt. *prædict. retornavit una cum Indentura prædict. quandam aliam Indenturam eidem brevi ſimiliter annex. ſpecificat. illam fore fact. inter præfat.* Willielmum, *&c. una parte, & diverſas alias perſonas dict. Comitat. in Indentura illa ſpecificat. & continent. quod dictæ al. perſonæ, ut major pars totius Comitat. prædict. in prædicto pleno Comitat. elegerunt quend.* Lionellum Talmaſh, *Bar. alias dict.* Lionel *Dom.* Huntingtowre, *in Regno* Scotiæ, *in loco prædicti* Henrici North *un. Mil. Com.* Suffolk *prædict. pro Parliamento prædicto adveniend. eidem Parliamento pro Com. il. Ubi re vera prædictus* Lionellus *non fuit electus par majorem partem, prout per ult. Indent. falſo ſupponitur. Ratione cujus quidem falſi retorn. de prædicta al. Indent. &c. idem* Samuel *in Dominum inferiorem pro Comitat. hujus Regni* Angliæ, *&c. aſſemblat. admitti non potuit, quouſque idem* Samuel *per petitionem ſuam Comitat. dicti Parliamenti pro remedio congruo exhibet; & poſt diverſas ingentes denar. ſummas in & circa manifeſtationem & verificationem dictæ Electionis coram dict. Comitat. expendit, & diverſos labores in ea parte ſuſtent. poſtea ſcil. &c. per Comitat. in Domum Comitat. prædict. admiſſus fuit & electio ipſius* Samuelis *per Comitat. declarat. fuit, fore bona, unde deteriorat. eſt, & damnum habet ad Valenc.* 3000*l.*

There is a verdict given for the Plaintiff, and damages found to the value of 800*l.* and Judgment thereupon, and a Writ of Error is brought to reverſe that Judgment.

I have but a little Time left me to ſay what I have to offer, it being very late; and yet I muſt deſire leave to produce thoſe reaſons I have in maintenance of my opinion: I will be careful not to detain you longer than will be neceſſary.

And therefore, I will not trouble you with ſtarting the caſe again, nor will I ſpeak of any exceptions that have been made to the declaration, for I love not the nicet es of the Law, in caſes where they do prevail: and in this caſe I have only conſidered the foundations of the action; which if I had found well eſtabliſhed upon reaſon, or the grounds of the Law, I would have examined what has been objected to the forms of the declaration, which muſt have brought great weight to have overturned thoſe Proceedings.

But as the point of the action, upon the moſt ſerious conſideration I could have of it, and weighing what has been before now, and alſo at this time, ſaid in ſupport of it; I am of opinion, that the Judgment ought to be reverſed; for that no ſuch action as this, at Bar, does lie by the Common Law.

Becauſe this is a cauſe of conſiderable value, great damages being recovered; becauſe it is a Judgment of great authority, being upon a cauſe tried at the *King's-Bench* Bar, and given upon deliberation there; becauſe it is a caſe of an extraordinary nature, and of great import, each party pretending benefit to the Parliament by it; becauſe it is an action *Primæ Impreſſionis*, that never was before adjudged, the report of which will be liſtened after: I have taken pains to collect and ſet down the reaſons that I muſt go upon in determining this caſe; that as the Judgment had the countenance of ſome deliberation in the Court where it was given; ſo the reverſal being with greater deliberation, may appear grounded upon reaſons that ought to prevail.

I can ſay with my brother *Windham*, that I love rather to affirm Judgments, than to reverſe them; but I can attribute nothing of authority to the Judgment, tho' it were given in a ſuperior Court, and upon deliberation; I muſt judge of it as if the caſe came to be judged originally by me: the argument to ſupport a Judgment from the authority of itſelf, is, *Exceptio ejuſdem rei cujus petitur Diſſolutio*, which muſt not be admitted in caſes of Writs of Error. We are entruſted to examine and correct the errors of that Court, and for that purpoſe we are made ſuperior to it; we muſt proceed according to our own knowledge and diſcretion, or elſe we do not perform the truſt repoſed in us.

I muſt needs ſay, this is a cauſe that imports it more than any cauſe I have known to come before us, for it is a cauſe *Primæ Impreſſionis*; and the queſtion is, Whether by this Judgment a change of the Common Law be introduced? It is the principal uſe of Writs of Error, and Appeals, to hinder the change of the Law; therefore do Writs of Error in our Law, and Appeals in the Civil Law, carry Judgments and Decrees to be examin'd by ſuperior Courts until they come to the higheſt, who are entruſted that they will not change the Law.

Therefore do Writs of Error lie from *Ireland*, which is a ſubordinate Kingdom to *England*, by whoſe Laws it is governed; that they might not be able to change the Law by their Judgments, and not ſo much for the particular right of the party.

For otherwiſe it would be very eaſy for Judges, by conſtruction and interpretation, to change even a written Law; and it would be moſt eaſy for the Judges of the Common Laws of *England*, which are not written, but depend upon uſage, to make a change in them, eſpecially if they may juſtify themſelves by ſuch a rule as my brother *Atkins* lays down to ſupport this caſe, *viz.* that the Common Law complies with the genius of the Nation. I admit that the Laws are fitted to the genius of the Nation; but when that genius changes, the Parliament is only entruſted to judge of it, and by changing the Law to make it ſuitable to it. But if the Judges ſhall ſay it is Common Law, becauſe it ſuits with the genius of the Nation, they may take upon them to change the whole as well as any part of it, the conſequence whereof may eaſily be ſeen; I wiſh we had not found it by ſad experience.

If the caſe at the Bar be a change of the Law, it is happy that it comes to be queſtioned in the firſt inſtance; for if this cauſe had been any way agreed and quitted, and a ſecond caſe of this nature had been queſtion'd, there would have been a precedent urg'd, which cannot be ſpoke of here; for this caſe hath no fellow, there never having been the like Judgment before.

The method I ſhall take in what I have to ſay, ſhall be,

1*ſt*, *To remove ſome prejudice the Caſe is under.*

2*dly*, *Give my reaſons againſt the Action.*

3*dly*, *Weigh what has been ſaid to maintain the Action.*

1*ſt*, The caſe is under this prejudice, that an action of the caſe lies for falſe returns of Sheriffs, and why ſhould it not lie in this caſe as well as any other?

To remove this prejudice, I ſhall ſhew ſome material differences betwixt the nature of ordinary returns and this return.

In ordinary returns the party is concluded, and abſolutely without remedy; for the Court muſt take the return as the Sheriff makes it. In ordinary caſes the Sheriff may, and frequently does, take ſecurity of the Plaintiff, or the Sheriff hath means by Law to be ſecure; as, if he doubts the property of the goods, he may return a *Fieri facias, Nullus venit ad monſtrandum bona.* In ſome caſes he may, for his ſafety, impannel a Jury, as upon an *Elegit*; or he may reſort to the Court, and pray reaſonable time to prepare his return, if the matter be difficult; and hath other ſhelters, that if he be wary, will ſave him from danger.

But in this caſe the party is not concluded, for upon a Petition to the Parliament, if they ſee it juſt, they will cauſe the return to be altered by the Clerk of the Crown, if the Sheriff be not in the way; in this caſe, the Sheriff may not take ſecurity, it were criminal in him to make ſuch a return by Compact, nor can the Sheriff make a fruitleſs return or obtain delay to conſult his ſafety.

Theſe differences are of that nature, that they change the caſe in the reaſon of it, as I ſhall hereafter make appear: and no man can infer, becauſe an action lies for falſe returns in ordinary caſes; therefore it lies in caſe of a return to Parliament, where the Sheriff is clearly upon terms.

My reaſons againſt this action are applicable to this caſe, and make it different from all the caſes, that have been put by my brothers that argued for the action: I obſerve they argued only upon generals, without any other application to this caſe than by the topick of concluding, *à Minori ad Majus*, becauſe an action lies in caſes of inferior nature, therefore it will lie in this; which rule holds not in diverſe caſes, where there are particular reaſons to the contrary, as I ſhall by-and-bye ſhew to be in this.

2*dly*, I ſhall give you my reaſons againſt this action, which are as follow:

(1.) My firſt reaſon is this, becauſe the Sheriff as to the declaring the majority is Judge; and no action will lie againſt a Judge, for what he does judicially, tho' it ſhould be laid *falſo, malitioſe & ſcienter*; as appears in *Co.* 12. *Rep. fol.* 24. *They who are intruſted to judge, ought to be free from vexation, that they may determine without fear; the Law requires courage in a Judge, and therefore provides ſecurity for the ſupport of that courage.* But,

1. Is the Sheriff a Judge in this caſe? And,

2. Is there the ſame reaſon he ſhould be freed from all actions?

As to the firſt it is of neceſſity, that as to the declaring the majority, he ſhould be Judge upon the place: in other caſes, in the County Court, the Freeholders are the Judges, and he is the Miniſter. When we ſay the Freeholders, we mean the major part of them is to judge; but when the queſtion is, Which is the major part? they cannot determine the queſtion; but of neceſſity the Sheriff muſt determine that, the nature of the thing ſpeaks it.

Therefore it was held rightly in *Letchmere*'s caſe, 13 and 14. *Car.* II. that as to the Election of Knights to the Parliament, the Court is properly the Sheriff's Court, and the Writ is in the nature of a ſpecial Commiſſion, *Elegi facias.*

I know a Judge may have many miniſterial Acts incumbent upon him, as the Chief-Juſtices have to certify Records upon Writs of Error; therefore it is neceſſary for me to obſerve, that the ſuit here is for what he does as a Judge, and not for any thing miniſterial; which appears by the averment, that the Sheriff annexed another Indenture, ſpecifying it to be made by the major part of the Freeholders, and containing that the Lord *Huntingtowre* was choſen,

ubi re vera the Lord *Huntingtowre* was not choſen by the major part of the Freeholders. If it had been ſaid *ubi re vera* the Freeholders ſuppoſed to ſeal the ſame, never did ſeal the ſame, there had been a falſity in his miniſterial part of ſending in the Indenture; but his ſending his two Indentures, which were really ſealed by the Freeholders, as they import; wherein the Freeholders of each Indenture (and not the Sheriff) ſay, that they are the major part, is no falſity in his miniſterial part, but only deferring to judge between them, which is the major part; or more properly judging that they are both equal in number.

They object, that the matter of this queſtion is not matter of Judgment, 'tis but counting the Poll, which requires Arithmetick, but not Judgment; but certainly if it be rightly conſidered, it will be thought this queſtion of Majority is not barely a queſtion of fact, but a queſtion of judgment, a queſtion of difficult judgment, there are ſo many qualifications of Electors.

1. They muſt have 40 *s. per annum*, there the value muſt be judged.
2. It muſt be Freehold; there the Title.
3. It muſt be their own; there colourable and fraudulent gifts made many times on purpoſe to get voices, muſt be judged.
4. The Electors muſt be reſident; here the ſettlement of the party muſt be determined.
5. There are many things that incapacitate voices, as bribery, force, *&c.* and many other queſtions ariſe, that are of ſuch difficulty in debate of them, much time is ſpent in Parliament; and ſometimes a Committee determines one way, and the Houſe another. Is not this then a queſtion that refers to Judgment?

They object again, the Sheriff may give an oath concerning all the qualifications, and he is to look no farther.

I anſwer, the Statute has given the Sheriff power to give an oath in aſſiſtance of him; but the Statute does not ſay that whoſoever takes that oath ſhall have a voice: neither does the Statute 23 *Hen.* VI. ſay, that the Sheriff ſhall not be charged with a falſe return, that purſues that way: ſo that although he may uſe thoſe means for his direction, yet he muſt conſider his own ſafety, and not make a falſe return. If a man, upon taking ſuch an oath, give the Sheriff a ſpecial anſwer, or if it ſhould be known to the Sheriff he ſwears falſe, the Sheriff muſt determine according to his own judgment, and not by what is ſworn.

It may hence be concluded, that the Sheriff, as to declaring a majority, is a Judge; and if ſo, my next aſſertion is, that there is the ſame reaſon he ſhould be free from actions, as any Judge in *Weſtminſter-hall*, or any other Judge. Does it not import the Publick, that the Sheriff ſhould deal uprightly and impartially? Ought he not to have courage, and for that end ſhould not the Law provide him ſecurity?

Conſider his diſadvantages, what a noiſe and croud accompany ſuch elections; what importunity, nay, what violence there is upon him from the conteſting parties.

We may ſay, no other Judge has more need of courage and reſolution to manage himſelf, and determine uprightly, than he. No other Judge determines in a caſe of greater conſequence to the publick, or difficulty, than he; expoſe him to ſuch actions, and in moſt Elections he muſt have trouble; for commonly each party is confident of his ſtrength, his conduct, and his friends; that let the Sheriff return never ſo uprightly, the party that is rejected will revenge it by a ſuit, eſpecially if he may ſue at Common Law, to have boundleſs damages, without running any hazard himſelf, but of the loſs of his coſts.

If we Judges, that find ourſelves ſecure from actions, ſhould not be tender of others that are in the ſame circumſtances; it may well be ſaid, *Wo unto you, for you impoſe heavy burthens upon others, but will not bear the leaſt of them yourſelves.*

2. My ſecond reaſon is, becauſe it is *alieni fori*, either to examine the right of the Election, or behaviour of the Sheriff; both which are incident, and indeed the only conſiderations that can guide in the Trial of ſuch cauſes, if they be allowed.

It is admitted, that the Parliament is the only proper Judicature to determine the right of Election, and to cenſure the behaviour of the Sheriff. How then can the Common Law try a cauſe, that cannot determine of thoſe things, without which the cauſe cannot be tried?

No action upon the caſe will lie for breach of a truſt, becauſe the determination of the principal thing, the truſt, does not belong to the Common Law, but to the Court of *Chancery*: certainly the reaſon of the caſe at Bar is ſtronger, as the Parliament ought to have more reverence than the Court of *Chancery*.

They object, that it may be tried after the Parliament hath decided the Election; for then that which the Common Law would not try is determined, and the Parliament cannot give the party the coſts he is put unto.

Then I perceive they would have the determination of the Parliament binding to the Sheriff in the action, which it cannot be; for that is between other parties to which the Sheriff is not called: it is againſt the courſe of Law, that any Judgment, Decree or Proceeding betwixt other parties ſhould bind the intereſt of, or any way conclude a third perſon; no more ought it to do here: it may be eaſy for parties combining to repreſent a caſe ſo to the Parliament, that the right of Election may appear either way as the parties pleaſe. Is it fit the Sheriff, who is not admitted to controvert ſuch determination, ſhould be concluded by it, in an action brought againſt him, to make him pay the reckoning?

Did the Parliament believe, when they determined this Election, that they paſſed Sentence againſt the Sheriff, upon which he muſt pay 800 *l.*? Sure if they had imagined ſo, they would, nay, in Juſtice, they ought to have heard his defence, before they determined it.

And yet that was the meaſure of this caſe, the Sheriff was not heard in Parliament, indeed he was not blamed there: and yet upon the Trial, which concerned him ſo deeply, he was not allowed to defend himſelf, by ſhewing any majority or equality of voices, the Parliament having determined the Election.

I do not by theſe reflections tax the Law of Injuſtice, or the courſe of Parliament of Inconvenience; I am an admirer of the methods of both: it is from the Excellency of them, I conclude this Proceeding in this new-fangled action, being abſurd, unjuſt and unreaſonable, cannot be legal.

To anſwer the other branch of this objection, I ſay, it does not follow, that becauſe the Parliament cannot give coſts, therefore this new-deviſed action muſt lie, to help the party to them.

For then ſuch an action might as well lie in all caſes, where there is a wrong to be remedied by courſe of Law, and no coſts are given for it.

At the Common Law no coſts were given in any caſe, and many caſes remain at this day, where the Statutes have given no coſts: as in a Prohibition, *Sciré facias*, and *Quare impedit*, and divers other caſes; and yet no action will lie to recover thoſe coſts, and why ſhould it lie in the caſe at Bar?

In this caſe the Parliament have already had it under their conſideration in the Statute 23 *Hen.* VI. and have appointed what ſhall be paid by the Sheriff that offends, *viz.* 100*l.* to the party, 100*l.* to the King, and impriſonment; the Parliament have ſtated what ſhall be paid for compenſation, and what for puniſhment, and would have provided for coſts, if they had thought fit.

3. My third reaſon is, becauſe a double return is a lawful means for the Sheriff to perform his duty in doubtful caſes.

If this be ſo, then all aggravations of *falſo, malitioſe & ſcienter*, will not make the thing actionable; for whatever a man may do for his ſafety, cannot be the ground of an action.

There is ſometimes *Damnum abſque injuria*, though the thing be done on purpoſe to bring a loſs upon another, without any deſign of benefit to himſelf; as if a new houſe be erected contiguous to my ground, I may build any thing on purpoſe to blind the lights of that new houſe, and no action will accrue, though the malice were never ſo great; much leſs will it lie, when a man acts for his own ſafety.

If a Jury will find a ſpecial verdict; if a Judge will adviſe and take time to conſider; if a Biſhop will delay a Patron, and impannel a Jury to enquire of the Right of Patronage; you cannot bring an action for theſe delays, though you ſuppoſe it to be done maliciouſly, and on purpoſe to put you to charges; though you ſuppoſe it to be done *ſcienter*, knowing the Law to be clear: for they take but the liberty the Law has provided for their ſafety, and there can be no demonſtration that they have not real doubts, for theſe are within their own breaſts; it would be very miſchievous, that a man might not have leave to doubt without ſo great peril.

The courſe of Parliament makes out the ground of this reaſon to be true in fact, ſo that a double return is lawful when the Sheriff doubts; for if the Parliament did not allow a double return in doubtful caſes, they ought never to accept a double return: if it were in itſelf a void and unlawful return, they ought not to endure it a moment, but ſend for the Sheriff, and compel him forthwith to make a ſingle return. But we ſee where there is doubt, the Parliament ſends not for the Sheriff before they have examined the caſe, and given particular directions.

And it muſt of neceſſity be the courſe: for ſuppoſe the voices are equal: ſuppoſe the Election is void for force; ſuppoſe the Sheriff doubts upon the validity of ſome voices, ſhall he tranſmit his doubts ſpecially to Parliament? Was there ever any ſuch thing done? Was there ever any other way but to make a double return, and leave it fairly to the deciſion of Parliament?

It was ſaid by my brother *Ellis*, that if the Sheriff had returned, in the nature of a ſpecial verdict, the ſpecial matter, and had concluded in this manner, *viz.* if the Parliament ſhall adjudge Sir *Samuel Barnardiſton* to be choſen, then he returns him; and if the Parliament ſhall adjudge the Lord *Huntingtowre* to be choſen, then he returns him; that ſuch a return as this had been ſafe, and could not have borne an action.

This is a pretty invention, found out for argument ſake, but methinks it furniſhes no force at all to the part for which it is brought, but rather ſhews the right to be the other way: for let any man of reaſon ſay, whether a double return, as it is now uſed, be not the ſame thing in conſequence? Is not a double return, as if the Sheriff ſhould ſay to the Parliament, "The right of Election is between theſe two, I am in doubt "which of them I ſhall reject, and expect your directions." This is the import of a double return, and is the ſame in effect, as if it had concluded like a ſpecial verdict; and ſo my brother *Ellis*'s inſtance ſhould not be actionable, though he concluded otherwiſe.

That other new-fangled way could not be received.—For,

1. *The Freeholders would never join in ſuch a return.*
2. *Such a return is not capable of being amended by the Sheriff.*

But the judgment of the Parliament muſt be entered upon record, to make it any return; it concluding nothing of itſelf, as a ſpecial verdict concludes nothing, till the judgment of the Court be entered upon the roll with it.

3. *The Parliament will not, as I believe, admit of new devices in the courſe of their Proceedings, whatever we do at Law.*

But the double return is practicable in the County, for the Freeholders of each part will tender their Indentures; and it is eaſily amended in Parliament, by rejecting the Indenture of thoſe Freeholders that were not the major part, which way has been practiſed in doubtful caſes for many years.

So that I apprehend the caſe at Bar to be more regular and favourable, than that caſe, which my brother *Ellis* put as a caſe that would bear an action.

Again, ſuppoſe the Sheriff had informed the Parliament of his doubts, and that he could not readily determine where the majority was, but it was betwixt two perſons, *A.* and *B.* and thereupon deſired their favour, either to grant him time to determine it, if they pleaſed to command him ſo to do, or elſe, that they would decide it themſelves, and he would obey what directions they ſhould make in it; and thereupon the Parliament had taken upon themſelves to determine it.

This moſt clearly had not been actionable, for it is not actionable to delay a return to any Court of Juſtice, where the Sheriff had leave from the Court ſo to do.

A double return, in my underſtanding, ſpeaks the ſame thing to the Parliament; and upon it they may either direct the Sheriff to make a ſingle return, which is to cauſe him to decide it, or they may do it themſelves.

And here, I muſt needs reflect upon the ſecond reaſon I gave againſt this action, that the matter of it is *alieni fori*; I find myſelf and my brothers that argued for the action, engaged in a diſcourſe of the nature of a double return, and the courſe of Parliament upon it, which, as a Judge, I cannot ſo well ſpeak to. I had the honour to be of this Houſe of Commons, and whilſt I was there, I conſidered

ſidered as well as I could the courſe of the Proceedings of the Houſe, and am therefore able to ſpeak ſomething of them, and I am brought into this diſcourſe neceſſarily by this action: but I muſt needs ſay, it is an improper diſcourſe for Judges, for they know not what is the courſe of Parliament, nor the privilege of Parliament. When the Lords in Parliament, whom they are bound to aſſiſt with their advice, aſk the Judges any thing, concerning the courſe or privilege of Parliament, they have anſwer'd, that they know them not, nor can adviſe concerning them.

If in Parliament we do not know, nor can adviſe concerning theſe things; how can we judge upon them out of Parliament? We ought to know before we judge, and therefore we cannot judge of things we cannot know.

Our being engaged in a diſcourſe improper for Judges, ſhews the action to be improper, as much as any other argument that can be made; and this argument ariſes from my brothers that argued for the action.

But now I am in this diſcourſe, I muſt go a little farther; my obſervation from the courſe of Parliament has been, that they will not permit the Sheriff to delay his return, to deliberate, and he cannot take ſecurity of either party; and if a ſingle return be not juſtified by the Committee of Elections, he is in danger of the Statute of 23 *Hen.* VI.

It follows, that there is no way for an innocent Sheriff to be ſafe, where he conceives doubt, but in making a double return; and if that ſhould be actionable too, the ſervice of the Parliament would be the moſt ungrateful ſervice in the world.

It ſeems ridiculous to me, that it ſhould be objected, that this courſe of Law is neceſſary to prevent the great miſchief ariſing from double returns; whenas, if it be a miſchief, or diſlik'd by the Parliament, either in general or any particular caſe, they may reject them when they pleaſe, and command the Sheriff to make a ſingle return; ſo that they may remedy it by their practice, without their Legiſlative Power.

Their practice hitherto has been to receive double returns, which therefore in ſome caſes muſt be lawful, and in this very caſe the double return was accepted, and the Sheriff no way puniſh'd for it; which he ought to have been, if he had been blameable.

If double returns are accepted by Parliament, they are allow'd, and we muſt ſay they are lawful, which is the ground of my third reaſon; for which I hold this action not maintainable.

4. My fourth reaſon is, That there is no legal damages occaſioned by the Sheriff. The damages laid in the declaration are,

1. *Being kept from ſitting in the Houſe.*
2. *The pains and charges he was put unto, to get his admittance into the Houſe.*

1. That of his being kept from ſitting in the Houſe, is as much every man's damage in the whole County, nay, in the whole Kingdom; and any man elſe might as well have an action for it, as the Member choſen.

To ſit in Parliament is a ſervice in the Member, for the benefit of the King and Kingdom; and not for the particular profit of the Member.

It is a rule in Law, that no particular man may bring an action for a nuiſance to the King's high-way; becauſe all the men in *England* might as well have actions, which would be infinite: and therefore ſuch an offence is puniſhable only by Indictment, except there be ſpecial loſs occaſion'd by that nuiſance.

For the ſame reaſon, the excluſion of a Member from the Houſe, being as much damage to all men in *England*, as to himſelf, he, nor any man elſe in *England*, can have an action for it; but it is puniſhable upon the public ſcore, and not otherwiſe.

For this reaſon was the Statute 23 *Hen.* VI. wiſely conſider'd: by that Statute the action is not given to the party for his particular damage; but the action given is a popular action, only the party griev'd hath a preference for ſix months: but if he do not ſue in that time, every man elſe is at liberty to recover the ſame ſum.

2. The other point of damage, is the pains and charges he was put unto, and that is not occaſion'd by the Sheriff, but by the deliberation of the Houſe. Why ſhould the Sheriff pay for that? It may be, if the Parliament had ſent for the Sheriff the firſt day, and blamed the double return, he would have ventur'd to determine the matter ſpeedily, and there ſhould have been no cauſe of complaint for delay: but the Parliament ſaw ſo much cauſe of doubt, that they think it not fit to put the Sheriff to determine, but to reſolve to examine the matter, and give him directions that may guide him in mending his return; thereupon they give a day to the parties on both ſides, and finding the matter of long examination, and withal difficult, they deliberate upon it.

It ſeems very unreaſonable the Sheriff ſhould be made pay for this, which he did not occaſion; but was a courſe taken by the Parliament for their own ſatisfaction, who found no fault in the Sheriff for putting them to all that trouble.

Suppoſe Sir *Samuel Barnardiſton* had been return'd alone, and the Lord *Huntingtowre* had petitioned againſt that return, there had been the ſame charge to have defended that return; ſo that it was the conteſt of the oppoſite party that occaſioned the charge, the deliberation of the Parliament that occaſioned the delay; but neither of them can be imputed to the Sheriff.

I cannot difference this caſe, from the caſe of bringing an action againſt a Jury, for maliciouſly, knowingly, and on purpoſe, to put the party to charges, finding a matter ſpecially, whereby great delay and great expences were, before the party could obtain judgment; and yet I think no man will affirm that an action will lie in that caſe.

In this caſe the damages are found entire, ſo that if both parts, *viz.* the not ſitting in the Houſe, and the pains and charges are not actionable cauſes of damages; it will be intended the Jury gave for both, and ſo the judgment is for that cauſe erroneous.

I ſuppoſe the wages of Parliament will not be mentioned for damages, for in moſt places they are only imaginary, being not demanded; but if there were to be any conſideration of them, it will not alter this caſe; for upon this return they are due as from the firſt day, and ſo no damage can be pretended upon that ſcore.

5. My fifth reaſon is drawn from the Statute of 23 *Hen.* VI. which has been ſo often mention'd; that Statute is a great evidence to me, that no action lay by the Common Law againſt a Sheriff, for a falſe return of a writ of Election to the Parliament; and this evidence is much ſtrengthened by the obſervation that hath been made, that never any action was brought otherwiſe than upon that Statute.

I muſt admit, that if an action lay by the Common Law, this Statute hath not taken it away, for there are no negative words in the Statute; but it is not likely that the Parliament would have made that Law, if there had been any remedy for the party before.

The Statute obſerves, that ſome Laws had been made before, for preventing falſe returns, but there was not convenient remedy provided for the party griev'd; and therefore gives him an action for 100*l.* If the Courts of Juſtice had, by the Common Law, juriſdiction to examine miſdemeanors concerning the returns of Sheriffs to the Parliament; what needed the Parliament to be ſo elaborate, to provide Law after Law, to give them power therein, and at laſt to give the party griev'd an action? Can any man imagine but that the Parliament took the Law to be, that the party was without remedy? I know preambles of Acts of Parliament are not always Goſpel; but it becomes us, I am ſure, to have reſpect to them, and not to impute any falſity or failing to them, eſpecially where conſtant uſage ſpeaks for them.

It has been objected, that in thoſe times, it was reckoned a damage to be return'd to ſerve in Parliament, which is the reaſon that no man then did bring his action againſt the Sheriff for returning another in his ſtead. This cannot be true, for the Statute calls him the party griev'd, and is careful in providing convenient remedy for him; and we ſee by the many Statutes about thoſe times, that it was a miſchief very frequent, and there wanted no occaſion for thoſe actions; which does extremely ſtrengthen the argument of the non-uſer of this pretended Common Law.

An action upon the caſe, where it may be brought, is a plaſter that fits itſelf for all times and all ſores; and if ſuch an action might then have been brought, there was no need for the Parliament to provide a convenient remedy.

By *Littleton*'s rule, often mentioned by my brothers, we may conclude this action will not lie; for if ſuch an action had lain, it would have been brought before this time.

In the caſe of *Buckley* againſt *Rice Thomas*, in *Plowden*'s *Commentaries*, 118, which appears to be ſo elaborately argued both at Bar and Bench; if this Common Law had been thought upon, they might have prevented the queſtion, whether the Sheriffs of *Wales* were bound by the Statute 23 *Hen.* VI.

It ſeems plain to me, that the makers of the ſaid Statute were ignorant of this Common Law; and yet my brother *Thurland* obſerves, the Judges, in thoſe times, uſually aſſiſted in the penning of the Laws.

The Judges and Counſel in the time of *Buckley*'s caſe were ignorant of this Common Law, elſe it would have been mention'd in the argument of that caſe.

This Common Law was never reveal'd, that I find, until a time that there were divers other new lights: I mean thoſe times, when *Nevil* brought an action for a falſe return againſt *Stroud*, during the late troubles; but in thoſe times it could never obtain Judgment. I have heard that the Court of *Common-Pleas* ſent the Record to the Parliament, as a caſe too difficult for the Courts of Common Law to determine.

The Statute of 23 *Hen.* VI. is not only evidence, that no ſuch action lay at the Common Law; but, in my opinion, is not conſiſtent with any remedy at the Common Law, unleſs it be allowed that the party ſhould be doubly puniſhed.

If the party griev'd has brought his action upon the Statute, and recover'd, it was admitted by the Counſel, that no action can be brought at the Common Law; nor *e contra*, can he recover by the Statute, after he has recovered by the Common Law, becauſe *Nemo bis punitur pro eodem delicto.*

So far it ſtands well; but ſuppoſe the party griev'd has let ſlip his time of three months, and then a third perſon brings a popular action, and recovers 100*l.* upon the Statute; there is nothing can bar the party griev'd from his action at Common Law, for his ſitting ſtill will not conclude him; no Statute of Limitations extending to this caſe. And if it be ſo, then muſt the party, beſides his Fine and Impriſonment, be doubly puniſhed by this Statute; which was made, as the Letter of it imports, becauſe there wanted convenient remedy.

And now I am diſcourſing of this Statute, I muſt obſerve the great wiſdom of the courſe of Parliament in theſe caſes, which hath in great meaſure prevented the bringing actions againſt Sheriffs, even upon this Statute.

Where the Sheriff miſtakes the perſon in his return, he incurs the penalty of 23 *Hen.* VI. tho' it be without malice: and it may happen that any where there are 21 Electors of one ſide, and 20 of the other, the Sheriff returns him that hath 21, and the Parliament adjudging an incapacity in two of the 21, may determine he that had the 20 voices was duly choſen. In ſuch caſe the Sheriff had made a falſe return, within the penalty of the Statute 23 *Hen.* VI. and no evidence ſhall be given againſt the determination of the Parliament.

This was a very hard caſe for the Sheriff; and if we were liable to ſuch a miſchief, many a paſt Sheriff might be awaken'd, that takes himſelf to be ſecure.

But the courſe of Parliament prevents this, as it is reaſon; for immediately upon their determination, they ſend for the Sheriff, and cauſe him to amend his return; and thenceforward the amended return is the Sheriff's return, and there is no record that can warrant any action to be brought for a falſe return: as when the Marſhal of the *King's-Bench* or Warden of the *Fleet* have made an improvident return, omitting ſome cauſes wherewith the Priſoner ſtood charg'd in their cuſtody, whereby they became liable to action, they frequently move the Court to amend the return; and when the return is amended, all is ſet right, for there is no averring againſt a Record: in like manner, when the Sheriff hath amended his return, he is ſecure from any action upon that occaſion.

By this means, there has of late years been no recovery upon the Statute, becauſe all perſons chuſe rather to compel the Sheriff to amend his return, that they might be admitted to ſit in the Houſe, than to take their remedy upon the Statute; and no man can recover upon the Statute firſt, and have afterwards their return amended: for I have been told, that by the courſe of Parliament, unleſs the Petition be lodged within ſome few days after the return, it cannot be received afterwards. So that a man cannot upon that Statute

Statute have remedy at Law, and alſo in Parliament: which ſeems to be wiſely provided, to prevent any contrariety of determinations.

This Statute of 23 *H.* VI. furniſhed thoſe that argued for this action, with one argument, which doth now vaniſh: They ſaid that all the inconveniences that could be objected to this action, were the ſame upon the Statute of 23 *H.* VI. *viz.* That upon that Statute, the right of election muſt be examined upon a trial, where there might be a contrariety of determinations; for it appears by what I have ſaid, that there can be no contrariety of determinations.

And there are other inconveniences in this remedy by the Common Law, which are not in the remedy given by the Statute; for by the Statute the ſum to be recovered is limited; the informer hath a time prefixed, ſo that there are bounds ſet which cannot be exceeded: but the remedy by the Common Law is without limitation of time, which is conſiderable; for all Sheriffs that ever made any return otherwiſe than the Parliament determined, will be liable, during their whole lives, to them that will call them to account for it. I ſay, this is without limitation of time, without meaſure of damages, or any rules contained in a written law: It depends upon a general notion of remedy, which may be enlarged by conſtruction, as it is now introduced without precedent.

To finiſh my obſervation upon this Statute, I ſay it is great wiſdom in the Parliament to call the Sheriff to amend the return, and ſo prevent any remedy againſt him upon the Statute 23 *H.* VI. for I do not ſee that the rules of law concerning elections, are ſo manifeſtly clear and known, that it is fit that the Sheriff ſhould, upon all returns that are corrected by the Parliament, pay the reckoning of the conteſt.

6. I have a ſixth reaſon againſt this action; which is, becauſe the Sheriff is not admitted to take ſecurity to ſave him harmleſs in ſuch caſes; I take this reaſon to be *inſtar omnium*, and there needs no other in the caſe.

It were the moſt unreaſonable and grievous thing in the world, that the Sheriffs ſhould be bound to act without any deliberation, and not to be allowed to take any ſecurity; and yet be liable to an action, which way ſoever he takes: There is no courſe can avoid it but this of a double return, as I have before ſhewn.

It has not been ſaid, by any that argued the other way, that the Sheriff may take ſecurity: and, I ſuppoſe, will not be ſaid; for it would be a dangerous courſe for Parliaments, for then the moſt litigious man muſt be returned, and not he who is truly choſen.

If the Sheriff may not take ſecurity, the law muſt be his ſecurity. It was an argument uſed by my brother *Ellis*, That becauſe the law impoſes an officer, to wit, the Sheriff, therefore the law muſt give the party an action againſt that officer, if he miſdemean himſelf: The argument does not hold univerſally, for the law impoſes a Judge, and yet no action lies againſt him. But the reaſon of that argument, if turned the other way, is irrefragable; as thus, The law will not ſuffer the Sheriff to take a ſecurity, therefore the law muſt be his ſecurity, elſe it were a moſt unreaſonable law. This reaſon of itſelf is ſufficient to bear the whole caſe; for no caſe can be put in our law, nay, no caſe can be in any reaſonable law, where a man is compelled to judge without deliberation, and cannot take ſecurity, and yet ſhall be liable to an action.

I have two more reaſons to add, upon which I lay great weight, tho' they depend not upon any particular circumſtances of this caſe, but the general conſideration of it.

1. *That it is a new invention.*
2. *That it relates to the Parliament.*

1. As it is a *new invention*, it ought to be examined very ſtrictly, and have no allowance of favour at the end; and it will have the ſame fortune that many other novelties, heretofore attempted in our law, have had.

Actions upon the caſe have ſometimes been received in new caſes, where it ſtands with the rules of law, and no inconvenience appears; but they have been more often rejected. I ſhall inſtance ſome caſes that have been rejected, becauſe it will be manifeſted by them, that all the arguments and poſitions laid down by my brothers that would ſupport the action, are as well applicable to ſeveral caſes that have been already rejected, as to the caſe at bar.

An action upon the caſe was brought againſt a grand-jury-man, for falſely and maliciouſly conſpiring to indict another, and adjudged it would not lie.

Againſt a witneſs for teſtifying falſely and maliciouſly; and an action was brought againſt a Judge, for acting falſely and maliciouſly; but adjudged that no action would lie in thoſe caſes.

Theſe three inſtances are applicable to every argument urged for this action. The arguments my brothers made in depreſſing falſity and malice, thoſe which they made from the compariſon of other actions upon the caſe *à minori ad majus*; the argument, that becauſe the law impoſes the officer, it will puniſh the malice, has the ſame force in the caſe of a Judge, Juror, or Witneſs; and yet my brothers admit in thoſe caſes, an action will not lie, which ſhews the invalidity of thoſe arguments.

Now I ſhall give other inſtances where actions upon the caſe have been rejected for novelty and reaſons of inconvenience.

An action of the caſe was brought againſt the Lord of a Manor for not admitting a copy-holder, and it was adjudged it would not lie. *Cro. Jac.* 368.

There was a verdict found, and damages given by the jury in that caſe: the Lord is compellable in Chancery to admit a copy-holder; and what harm would it have been, if there might have been a remedy given by the Common Law, there being a cuſtom broken by which the Lord was bound? The reaſons of the books are, becauſe it was a novelty, and it would be vexatious, if every copy-holder ſhould have an action againſt the Lord, when he refuſed to admit him upon his own terms.

It has been adjudged, that an action upon the caſe will not lie for the breach of a truſt, becauſe the Common Law cannot try what a truſt is; but if ſuch actions were allowed, the law might declare that to be a truſt, which the Court of Chancery, that properly judges of truſts, might ſay is none; and where the Common Law cannot examine the principal matter, the damages that were but dependant upon it ſhall not be regarded.

Anthony Maddiſon brought an action againſt *Skipwith*, for maliciouſly killing Sir *Tho. Wortley:* the caſe was thus; The plaintiff was a young lawyer that had expended all his gains in the purchaſe of a rent that was determinable upon the death of Sir *Tho. Wortley*; *Skipwith* quarrelled with Sir *Thomas Wortley* in the ſtreets, about a miſtreſs, and killed him, whereby *Maddiſon* loſt his rent. It was held the action would not lie, though it were laid to be done maliciouſly, on purpoſe to determine the plaintiff's rent.

I obſerved in that caſe, that although Mr. *Maddiſon* knew very well that there was a miſtreſs in the caſe, and that the rent was not aimed at, yet he would fain try his fortune in the ſuit; thinking that a jury, perhaps, out of compaſſion to him, or to diſcourage the like facts, might make the manſlayer pay him for his loſs: but the Judges would not ſuffer it to go on, it being a mere device and a new-fangled action.

It hath been held, that an action will not lie againſt a Parſon for ſuing for tithes in-kind, knowing that there was a *modus*, becauſe it might then be perilous for any Parſon to inſiſt upon his right.

It was held by the Court of *Common-Pleas*, that no action will lie for ſuing an Attorney, knowingly, in any other Court againſt his privilege: for his means to enjoy his privilege, is to claim it by writ of privilege; and he is not bound to claim his privilege, nor can his adverſary know he will claim it.

An action was lately brought in the *King's-Bench*, (as I have heard) for delaying a poſt-letter maliciouſly, whereby the plaintiff wanted intelligence that might have been of great advantage to him. The Court diſcountenanced the action, ſo that it proceeded no farther. It was then ſaid (as I heard) to this effect; That if ſuch precedents were admitted, there could hardly be any dealing or correſpondence, but might be matter for actions at law: and although the caſe depended upon proof of particular malice, and the defendant will be acquitted if his caſe be not odious; yet we muſt conſider that there is both charge and vexation of mind that attends the defence of a juſt cauſe, and we muſt not ſubject men for all their actions to ſuch trouble and hazard.

Theſe inſtances ſhew, that although an action upon the caſe be eſteemed a catholicon, yet when actions have been applied to new caſes, they have always been ſtrictly examined, and upon conſiderations of juſtice or inconvenience they have been many times rejected.

For though the law advances remedies, as my brothers obſerved, yet it is with conſideration that vexation be not more advanced than remedy.

It is my opinion, that no new device ever was, or can be introduced into the law, but abſurdities and difficulties ariſe upon it, which were not foreſeen: which makes me very jealous of admitting novelties. But,

2. In matters relating to the Parliament (which is my ſecond ground) there is no need of introducing novelties; for the Parliament can provide new laws to anſwer any miſchiefs that ariſe, and it ought to be left to them to do it.

Eſpecially in a caſe of this nature, concerning elections, which the Parliament have already taken care of, and preſcribed remedies by the ſeveral Statutes that have been made concerning them; I ſay, in ſuch a caſe, there is little need to ſtrain the law.

The Judges in all times have been very tender of meddling with matters relating to Parliament. I do not find that ever they tried elections, but where Statutes give them expreſs power; or that they ever examined the behaviour of a Sheriff, or any officer of the Parliament, in relation to any ſervice performed to the Parliament, but upon thoſe Statutes: And in *Brounker*'s caſe, *Dyer* 168. the Statute was their rule in the *Star-Chamber*, and they inflicted the ſame puniſhment that is appointed by that Statute.

If we ſhall allow general remedies (as an action upon the caſe is) to be applied to caſes relating to the Parliament, we ſhall at laſt invade privilege of Parliament, and that great privilege of judging of their own privileges.

Suppoſe an action ſhould be brought in time of prorogation, againſt a Member of Parliament, for that he falſely and maliciouſly did exhibit a complaint of breach of privilege to the Parliament, whereby the party was ſent for in cuſtody, and loſt his liberty, and was put to great charges to acquit himſelf, and was acquitted by the Parliament.

If upon ſuch a caſe the jury ſhould find the defendant guilty, why ſhould not that action be maintained as well as this at bar? It may be ſaid for that action, that the judgment of the Parliament is followed, and the privilege is not tried at Law, but determined, 1. In the Houſe; 2. It may be ſaid, the party has no other way to recover his charges.

It would be dangerous to admit ſuch an action, for then there would be peril in claiming privilege; for if the party complained of, had the fortune to be acquitted by the Houſe, the Member that made the complaint would be at the mercy of the jury, as to the point of malice and quantity of damages. Such a precedent, I ſuppoſe, would not pleaſe the Parliament; and yet it may with more juſtice be the ſecond caſe, than this at the bar the firſt.

Actions may be brought for giving Parliament-protections wrongfully. Actions may be brought againſt the Clerk of the Parliament, Serjeant at Arms, and Speaker, for aught I know, for executing their offices amiſs, with averments of malice and damage: and then muſt Judges and Juries determine what they ought to do by their officers. This is in effect preſcribing rules to the Parliament for them to act by.

It cannot be ſeen whither we ſhall be drawn, if we meddle with matters of Parliament in actions at law. Therefore, in my judgment, the only ſafety is in thoſe bounds that are warranted by Acts of Parliament or conſtant practice.

Suppoſe this action had been brought before the election had been decided in the Houſe, and the jury had found one way, and the Parliament had determined contrary; how inconſiſtent had this been?

But it was ſaid in the *King's-Bench* that the Court would not try it, before the Parliament had determined the election, and then that cannot be conteſted, but the judgment of the Parliament muſt be followed: And my brother *Ellis* but now ſaid, *Surely no man will be ſo indiſcreet as to bring ſuch an action before the Parliament hath determined it; and the Court will not try it, before ſuch time as the election be determined in a proper way.*

In my opinion this was not rightly conſidered, for how can the Court ſtay any ſuit, to expect the determination of the Parliament? And what reaſon or juſtice is there, that the Sheriff, who is no party called to anſwer in the Parliament, ſhould be concluded in any thing by a judgment between other

other parties, to defend himself from a demand of damages in a Court of law, where witnesses are examined upon oath, which they cannot be in the Commons House?

There is no reason the suit of law should stay till the House have determined the election, if the determination of the House be not conclusive in that suit.

And for the discretion of the parties that are like to bring such actions, I cannot depend upon it: for I see in this age, some men will insist upon their private rights to the hindrance of publick Affairs of higher consequence than any that can come before the Courts in *Westminster-hall.*

It may be, there will not want men that will press us to judge in such cases; and not only before the Parliament have determined, but against what the Parliament have determined; and will tell us, that the Sheriff was no party, that witnesses were not there examined upon oath, and produce Arguments from Antiquity which we shall be very loath to judge of.

I can see no other way to avoid consequences derogatory to the honour of the Parliament, but to reject the action; and all others that shall relate either to the proceedings or privilege of Parliament, as our Predecessors have done.

For if we should admit general remedies in matters relating to the Parliament, we must set bounds how far they shall go, which is a dangerous province; for if we err, privilege of Parliament will be invaded, which we ought not any way to endamage.

This I speak of general remedies: Now I will consider this particular case, which, in my opinion, would bring great danger and dishonour to the Parliament.

It is dishonourable to the Parliament that there should be no protection in their service; I have shewn that the Sheriff can be safe in no case, if he shall be sued in such a case as this: And can there be a greater reproach, than that there is no safety in their service? Nobody can serve them chearfully and willingly at that rate.

It has been objected that the Sheriff is not their officer, but is the officer of the Court of *Chancery*, which sends forth the writs, and receives the returns. The Argument is plausible, but will not pass in the Parliament; for they say the Court of *Chancery* is the Repository for their writs, but will not allow them to issue without warrant from the House: They will not suffer the Court of *Chancery* to meddle with the returns of the Sheriff. The Parliament sends immediate order to the Sheriff; if the return be too slow, they direct the Sheriff to amend his return, and they punish the Sheriff where they find him faulty; so that it appears they exercise an immediate jurisdiction over the Sheriff. And I suppose they would judge it very false doctrine to say, that the Court of *Chancery*, or us, can any way meddle with the returns or the officer.

Admitting the Sheriff to act in returns as the Officer of the Parliament, it concerns them that he should be liable to no other punishment but what they inflict, otherwise they cannot expect to be obeyed.

To have others judge when their servants do well, will be to have others give rules to their servants and service, which they will think inconvenient.

Let it be considered how hard a task Sheriffs have in the elections of Knights to the Parliament: The appearance commonly is very numerous, the parties contesting very violent, the proceeding tumultuous, the polling sometimes is at several places at once; so that the Sheriff can hardly be a witness of the action: and if the dispute be in the House of Commons, he is no party to it. If after all this, the Sheriff, who cannot indemnify himself by security, still be liable to an action, the service of the Parliament may be reckoned a miserable slavery; which is not for their honour.

As this is dishonourable, so it is dangerous to Parliaments; it concerns the Kingdom that returns to the Parliament should be upright and impartial, and that they may be so, the Sheriff should be secure from all fears.

Judges are not liable to actions, that they may proceed uprightly and impartially; if they were subject to suits for their judgments, there is that earnestness and confidence on both sides, that one side would be dissatisfied and trouble them, and they could not discharge their duty without apprehensions of disquiet.

If the Sheriff be exposed to actions thus, let us consider what and whom he is to fear: He may fear the suit of the party, and he may fear the suit of the King. And it follows necessarily, that if an action lies, an information for the King will also lie for the misdemeanor in his office: If it be not a case privileged by the complexion of it, as Parliamentary, from being examined in *Westminster-hall*, but that he may be punished at the suit of the Party, he may certainly as well be punished at the suit of the King: If so, Where is the Sheriff's security? Will his own innocence secure him? That must be tried by a jury of the County where the Parliament sits; who are, it may be, strangers to him as well as to the matter; or by a jury of the County where the election was, where, it may be, they will be of an opposite party; the plaintiff may wait his opportunity, and question him twenty years after: And if he be condemned, his punishment is unlimited, a fine may be set to any height for the King, and damages may be given to any value for the party. Where is his security upon such proceedings? Will he not be more afraid of such punishment out of Parliament, than of any punishment in Parliament? Will not, nay, may not his terror make him desire to please them that can punish him out of Parliament, rather than to do right? Will not that be dangerous to the constitution of Parliaments?

As the punishment out of Parliament may be a terror to those who mean well, so colourable punishments may be as mischievous on the other side; for they may prevent any punishment in Parliament, for *nemo bis punitur pro eodem delicto*; they may serve for protection of men that do ill. When it is seriously weigh'd, of what consequence this may be, the case at Bar will not be thought a case fit to be received by the Judges without the countenance of a new law.

They object, here is malice found by the verdict, and that there can be no danger or inconveniency that malice should be punished.

This objection fortifies my opinion; for malice, upon which they would have the scales turn in this case, is not a thing demonstrative, but interpretative, and lies in opinion; so that it may give an handle to any man to punish another by.

The instance of this very case shews, that a good man may reasonably be afraid of the event of his defence in such a case.

For altho' the matter was of great examination in Parliament, and at last decided but by few voices, and no observation of the Sheriff's miscarriage there; tho' it appeared upon the trial (which I may say, being present there), that the Sheriff was guided by the advice of his friends, of Counsel, and of Parliament-men, that told him the only safe course was to make a double return; yet the Jury condemned him to pay 800*l.* against the expectation of the Court: for the Judges that were present at the trial did all declare publickly, that they would not have given that verdict.

The Judges heard all the evidence the Jury could go upon; for being of a remote County to the place of election, the Jury could know nothing of their own knowledge, and yet the Judges concurred not with the Jury in their opinion.

I know we are not to examine the truth of the verdict, we must take it for gospel; neither doth any partiality in this particular lead me in judgment: but I shew it as an instance that malice is not demonstrative; men's minds may be mistaken, and innocent men may therefore have reason to be afraid, especially in ill times, and may use such means for their safety as may not be convenient for Parliaments.

But there can be no danger or inconvenience in the censure of the Parliament, that represents the whole Kingdom, who hitherto have alone exercised this power, and who may at any time reform the law, if the present practice be any way inconvenient.

Upon these reasons which I have produced, I ground my opinion: Now it will be necessary to weigh what hath been said in opposition to it.

The Arguments urged on the other side, related either to the ingredients or circumstances of this action, or to the foundation or substance of it.

I call the ingredients and circumstances of the action, that it is laid with these words, *Falso, malitiose, deceptive, & scienter:* And that there is a verdict in this case, and damages are found.

The words *falso, malitiose, & deceptive*, will sometimes make a thing actionable, which is not so in itself, without malice proved, tho' there be the same damage to the party.

As where a man causes another to be falsely indicted, yet if it be not *malitiose*, no action lies; tho' there be the same trouble, charge and damage in one case as the other.

But it is only where a man is a voluntary Agent; for if a man be compellable to act, you cannot molest him upon any averment of malice: As if a grand-jury-man causes another to be indicted, tho' you aver malice, you cannot have an action against him; so for a witness that doth testify, or a Judge that judgeth.

In the case at Bar, the Sheriff is compellable to act, and not barely as a Minister to send the Indenture, but as a Judge to say which is the major part of the due Electors; and if he mistakes, there is no reason it should subject him to an action upon an artificial averment of malice.

I remember in *Shepherd* and *Wakeman*'s case in the *King's Bench*, Mr. Justice *Wyndham* said well, that the words *falso & malitiose* were grown words of course, and put into every action: So that to his knowledge Juries many times had no regard to them, that he looked upon them as words of form.

If we should make the words *falso & malitiose* support an action without a fit subject matter, all the actions of mankind would be liable to suit and vexation: they that have the cooking (as we call it) of declarations in actions of the case, if they be skilful in their art, will be sure to put in the words *falso & malitiose*, let the case be what it will; they are here pepper and vinegar in a Cook's hand, that help to make sauce for any meat, but will not make a dish of themselves.

Falso & malitiose will not enable an action against a Judge.

Nor against an indictor or witness, nor where words are not actionable, tho' the plaintiff hath a verdict and damages found; nor for a breach of trust, which is *alieni fori*.

The reason of every one of these cases holds in the case at Bar: Therefore it ought to have the same Resolution.

As to the word *scienter*, it hath weight sometimes; and if an action be brought for keeping a dog that worried another's sheep, *sciens canem ad mordend' oves esse consuetud.* or for detaining the servant or wife of another, *scienter:* In these cases, if the defendant hath been told that the dog did worry sheep, or that it was the servant or wife of another, tho' it may be he did not believe it, yet it was *scienter*; for the word implies no more than having notice: And in those actions he must inform himself at his peril, and may, if he doubts, avoid danger by putting away those things which give offence. But in this case he could receive information by none, and is not to believe or disbelieve any body, but is bound to judge of the thing himself, and to act according to his judgment; so that no proof could be made of the *scienter*, for one side tells him the Election was one way, and the other side tells him it is the other way; but he being present to the whole action, must follow the dictates of his own judgment. Hence it appears, *scienter* in this case is an empty word, not referring to notice of a fact, but a matter of judgment, which cannot any way be proved.

It has been often urged, that this case is stronger by being after a verdict and damages found by the jury; and it has been said, that perhaps upon a demurrer, it might have been found more doubtful.

The case is the same to me upon a verdict, that it would have been upon a general demurrer, and no stronger; for a demurrer is the confession of the party, of all that can be proved, or can possibly be found upon that declaration.

It is my Lord *Coke*'s advice in *Cromwel*'s case, *4th part*, 14. *a.* never to demur to a declaration, if there be any hopes of the matter of fact; for the matter in law will as well serve after a verdict as upon a demurrer.

It had been a very odious case, if the Sheriff should have admitted all this fact to be true by a demurrer.

The finding the Plaintiff's damages adds no strength to the case; for we see every day upon actions for words, tho' the jury find the defendant guilty for speaking words *falso & malitiose*, and find it to be to the Plaintiff's great damages; yet if the words are not such as will bear an action, the Court stays judgment: and if judgment happens to be given, it is reversable for error; which shews that the finding damages by the jury cannot make an action better than if it were to be adjudged upon demurrer.

I ſhall now conſider what hath been ſaid to maintain this action upon the main ſubſtance and foundation of it. They ſay, this is a caſe within the general reaſon of the Common Law, for here is malice, falſity and damage; and where they concur, there ought to be remedy. And altho' this be a new caſe, yet it ought not for that reaſon to be rejected; for other kind of actions have been newly introduced, and this is as fit to be entertained as any.

My brothers that argued even now for the action, ſhewed great learning and great pains; and certainly have ſaid all that can be invented in ſupport of this caſe: But as far as I could perceive, they have ſpoken only upon general notions to that purpoſe I juſt now mentioned; but nothing that I could obſerve applicable to the reaſons and differences I go upon.

As for the rule they go upon, that where falſity, malice and damage do concur, there muſt be remedy; I confeſs it is true generally, but not univerſally, for it holds not in the caſe of a Judge, nor an Indictor, nor a Witneſs, nor of words that import not legal ſlander, tho' they are found to bring damage, as I have ſhewn before. And the reaſons that exempt theſe caſes from the general rule, have the ſame force in the caſe at bar.

I muſt confeſs the Judges have ſometimes entertained new kinds of actions, but it was upon great deliberation, and with great diſcretion, where a general inconvenience requir'd it.

If *Slane*'s caſe were new (for my brother *Thurland* obſerved truly it was ſaid in that caſe, that there were infinite numbers of precedents) that caſe imported the common courſe of juſtice. Actions for words that are ſaid to be new, tho' they have been uſed ſome hundreds of years, are a neceſſary means to preſerve the peace of the Kingdom. The caſe of *Smith* and *Craſchaw*, *Cro. Car.* 15. was a caſe of general concern, being that proſecutions for treaſons may be againſt any man, and at any time.

But in the caſe at bar, neither the peace of the Kingdom, nor the courſe of juſtice is concerned in general, but only the adminiſtration of officers of the Parliament, in the execution of Parliamentary Writs; and can never happen but in time of Parliament, and muſt of neceſſity fall under the notice of the Parliament; ſo that if the law were deficient, it is to be preſumed the Parliament would take care to ſupply it: Diſcretion requires us rather to attend that, than to introduce new precedents upon ſuch general notions that cannot govern the courſe of Parliament.

My brother *Atkins* ſaid, the Common Law complied with the genius of the Nation; I do not underſtand the Argument: Does the Common Law change? Are we to judge of the changes of the genius of the Nation? Whither may general notions carry us at this rate? For my own part, I think, tho' the Common Law be not written, yet it is certain, and not arbitrary. We are ſworn to obſerve the laws as they are, and I ſee not how we can change them by our Judgments: and as for the genius of the Nation, it will be beſt conſidered by the Parliament, who have power of the laws, and may bring us to a compliance with it.

In the caſe at bar, I look upon the Sheriff as a particular officer of the Parliament for the managing elections, and as if he were not Sheriff: I look upon the writ as if it were an order of Parliament, and had not the name of a writ: I look upon the courſe of Parliament, which we pretend not to know, to be incident to the conſideration of it; ſo that it ſtands not upon the general notion of remedy in the common courſe of juſtice.

The Arguments of the falling of the value of money, whereby the penalty of 100*l.* provided by the 23 *H.* VI. is become inconſiderable; and the increaſe of the eſtimation of being a Member of Parliament; if they were true, are arguments to the Parliament to change the law by increaſing the penalty, but we cannot do it.

My brother *Maynard*, in his Argument, would embolden us; telling us we are not to think the caſe too hard for us, becauſe of the name or courſe of Parliament; for Judges have puniſhed Abſentees: They may determine what is a Parliament, what is an Act of Parliament, how long an ordinance of Parliament ſhall continue, and may puniſh treſpaſſes done in the very Parliament.

I will not diſpute the truth of what he ſaid in this, but if his Arguments were artificial, he might have ſpared them; for they have no manner of effect to draw me beyond my ſphere.

I will not be afraid to determine any thing that I think proper for me to judge; but ſeeing I cannot find the Courts of Juſtice have at any time meddled with caſes of this nature, but upon expreſs power given them by Acts of Parliament, I cannot conſent to this precedent; I am confident when there is need, the Parliament will diſcern it, and make laws to enlarge our power, ſo far as they ſhall think convenient.

I ſee no harm that Sheriffs in the mean time ſhould be ſafe from this new-deviſed action, which they call the Common Law; if they miſdemean themſelves, they are anſwerable to the Parliament, whoſe officers they be, or may be puniſhed by the Statute, made for regulating Elections.

It is time for me to conclude, which I ſhall do by repeating the opinion I at firſt delivered, *viz.* That this judgment is not warranted by the rules of law; That it introduceth novelty of dangerous conſequence, and therefore ought to be reverſed. *Sæpe viatorem nova, non vetus orbita, fallit.*

North, Chief-Juſtice, and five other Judges (againſt *Ellis* and *Atkins*) reverſed the judgment upon the matter in Law, That the action lies not.

[*Note*, The Lord Chief-Juſtice *Vaughan*, and Lord Chief-Baron *Turner*, both deceaſed, who in their lives were eminent Members of Parliament, were of the ſame opinion.]

Soon after the Revolution, Sir *Samuel Barnardiſton* brought his Writ of Error into the Houſe of Peers, to reverſe the reverſal of the judgment given in the Exchequer; but the Houſe affirmed the reverſal of the ſaid judgment, as appears by the following Reſolutions.

Veneris, 24 *Maii*, 1689.

THIS Day the Lord Chief-Juſtice of the Court of *King*'s-*Bench* brought into this Houſe a tranſcript of a Writ of Error, to reverſe a judgment given againſt *Barnardiſton* at the ſuit of *Soame*.

Sabbati, 25 *Maii*, 1689.

Whereas Sir *Samuel Barnardiſton* brought his Writ of Error into this Houſe, and hath aſſigned errors thereupon, to which Sir *William Soame* was Defendant; who left Dame *Catherine Soame*, his widow, his executrix: and the Houſe being moved, that the ſaid Dame *Catherine Soame* may join iſſue thereupon; it is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, that the ſaid Dame *Catherine Soame* be, and is hereby required to join iſſue to the ſaid Writ, on or before *Thurſday* next, being the 30th inſtant, at ten of the clock in the forenoon; whereof the ſaid Sir *Samuel Barnardiſton* is to cauſe notice to be given to the ſaid Dame *Soame*, to the end ſhe join iſſue accordingly.

Sabbati, 1 *Junii*, 1689.

The Houſe being moved, that they would be pleaſed to appoint a day for hearing the errors argued upon the Writ of Error brought into this Houſe, wherein Sir *Samuel Barnardiſton* is Plaintiff, and Dame *Catherine Soame*, widow, executrix of Sir *William Soame*, Defendant: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That this Houſe will hear the ſaid errors argued by Counſel on both ſides, at the bar, on *Saturday* next, being the 8th inſtant, at ten of the clock in the forenoon; and in the mean time ſhe may join iſſue if ſhe pleaſe: whereof the ſaid Sir *Samuel Barnardiſton* is to cauſe notice to be given to the ſaid Dame *Catherine Soame*, to the end ſhe attend accordingly.

Sabbati, 8 *die Junii*, 1689.

This day being appointed for hearing errors argued by Counſel, upon the Writ of Error between Sir *Samuel Barnardiſton* and the Lady *Soame*, the Counſel for the Plaintiff appeared, but none appeared for the Defendant: And upon oath made at the bar by *Nicholas Baker*, Sollicitor, that he ſerved the order of this Houſe at the houſe of the Lady *Soame*; thereby giving notice, that the cauſe was to be heard this day; whereupon the Houſe heard the Counſel of the Plaintiff, and made the enſuing Order, *viz.*

After hearing Counſel this day, upon the Writ of Error depending in this Houſe, wherein Sir *Samuel Barnardiſton* is Plaintiff, and Dame *Catherine Soame* is Defendant; It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, the giving judgment on this Writ of Error be, and is hereby ſuſpended, until *Monday* next; and thoſe that are, or were Judges, and now in Town, do attend this Houſe that day, to inform the Houſe of their reaſons and grounds for their judgment for reverſal of the judgment in Sir *Samuel Barnardiſton*'s caſe.

Ordered, That all the Judges be preſent on *Monday* morning, to aſſiſt this Houſe in this buſineſs of Sir *Samuel Barnardiſton*.

Lunæ, 10 *Junii*, 1689.

William Mountague, Eſq. was called in, and the Speaker told him, That the Houſe deſired to hear from him, upon what grounds and opinions he gave his opinion for the reverſal of the judgment for giving eight hundred pounds to Sir *Samuel Barnardiſton*?

He taking notice that there was Counſel preſent for Sir *Samuel Barnardiſton*, but no Counſel for the Lady *Soame*, he ſaid, ſeeing the Defendant did not appear with Counſel, he deſired he might not be looked upon as Counſel for the Defendant; upon that the company was commanded to withdraw: And the Houſe ordered Mr. *Mountague* ſhould be admitted to come in alone; who being come in, ſaid, he would, for their Lordſhips ſatisfaction, (as well as he can remember) acquaint them with the grounds and reaſons which induced him to give his opinion for the reverſal of that judgment; and ſo he proceeded to give the heads of what he ſaid, which being ended, he withdrew.

And after conſideration thereof, it was moved that the Counſel for Sir *Samuel Barnardiſton* ſhould be called in, and the Speaker to acquaint them with the effect of what Mr. *Mountague* had ſaid; that ſo the Counſel might be able thereby to reply, for the better information of their Lordſhips and the Judges then preſent. And after ſome debate, the queſtion was put, whether the Counſel ſhall be called in? It was reſolved in the negative.

Then it was moved to make uſe of proxies, which was oppoſed, as concerning their not being admitted in preliminary caſes of judicature.

After hearing *William Mountague*, Eſq. for his judgment in Sir *Samuel Barnardiſton*'s caſe, and debate thereupon, it is ordered, That the Clerk do inſpect the books concerning proxies; and whether they have been uſed in caſes of judicature; and give an account to-morrow morning what he finds therein: And that all the Judges do attend the Houſe to-morrow.

Martis, 11 *Junii*, 1689.

The Clerk of the Parliament, in purſuance of the Order yeſterday, ſhewed ſeveral inſtances where proxies have been uſed in preliminaries to private cauſes: It is ordered by the Lords Spiritual and Temporal in Parliament aſſembled, That proxies may be uſed in ſuch preliminary caſes, but not in giving judgment; and that this order be added to the Roll of ſtanding Orders.

Ordered, That the Counſel of Sir *Samuel Barnardiſton* ſhall be heard on *Friday* next, to reply to what Mr. *Mountague* gave for his reaſons for reverſal of Sir *Samuel Barnardiſton*'s judgment; and that all the Judges do attend at the ſame time.

Veneris, 14 *die Junii*, 1689.

After hearing Counſel in Sir *Samuel Barnardiſton*'s caſe this day, to reply to what Mr. *William Mountague* ſaid for his reaſons to reverſe the judgment given in the *Exchequer*; It is ordered, That this Houſe will hear all the Judges give their opinions in this caſe on *Tueſday* the 25th of this Inſtant *June*, at ten of the clock in the forenoon.

Martis, 25 *die Junii*, 1689.

The Houſe heard the opinion of all the Judges in the caſe of Sir *Samuel Barnardiſton*, upon his Writ of Error depending in this Houſe.

And the queſtion being put, Whether to go on in the debate of this buſineſs now? It was reſolved in the affirmative.

After debate, the queſtion being put, Whether to reverſe the reverſal of the judgment given between Sir *Samuel Barnardiſton* and Sir *William Soame*? It was reſolved in the negative.

Leave is given to ſeveral Lords to enter their diſſent to the aboveſaid queſtion, and accordingly do enter their diſſent for the reaſons enſuing.

1. Becauſe it is a denying Sir *Samuel Barnardiſton* the benefit of law, which gives relief in all wrong and injury: And tho' this be an action of the firſt impreſſion, yet there being a damage to the Plaintiff, the Common Law gives him this action to repair himſelf; and if it were not ſo, there would be a failure of juſtice, which cannot be admitted.

2. Becauſe

2. Becauſe the allowing this reverſal tends towards the giving the power and encouragement to Sheriffs to make falſe and double returns; by which means the right of Elections will be avoided, and it tends thereby to the packing of a Houſe of Commons, which may overturn the whole frame of the Government, and eſtabliſh what Religion and Governments a pack'd Parliament ſhall think fit.

Bolton, *S. Stamford*,
Macclesfield, *Herbert*.
P. Wharton,

Whereas by virtue of their Majeſties Writ of Error, returnable into the Houſe of Peers, a record of the Court of *King's-Bench* was brought into this Houſe the 24th of *May*, 1689, with the tranſcript thereof, wherein judgment is entered for Sir *Samuel Barnardiſton* againſt Sir *William Soame*: upon which Writ, Errors being aſſigned, after hearing Counſel at the Bar, to argue the ſaid Errors aſſigned, and due conſideration had of what was offered thereupon, the Lords Spiritual and Temporal in Parliament aſſembled, do order and adjudge, that the Judgment given in the *Exchequer* Chamber, for the reverſal of the Judgment given in the Court of *King's-Bench* for Sir *Samuel Barnardiſton* againſt Sir *William Soame*, be, and is hereby affirmed: And that the ſaid Writ of Error, and tranſcript annexed, be remitted to the Court of *King's-Bench*.

The Tenor of which Judgment to be affixed to the Tranſcript to be remitted, follows;

ET poſtea, ſcilicet quarto die Maii Anno Regni Domini Gulielmi & Dnæ. Mariæ nunc Regis & Reginæ Angl. primo tranſcript. Record. & proceſſ. præd. inter partes præd. cum omnibus ea tangent. pretext. cujuſdam brev. de Error corrigend. & præfat. Samuel. Barnardiſton, in premiſſ. perſecut. dict. Dom. Reg. & Dom. Reginæ in preſent. Parliament. à pred. curia dict. Dom. & Dominæ Regis & Reginæ hic tranſmiſſ. fuit pred. Samuel. in eadem curia Parliament. comparens, diverſas cauſas & materias per Erroribus in Record. & proceſſ. pred. pro revocatione & adnullatione Judicii pred. aſſignaverit; & poſtea ſcilicet 25 die Junii Anno dict. Dom. & Dominæ Regis & Reginæ, ſupradict. in pred. cur Parliament. pred. viſis, & per cur. ibidem diligenter examinat. & plenius intellect. Sam. Recordo & Proceſſ. pred. ac Judicio ſuper iiſdem reddit. qua Errore ſuperius aſſignat. pro eo quod videtur cur. Parl. pred. quod Record. illum in nullo vitioſum aut defectum exiſtit, & quod in Record. ill. in nullo erratum, adtunc & ibidem conſideratum eſt per eandem curiam Parliament. pred. quod Judic. pred. in omnibus affirmetur & in omni ſuo robore ſtet & effectu.

XXXI. Proceedings in the *Houſe of Commons*, on an Appeal being brought in the *Houſe of Lords*, by Dr. SHIRLEY, againſt Sir JOHN FAGG, and others, their Members, *May* 1675, 27 *Car.* II.

Martis, 4 *Maii*, 1675.

SIR *John Fagg*, Bart. this day informed the Houſe, that he was ſummon'd to appear to a Petition in the Houſe of Lords; a Committee was thereupon appointed to ſearch for precedents to that purpoſe.

Mercurii, 5 *Maii*.

Reſolved, That a Meſſage be ſent to the Lords, to acquaint them that this Houſe hath received information, That there is a Petition of Appeal depending before them, at the ſuit of *Thomas Shirley*, Eſq. againſt Sir *John Fagg*, a Member of this Houſe; to which Petition, he is, by order of the Houſe of Lords, directed to anſwer on *Friday* next; and to deſire the Lords to have a regard to the privileges of this Houſe; and that Sir *Trevor Williams* do go up with the Meſſage to the Lords.

Sir *Trevor Williams* reports, that he had attended the Lords with the Meſſage of this Houſe, concerning Sir *John Fagg*; and that the Lords will return an anſwer by Meſſengers of their own.

Veneris, 7 *Maii*.

A Meſſage from the Lords by Sir *William Beverſham*, and Sir *Samuel Clarke*.

Mr. Speaker,

The Lords have conſidered of the Meſſage received from the Houſe of Commons, concerning privilege in the caſe of Sir *John Fagg*, and do return this anſwer, That the Houſe of Commons need not doubt, but that the Lords will have a regard to the privileges of the Houſe of Commons, as they have of their own.

Sabbati, 8 *Maii*.

A Committee was appointed to inſpect the Lords Journals, to ſee what entries are therein made againſt Sir *John Fagg*, a Member of this Houſe, and to report the ſame.

Mercurii, 12 *Maii*.

Dr. *Thomas Shirley* ordered to be ſent for in cuſtody, to anſwer his breach of the privileges of this Houſe, in proſecuting a ſuit by petition of Appeal in the Lords Houſe, againſt Sir *John Fagg*, a Member of this Houſe, during the ſeſſion and privilege of Parliament.

And a Committee is alſo appointed to inſpect the Lords Journals, to ſee what has been done in like caſes; and the ſaid Sir *John Fagg* is ordered not to proceed, or make any anſwer to the ſaid Appeal, without the licence of this Houſe.

Veneris, 14 *Maii*.

Sir *Thomas Lee* reports from the Committee appointed to inſpect the Journals of the Houſe of Lords, and the entries therein, in the caſe between Dr. *Thomas Shirley* and Sir *John Fagg*, a Member of this Houſe, That the Committee had peruſed the Journals of the Lords Houſe, and found the entries to be as follow:

April *the* 30*th*.

Thomas Shirley, Eſq. preſented a Petition to the Lords.

Ordered, That the ſaid Sir *John Fagg* may have a copy of the ſaid Petition, and put in his anſwer thereunto, in writing, on *Friday* the 7th day of *May* next, at ten of the clock in the forenoon, if he thinks fit.

May *the* 5*th*.

The Commons ſend a Meſſage by Sir *Trevor Williams*:

The Knights, Citizens, and Burgeſſes of the Houſe of Commons, in Parliament aſſembled, have been informed, that there is a Petition of Appeal depending before their Lordſhips, at the ſuit of *Thomas Shirley*, Eſq. againſt Sir *John Fagg*, a Member of their Houſe. To which Petition he is, by their Lordſhips order, directed to anſwer on *Friday* next, and deſire their Lordſhips to take care of their privileges.

Anſwer, That this Houſe have conſidered of their Meſſage, and will ſend anſwer by Meſſengers of their own.

Ordered, That the Committee for Privileges do meet this afternoon, to conſider of the Meſſage received from the Houſe of Commons this day, concerning *Thomas Shirley*, Eſq. and Sir *John Fagg*, a Member of the Houſe, and ſearch precedents in the caſe, and report to the Houſe tomorrow morning.

May *the* 6*th*.

The Earl of *Berks* reported, That the Committee of Privileges having met and conſidered of what was referred to them in the caſe between *Thomas Shirley*, Eſq. and Sir *John Fagg*, a Member of the Houſe of Commons, and the Meſſage from the Houſe of Commons thereupon; have ordered him to report, That the Committee have found that the Houſe did refer the buſineſs of Mr. *Hale* and Mr. *Slingſby*, upon the like Meſſage of the Houſe of Commons, to the Committee of Privileges; who did report to the Houſe, That it is the undoubted right of the Lords in judicature, to receive and determine in time of Parliament, Appeals from inferior Courts, though a Member of either Houſe be concerned, that there may be no failure of juſtice in the land; and the Houſe did agree with the Committee therein: And thereupon the Committee do humbly offer to their Lordſhips, upon this occaſion, to take the ſame courſe, and to inſiſt upon their juſt rights in this particular, which their Lordſhips will be pleaſed to ſignify to the Houſe of Commons, in ſuch manner as they ſhall think fit.

The Houſe agreed with the Committee in this declaration, and ordered the ſame to be entered into the Journal-book of this Houſe, as their declaration, *viz.*

"That it is the undoubted right of the Lords in Judicature, to receive "and determine in time of Parliament, Appeals from inferior Courts, "though a Member of either Houſe be concerned, that there may be no "failure of juſtice in the land."

Then it was moved, that the former anſwer ſent to the Houſe of Commons, in the caſe of Mr. *Slingſby* and Mr. *Hale*, might be given now to the Houſe of Commons, in this caſe of Sir *John Fagg*; and that the declaration and report agreed to this day, might be added to it.

The Declaration aforeſaid was read, and the queſtion being put, Whether this ſhall be as a part of the anſwer to be given to the Houſe of Commons? It was reſolved in the negative.

The anſwer returned formerly to the Houſe of Commons, in the caſe of Mr. *Slingsby* and Mr. *Hale*, was in theſe words; *That the Houſe of Commons need not doubt but that their Lordſhips will have a regard to the privileges of the Houſe of Commons, as they have of their own.*

The queſtion being put, Whether this anſwer ſhall be now returned to the Meſſage from the Houſe of Commons? It was reſolved in the affirmative.

May the 7th, it was ſent accordingly.

Maii 7.

Whereas this day was appointed for Sir *John Fagg* to put in an anſwer to the Petition and Appeal of *Thomas Shirley*, Eſq. depending in this Houſe, if he thought fit; the ſaid Sir *John Fagg* appearing perſonally this day at the Bar, and deſiring longer time to put in an anſwer thereunto;

It is thereupon ordered, That the ſaid Sir *John Fagg* hath hereby further time given him for putting in his anſwer, till *Wedneſday* next, being the 12th day of this inſtant *May*, at ten o'clock in the forenoon.

Maii 12.

Sir *John Fagg* put in his anſwer to the petition of Mr. *Shirley*.

A debate ariſing thereupon, touching the privilege of their Houſe;

Reſolved, &c. That the Appeal brought by Dr. *Shirley* in the Houſe of Lords, againſt Sir *John Fagg*, a Member of this Houſe, and the proceedings thereupon, are a breach of the undoubted rights and privileges of this Houſe.

The Houſe being informed, that the Warrant of this Houſe for taking of the ſaid Dr. *Shirley* into cuſtody, was forcibly taken away and detained from the Serjeant at Arms his Deputy, attending this Houſe, by the Lord *Mohun*: And the Serjeant's Deputy being called in and examined as to the matter of fact, gave this teſtimony:

That he found Dr. *Shirley* in the inner Lobby of the Houſe of Lords, and that he came to him, and deſired to ſpeak with him, and acquainted him that he had a Warrant from the Houſe of Commons to apprehend him, and deſired to know, whether he could ſhew him any reaſon to excuſe him, that

that he might not ſerve the warrant on him: And that he likewiſe told him, that he would not execute the warrant on him in that place, but deſired of him, that he would go along with him freely; and that in caſe he would not, he would take his opportunity in another place.

And that the ſaid Lord *Mohun* coming in, in the mean time, required him to ſhew his warrant; which he producing, the Lord *Mohun* laid hands on it, and held it ſo faſt, that it was in danger of being torn, and that therefore he was forced to part with it, and deſiring to have it again, the Lord *Mohun* refuſed it, but carried the warrant into the Houſe of Lords. That Dr. *Shirley* afterwards refuſed to go along with him, ſaying, that he was not then his priſoner; and that ſeveral perſons interpoſing, the Doctor eſcaped from them. And a debate ariſing thereupon,

Reſolved, That a Meſſage be ſent to the Lords to complain of the Lord *Mohun*, for forcibly taking away and detaining the warrant of this Houſe, from the Deputy Serjeant at Arms, for taking of Dr. *Shirley* into cuſtody; and to demand the juſtice of the Lords Houſe againſt the ſaid Lord *Mohun*.

And that the Lord *Antram* do go up to the Lords with the Meſſage.

Ordered, That Mr. Speaker do iſſue forth a new warrant to the Serjeant at Arms attending this Houſe, for apprehending Dr. *Thomas Shirley*, to anſwer his breach of privilege, for proſecuting a ſuit by petition of Appeal in the Lords Houſe, againſt Sir *John Fagg*, a Member of this Houſe, during the ſeſſion and privilege of Parliament.

Sabbati, 15 *Maii* 1675.

The Lord *Antram* reports from the Lords, that he had, in obedience to the commands of this Houſe, attended the Lords, and delivered the Meſſage concerning the Lord *Mohun*'s taking away and detaining the warrant for apprehending Dr. *Shirley*, and that the Lords had returned this anſwer;

Gentlemen of the Houſe of Commons,

The Lords have conſidered of your Meſſage, and of the complaint therein; and they return you this anſwer, That they find the Lord Mohun *hath done nothing but what is according to his duty.*

The Houſe then reſumed the debate of the matter concerning the privileges of this Houſe; and the matter being debated,

Reſolved, &c. That the Appeal brought by Dr. *Shirley* in the Houſe of Lords againſt Sir *John Fagg*, a Member of this Houſe of Commons, and the proceedings thereupon, is a breach of the undoubted rights and privileges of the Houſe of Commons; and therefore the Commons deſire, that there be no further proceedings in that cauſe, before their Lordſhips.

Ordered, That a conference be deſired with the Lords concerning the privileges of this Houſe, in the caſe of Sir *John Fagg*; and that Sir *Thomas Lee* do go up to the Lords to deſire a conference.

A Meſſage from the Lords by Sir *Mondeford Bramſton*, and Sir *William Glaſcock*:

Mr. Speaker,

We are commanded to let this Houſe know, that the Lords ſpiritual and temporal aſſembled in Parliament, have received a warrant, ſigned Edward Seymour, *which they have appointed us to ſhew you; and deſire to know, whether it be a warrant ordered by this Houſe?*

The matter of the Meſſage being debated, the queſtion being put, That the word *unparliamentary*, be part of the anſwer to the Lords Meſſage,

It paſſed in the negative.

Reſolved, That the meſſengers be called in, and that this Anſwer be returned, *That this Houſe will conſider of the Meſſage.*

The meſſengers being called in, *Mr. Speaker* does acquaint them, that the Houſe will conſider of the Meſſage.

Reſolved, That the Meſſage laſt received from the Lords, is an unparliamentary Meſſage.

Reſolved, That a conference be deſired to be had with the Lords upon the ſubject-matter of the laſt Meſſage received from the Houſe of Lords.

Reſolved, That it be referred to Mr. *Garraway*, *&c.* to draw up reaſons to be offered at the ſaid conference.

Then the Houſe being informed, that there is a cauſe upon an Appeal brought up by Sir *Nicholas Stoughton*, againſt Mr. *Onſlow*, a Member of this Houſe, appointed to be heard at the bar of the Lords Houſe:

Reſolved, That a Meſſage be ſent to the Lords to acquaint them, that this Houſe has received information, that there is a cauſe upon an Appeal brought by Sir *Nicholas Stoughton* againſt Mr. *Onſlow*, a Member of this Houſe, appointed to be heard at the bar of their Houſe, on *Monday* next; and to deſire their Lordſhips to have regard to the privileges of this Houſe: And that Sir *Richard Temple* do go up with the Meſſage to the Lords.

Ordered, That Mr. *Onſlow* do not appear any further in the proſecution of the Appeal brought againſt him by Sir *Nicholas Stoughton*, in the Houſe of Lords.

Ordered, That Sir *Nicholas Stoughton* be ſent for in cuſtody of the Serjeant at Arms attending this Houſe, to anſwer his breach of privilege in proſecuting a ſuit in the Houſe of Lords, againſt *Arthur Onſlow*, Eſq. a Member of this Houſe, during the ſeſſion and privilege of Parliament.

Reſolved, That whoever ſhall appear at the bar of the Lords Houſe, to proſecute any ſuit againſt any Member of this Houſe, ſhall be deemed a breaker and infringer of the rights and privileges of this Houſe.

Lunæ, 17 *Maii*, 1675.

Sir *Richard Temple* reports, That the perſon appointed had attended the Lords, and delivered the vote of this Houſe, concerning the Appeal brought by Dr. *Shirley* againſt Sir *John Fagg*.

Sir *Thomas Lee* reports from the Committee appointed to draw up reaſons for the conference to be had with the Lords, Reaſons agreed by the Committee; which are as follow, *viz.*

For that the Meſſage is by way of interrogatory upon the proceedings of the Houſe of Commons, in a caſe concerning the privilege of a Member of that Houſe, of which they are proper Judges.

For that the matter of the Meſſage carries in it an undue reflection upon the *Speaker* of the Houſe of Commons.

For that the matter of the Meſſage doth highly reflect upon the whole Houſe of Commons, in their Lordſhips queſtioning that Houſe concerning their own orders; which they have the more reaſon to apprehend, becauſe the day before this Meſſage was brought to them, the warrant was owned by the complaint of the Houſe of Commons to their Lordſhips, that the ſame was taken and detained from a ſervant of theirs, by a Peer; which imports, that the queſtion in that Meſſage could not be for information only, and ſo tends to interrupt that mutual good correſpondency, which ought to be preſerved inviolably between the two Houſes of Parliament.

Martis, 18 *Maii*, 1675.

Sir *Richard Temple* reports from the Lords, That he had attended their Lordſhips, according to the command of this Houſe, with the meſſage in the caſe of Mr. *Onſlow*; to which the Lords returned an anſwer, which being in writing, was delivered in at the Clerk's table, and read; and is as followeth:

The Lords do declare, *That it is the undoubted right of the Lords in judicature, to receive and determine in time of Parliament Appeals from inferior Courts, though a Member of either Houſe be concerned, that there may be no failure of juſtice in the land: And from this right, and the exerciſe thereof, their Lordſhips will not depart.*

The matter of the Lords anſwer being debated, *Reſolved*, "That it is "the undoubted right of this Houſe, that none of their Members be ſum-"moned to attend the Houſe of Lords, during the ſitting or privilege of "Parliament."

Reſolved, That a conference be deſired with the Lords, upon the privileges of this Houſe, contained in the Lords anſwer to the laſt Meſſage of this Houſe, in the caſe of Mr. *Onſlow*.

Ordered, That Sir *Henry Ford* do go up to the Lords, to deſire a conference upon the ſubject-matter of their Meſſage, concerning the warrant for apprehending Dr. *Shirley*.

Jovis, 20 *Maii*, 1675.

Sir *Thomas Lee* reports, from the Committee appointed to draw up reaſons to be offered at the conference to be had with the Lords upon the privileges of this Houſe, contained in the Lords anſwer to the laſt Meſſage of this Houſe, in the caſe of Mr. *Onſlow*; which reaſons were twice read, and with ſome alterations at the Clerk's table (upon the queſtion ſeverally put) agreed to: which are as follow, *viz.*

1. That by the laws and uſage of Parliament, privilege of Parliament belongs to every Member of the Houſe of Commons, in all caſes, except Treaſon, Felony, and breach of the Peace; which hath often been declared in Parliament, without any exception of Appeals before the Lords.

2. That the reaſon of that privilege is, that the Members of the Houſe of Commons may freely attend the public affairs of that Houſe, without diſturbance or interruption; which doth extend as well to Appeals before the Houſe of Peers, as to proceedings in other Courts.

3. That by the conſtant courſe and uſage of Parliament, no Member of the Houſe of Commons can attend the Houſe of Lords, without the eſpecial leave of that Houſe firſt obtained, much leſs be ſummoned or compelled ſo to do.

4. If the Lords ſhall proceed to hear and determine any Appeal where the party neither can, nor ought to attend, ſuch proceedings would be contrary to the rules of juſtice.

5. That the not determining of an Appeal againſt a Member of the Houſe of Commons, is not a failure of juſtice, but only a ſuſpenſion of proceedings in a particular caſe, during the continuance of that Parliament, which is but temporary.

6. That in caſe it were a failure of juſtice, it is not to be remedied by the Houſe of Lords alone, but it may be by Act of Parliament.

[Here Sir *Thomas Littleton* reported from the Committee appointed to prepare the further addreſs of this Houſe to his Majeſty, for the recalling ſuch of his ſubjects as are in the *French* King's ſervice; which the Houſe deferred the further conſideration of till *Wedneſday* next.]

Then Sir *Trevor Williams* reports from the Lords, that he had attended, and deſired a conference with the Lords on the privilege of this Houſe, contained in the Lords anſwer to the Meſſage of this Houſe, in the caſe of Mr. *Onſlow*: And that the Lords will return an anſwer by Meſſengers of their own.

Mr. *Powle* reports, from the conference had with the Lords upon the ſubject-matter of the former conference, concerning the warrant for apprehending Dr. *Shirley*, That the Lords had returned an anſwer to the reaſons of this Houſe, delivered at the former Conference, and are as follow:

"The Lords have appointed this conference, upon the ſubject-matter "of the laſt conference, and have commanded us to give theſe anſwers to "the reaſons and other matters then delivered by the Houſe of Commons.

"To the firſt queſtion, the Lords conceive, that the moſt natural way "of being informed, is by way of queſtion; and ſeeing a paper here which "did reflect upon the privileges of the Lords Houſe, their Lordſhips would "not proceed upon it till they were aſſured it was owned by the Houſe of "Commons: But the Lords had no occaſion at that time, nor do they now "think fit to enter into the debate of the Houſe of Commons being or not "being proper Judges in the caſe concerning the privilege of a Member of "that Houſe; their Lordſhips neceſſary conſideration upon ſight of that "paper, being only, how far the Houſe of Commons ordering (if that "paper were theirs) the apprehenſion of Dr. *Shirley*, for proſecuting his "Appeal before the Lords, did entrench upon their Lordſhips both privi-"lege and undoubted rights of judicature in the conſequence of it, exemp-"ting all the Members of both Houſes from the judicature of this the high-"eſt Court of the Kingdom; which would cauſe a failure of that ſupreme "juſtice, not adminiſtrable in any other Court, and which their Lordſhips "will never admit.

"As to the ſecond reaſon, the Lords anſwer, That they do not appre-"hend how the Matter of this Meſſage is any reflection upon the *Speaker* "of the Houſe of Commons.

"To the third reaſon, The Lords cannot imagine how it can be appre-"hended in the leaſt to reflect upon the Houſe of Commons, for the Houſe "of Peers, upon a paper produced to their Lordſhips, in form of a war-"rant of that Houſe, whereof doubt was made among the Lords, whe-"ther any ſuch thing had been ordered by that Houſe, to enquire of the "Commons, whether ſuch warrant was ordered there or no? And with-"out ſuch Liberty uſed by the Lords, it will be very hard for their Lord-"ſhips to be rightly informed, ſo as to preſerve a good correſpondence be-"tween the two Houſes, which their Lordſhips ſhall endeavour; or to know "when warrants in the name of that Houſe are true or pretended: And it "is ſo ungrounded an apprehenſion, that their Lordſhips intended any re-

" flection in aſking that queſtion, and not taking notice in their meſſage of " the complaint of the Houſe of Commons owning that warrant, that the " Lords had ſent their meſſage concerning that paper to the Houſe of Com- " mons, before the Lords had received the ſaid Commons complaint.

" But their Lordſhips have great cauſe to except againſt the unjuſt and " ſtrained reflection of that Houſe upon their Lordſhips, in aſſerting that " the queſtion in the Lords meſſage could not be for information, as we " affirm, but tending to interrupt the mutual correſpondence between the " two Houſes; which we deny, and had not the leaſt thought of.

" The Lords have further commanded us to ſay, That they doubt not " when the Houſe of Commons have received what we have delivered at " this conference, they will be ſenſible of their error, in calling our " meſſage ſtrange, unuſual, or unparliamentary. Though we cannot but " take notice, that their anſwer to our meſſage, That they would con- " ſider of it, was the firſt of that kind that we can find to have come from " that Houſe."

The queſtion being put, Whether the Houſe be ſatisfied with the reaſons delivered by the Lords at the laſt conference? it paſſed in the negative.

Reſolved, That a free conference be deſired with the Lords upon the matter delivered at the laſt conference: and that the former Managers do attend, and manage the free conference.

Friday, *May* 21. The Houſe reſolved on *Wedneſday* next to proceed in the further conſideration of that part of the meſſage relating to Appeals from inferior Courts. Sir *Trevor Williams* ordered to go up to the Lords, to deſire a conference upon the privileges of this Houſe, contained in their anſwer to the meſſage touching Mr. *Onſlow*'s caſe, which he accordingly did; and reports, That the Lords will return an anſwer thereto by meſſengers of their own.

May 27. A meſſage ordered to be ſent to the Lords to remind them of the former meſſage; and again to deſire a conference upon the privileges of this Houſe, in the caſe of Mr. *Onſlow*. And ordered the matter of the juriſdiction of the Lords, in caſes of Appeal, be taken into conſideration to-morrow morning.

Veneris, 28 *Maii*, 1675.

Sir *Thomas Lee* reports, from the Committee to whom it was referred to draw up reaſons to be offered at a conference to be had with the Lords upon the ſubject-matter of their anſwer to the laſt meſſage of this Houſe, in the caſe of Mr. *Onſlow*, ſeveral reaſons agreed by the ſaid Committee; which he read in his place, and afterwards delivered the ſame in at the Clerk's table; where the ſame being twice read, were, upon the queſtion, ſeverally agreed unto, and are as follow, *viz.*

" For that the Commons deſired a conference upon their privileges " concerned by the Lords anſwer to a meſſage ſent to the Lords the 18th " of *May*, in the caſe of Mr. *Onſlow*; their Lordſhips have not agreed any " conference in the caſe of Mr. *Onſlow*; but have only agreed a confe- " rence concerning their privileges in general, without reference to the " caſe of the ſaid Mr. *Onſlow*; which was the only ſubject-matter of the " deſired conference.

" The limitation in the Lords agreement to a conference, with proviſo " that nothing be offered at the conference that may any way concern " their Lordſhips judicature, is in effect a denial of any conference at all, " upon the ſubject on which it was deſired; which ought not to be: the " judicature which their Lordſhips claim in Appeals againſt a Member of " the Houſe of Commons, and the privilege of that Houſe being in that " caſe ſo involved, that there can be no conference upon the latter, with- " out ſome way touching upon the former.

" That this manner of agreeing to a conference with any limitation or " proviſo, is againſt the courſe of Proceedings betwixt the two Houſes " of Parliament, in coming to conference; and doth ſeem to place a power " in the Managers of ſuch conferences, to judge whether ſuch proviſo's " be broken or not; and accordingly to proceed, or break off the confe- " rence upon their own judgments."

Lunæ, 31 *Maii*, 1675.

Sir *Leoline Jenkins* reports, that he had attended the Lords, with the meſſage of this Houſe, for a conference upon the ſubject-matter of the Lords anſwer to the laſt meſſage of this Houſe, in the caſe of Mr. *Onſlow*; and that the Lords had ſent anſwer, that they would return anſwer by meſſengers of their own.

A meſſage from the Lords by Sir *Mondeford Brampſton*, and Sir *William Beverſham*.

" *Mr. Speaker*,

" The Lords have commanded us to acquaint you, that they deſire a " conference preſently in the Painted-Chamber, with the Houſe of Com- " mons, upon their not coming to the conference deſired by them on " *Thurſday* laſt, and by the Lords appointed to be at ten of the clock in " the Painted-Chamber, on *Friday* the 28th of this inſtant *May*."

The meſſengers being withdrawn, and the meſſage debated, a preſent conference upon the queſtion was agreed.

And the meſſengers being called in, Mr. Speaker acquaints them, that the Houſe had agreed to a preſent conference.

Ordered, That the former Members that were appointed to manage the former conference in the caſe of Mr. *Onſlow*, do attend and manage this conference.

Sir *John Trevor* reports, from the conference, that the Lords had declared the intent of this conference, to the effect following, *viz.* " That " the Lords have appointed this conference, out of that conſtant deſire and " reſolution that they have to continue a fair correſpondence between the " two Houſes; which is of the eſſence of Parliamentary Proceedings.

" For this end their Lordſhips have commanded us to tell you, that they " cannot but take notice of the Houſe of Commons failing to be on *Friday* " laſt, at a conference deſired by themſelves, and appointed by the Lords " at ten of the clock in the Painted-Chamber.

" That they conceive it tends to an interruption of all Parliamentary " Proceedings, and to evade the right of the Lords to appoint time and " place for a conference."

Ordered, That it be referred to the former Committee, who are appointed to draw up reaſons, to be offered at a conference to be had with the Lords, upon the ſubject-matter of their anſwer to the meſſage of this Houſe, in the caſe of Mr. *Onſlow*; to conſider of the matter delivered by the Lords at the laſt conference; and to prepare and draw up further reaſons, to be offered at another conference to be had with the Lords, upon the ſubject-matter of the laſt conference. And that the Committee do meet this afternoon at five of the clock in the Speaker's Chamber. And Mr. Serjeant *Maynard*, and Mr. *Sawyer*, are to have notice to attend the ſame.

Martis, 1 *Junii*, 1675.

Sir *Thomas Lee* reports, from the Committee appointed to inſpect the Journals of the Houſe of Lords, and to ſee what Proceedings have been entered, in the caſe of Mr. *Dalmahoy* and Mr. *Onſlow*; that they had inſpected the Lords Journals, as to the caſe of Mr. *Dalmahoy*, and collected what Proceedings had been in that caſe; but had no opportunity or time, yet to do it in the caſe of Mr. *Onſlow*. Which Proceedings being reported, were read, and delivered in at the Clerk's table; and are as follow, *viz.*

19 *April*, 1675.

The Appeal brought by *Criſpe* and *Criſpe*, complaining againſt a Decree in *Chancery* made, wherein Mr. *Dalmahoy* is recited to be one of the Petitioners; *Cranbourne* and *Bowyer* are ordered to put in an anſwer, and *Dalmahoy*, if he pleaſe.

Maii 12, 1675.

Ordered, That this Houſe will hear Counſel at the Bar, upon the Petition and Appeal of Sir *Nicholas Criſpe* and others, againſt the Lady Viſcounteſs *Cranbourne*, the Lady *Anne Bowyer*, and *Thomas Dalmahoy*, Eſq; and their anſwer thereunto, depending in this Houſe, on *Wedneſday* the 19th of this inſtant *May*, at ten of the clock in the forenoon; whereof the Petitioners are to cauſe timely notice to be given to the ſaid Defendants, or their Agents in the ſaid cauſe, for that purpoſe.

Maii 16, 1675.

Whereas Sir *Nicholas Criſpe*, Bart. having an Appeal depending in this Houſe, againſt the Lady *Cranbourne*, Lady *Bowyer*, and *Thomas Dalmahoy*, Eſq; a Member of the Houſe of Commons; hath prayed that Counſel may be aſſigned him to plead his cauſe upon the ſaid Appeal, and hath named Counſel for that purpoſe:

It is ordered, That Sir *John Churchill*, Serjeant *Peck*, Serjeant *Pemberton*, and Mr. *Porter*, named by the ſaid Sir *Nicholas Criſpe*, be, and are hereby appointed to open, and manage the ſaid cauſe, on the part and behalf of the ſaid Sir *Nicholas Criſpe*, on *Thurſday* the 27th day of this inſtant *May*, at ten of the clock in the forenoon; and at ſuch other times, as it ſhall be depending in this Houſe.

Upon reading the Petition of Sir *Nicholas Criſpe*, Bart. *Thomas Criſpe* and *John Criſpe*, Eſqrs. ſhewing, that having an Appeal depending in this Houſe againſt *Thomas Dalmahoy*, Eſq; a Member of the Houſe of Commons, and others; they are in danger of being arreſted by an order of the Houſe of Commons; and therefore pray the protection of this Houſe, that they may have liberty to proſecute their ſaid Appeal with Freedom:

It is thereupon ordered, That the ſaid Sir *Nicholas Criſpe*, Bart. *John Criſpe*, and *Thomas Criſpe*, or any of them, their or any of their Counſel, Agents or Sollicitors, or ſuch other perſon or perſons as they ſhall employ, in proſecuting the ſaid Appeal before this Houſe, be, and are hereby privileged, and protected accordingly by this Houſe, until the matter upon the Appeal be determined by their Lordſhips. And all perſons whatſoever are hereby prohibited from arreſting, impriſoning, or otherwiſe moleſting the ſaid Sir *Nicholas Criſpe*, *John Criſpe*, and *Thomas Criſpe*, or any of them, their or any of their Counſel, Agents, or Sollicitors, upon any pretence whatſoever, during the time prefixed, as they or ſuch of them will anſwer the contrary to this Houſe.

Maii 26, 1675.

The cauſe between Sir *Nicholas Criſpe*, &c. plaintiffs, and *Thomas Dalmahoy*, Eſq; defendant, appointed to be heard the 27th, was ordered to be heard the 28th *Maii*.

Maii 27.

Upon reading the petition of Sir *Nicholas Criſpe*, complaining, that the Counſel aſſigned him by this Houſe, to plead his cauſe at the bar, wherein Mr. *Dalmahoy* is one of the defendants, do refuſe to plead for him in this caſe, in regard of a vote of the Houſe of Commons; Sir *Nicholas Criſpe* was called in, and teſtified, that he ſhewed the order of this Houſe to Serjeant *Peck*, Serjeant *Pemberton*, Sir *John Churchill*, and Mr. *Porter*.

Whereupon it is ordered, That whereas Sir *John Churchill*, Serjeant *Peck*, Serjeant *Pemberton*, and Mr. *Porter*, were by order of this Houſe, dated on the 19th inſtant, aſſigned to be of Counſel for Sir *Nicholas Criſpe*, *John Criſpe*, and *Thomas Criſpe*, in their cauſe depending in this Houſe againſt *Thomas Dalmahoy*, Eſq; a Member of the Houſe of Commons, and other defendants, at ſuch time as the ſaid cauſe ſhall be appointed to be pleaded at the bar of this Houſe; having appointed to hear the ſaid cauſe by Counſel on both ſides, to-morrow at three of the clock in the afternoon:

It is this day ordered, That the ſaid Sir *John Churchill*, Serjeant *Peck*, Serjeant *Pemberton*, and Mr. *Porter*, be, and are hereby required, to appear at the bar of this Houſe, to-morrow, at three of the clock in the afternoon, as Counſel to plead in the ſaid cauſe, on the behalf of the ſaid Sir *Nicholas Criſpe*, *John* and *Thomas Criſpe*, as they will anſwer the contrary to this Houſe.

Maii 28, 1675.

Counſel heard at the bar on both parts, upon the Petition and Appeal of Sir *Nicholas Criſpe*, &c. and the anſwer of *Diana* Viſcounteſs *Cranbourne*, &c. and *Thomas Dalmahoy*, Eſq; put in thereunto, concerning a decree in *Chancery*: *Reſolved*, the Petition and Decree be diſmiſſed.

Maii 28.

This day the Houſe heard the Counſel of Sir *Nicholas Criſpe*, *John Criſpe*, and *Thomas Criſpe*, upon their Petition and Appeal depending in this Houſe; and alſo the Counſel of the Lady *Bowyer*, and Mr. *Dalmahoy*, upon their anſwer thereunto; and after a ſerious conſideration thereof, the queſtion being put, Whether this Petition and Appeal ſhall be diſmiſſed this Houſe?

It was reſolved in the affirmative.

Mr. Serjeant *Pemberton*, Sir *John Churchill*, Mr. Serjeant *Peck*, and Mr. *Porter* attending at the door, in obedience to the order of the House of Commons; and being severally called in, Mr. *Speaker* did severally acquaint them, that they were summoned to give an account to the House, of their appearing as Counsel at the Bar of the House of Lords, in the prosecution of a cause depending upon an appeal, wherein Mr. *Dalmahoy*, a Member of this House, is concerned, in the manifest breach of the order of this House; and giving up, as much as in them lies, the rights and privileges of the Commons of *England:* And they having answered and made their excuses to the effect following: That they had no notice of the order or vote of this House, but what they have heard in common discourse abroad; and because they conceived Mr. *Dalmahoy*, a Member of this House, might be concerned, they refused several times to appear as Counsel, or to accept their fees; but being assigned of Counsel for Sir *Nicholas Crispe*, and an order of the House of Lords being served on them to attend at their peril, and that then attending, and Mr. *Dalmahoy* having put in his answer in the Lords House, and not insisting on his privilege afterwards, and the Counsel for the Lady *Bowyer*, who was the principal party concerned, denying to be of counsel for Mr. *Dalmahoy*, they conceived they might safely appear as Counsel without breach of the order, or invading the rights and privileges of this House, which was not intended by them; and Sir *John Churchill*, by way of further excuse for himself, said, that he had witnesses ready to prove, that Mr. *Dalmahoy* was willing and desirous to have the business go forward. And the said Mr. Serjeant *Pemberton*, Sir *John Churchill*, Mr. Serjeant *Peck*, and Mr. *Porter*, did all of them humbly submit themselves to the pleasure of the House, if they had in any thing misbehaved themselves; and being withdrawn, and the matter debated: The question being put, That Serjeant *Pemberton* be taken into the custody of the Serjeant at Arms attending this House?

It was resolved in the affirmative.

Ordered, That Serjeant *Pemberton*, Sir *John Churchill*, Mr. Serjeant *Peck*, and *Charles Porter*, Esq. be taken into the custody of the Serjeant at Arms attending this House, for their breach of privilege of this House.

Mercurii, 2 die Junii.

Ordered, That Sir *Richard Temple*, Mr. *Vaughan*, and Sir *Thomas Lee* do withdraw, and amend the reasons upon the debates of the House, which was done; and the reasons agreed to are as follow:

"The House of Commons do agree with the Lords, that conferences between the two Houses of Parliament are essential to Parliamentary Proceedings, when they are agreed in the usual and Parliamentary way; but the manner of the Lords agreement to the conference, to have been on *Friday* the 28th of *May* last, at ten of the clock, in the Painted Chamber, with limitation and proviso, did necessitate the House of Commons to forbear to meet at that conference, and gave the first interruption to parliamentary Proceedings in conferences between the two Houses.

"For that the conference desired by the Commons, was upon their privileges, concerned in the answer of the Lords to a message of the House of Commons, sent to the Lords the 17th of *May*, in the case of Mr. *Onslow*, to the which the Lords did not agree, but did only agree to a conference concerning their privileges in general, without reference to the case of the said Mr. *Onslow*; which was the only subject-matter of the desired conference.

"The limitations in the Lords agreement to a conference, with proviso that nothing be offered at the conference that may any ways concern the Lords judicature, is in effect a denial of any conference at all upon the subject upon which it was desired; which ought not to be.

"The judicature which the Lords claim in Appeals against a Member of the House of Commons, and the privilege of that House in that case, is so involved, that no conference can be upon the matter without some way touching the former.

"That this manner of agreeing to a conference with any limitation or proviso, is against the course of proceedings between the two Houses of Parliament, in coming to conferences; and doth seem to place a power in the Managers of such conferences to judge, whether such proviso's be broken or not; and accordingly to proceed or break off the conference upon their own judgments.

"The House of Commons doubt not, but that when the Lords have considered of what is delivered at this conference, the good correspondence which the Lords express they desire to continue between the two Houses, (which the Commons also are no less careful to maintain) will induce them to remove the present interruption of coming to conferences; and therefore to agree to the conference, as it was desired by the House of Commons, upon the privileges of their House, concerned in the Lords answer to the message of the House of Commons, in the case of Mr. *Onslow:* That the particular limitation, that nothing be offered at the conference, that may any way concern the judicature of the Lords, appears unreasonable; for that their Lordships judicature in Parliament is circumscribed by the laws of the land, as to their proceedings and judgments; and is, as well as all other Courts, subjected to Parliament."

Jovis, 3 die Junii, 1675.

Mr. *Vaughan* reports, That the Lord Privy-Seal did manage the conference, and had delivered the intent and occasion of the conference; which Mr. *Vaughan* did report to the House, to the effect following, *viz.*

"The Lords do take notice of the House of Commons, their ordering into custody of their Serjeant, Mr. Serjeant *Peck*, Sir *John Churchill*, Mr. Serjeant *Pemberton*, and Mr. *Charles Porter*, Counsellors at Law; assigned by their Lordships to be of Counsel in an Appeal heard at their Lordships Bar, in the case of Sir *Nicholas Crispe*, against the Lady *Bowyer*, Mr. *Dalmahoy*, and others; the Lords in Parliament, where his Majesty is highest in his royal estate, and where the last resort of judging upon Writs of Error, and Appeals in Equity, in all causes, and over all persons, is undoubtedly fixed, and permanently lodged.

"It is an unexampled usurpation and breach of privilege against the House of Peers, that their orders or judgments should be disputed, or endeavoured to be controuled, or the execution thereof obstructed by the Lower House of Parliament; who are no Court, nor have authority to administer an oath, or give any judgment.

"It is a transcendent invasion on the right and liberty of the subject, and against *Magna Charta*, *the Petition of Right*, and many other laws, which have provided, *That no Freeman shall be imprisoned, or otherwise restrained of his liberty, but by due process of Law.*

"This tends to the subversion of the Government of this Kingdom, and to the introducing of arbitrarines and disorder.

"Because it is in the nature of an injunction from the Lower House (who have no authority or power of judicature over inferior subjects, much less over the King and Lords) against the orders and judgments of the Supreme Court.

"We are further commanded to acquaint you, That the Lords have therefore, out of that justice which they are dispensers of, against oppression and breach of laws, by judgment of this Court, set at liberty by the Gentleman-Usher of the Black Rod, all the said Serjeants and Counsellors; and prohibited the Lieutenant of the Tower, and all other Keepers of prisons, and Gaolers, and all persons whatsoever, from arresting and imprisoning, detaining, or otherwise molesting, or charging the said Gentlemen, or any of them in this case: And if any person, of what degree soever, shall presume to the contrary, their Lordships will exercise the authority with them intrusted for putting the laws in execution.

"And we are further commanded to read to you, a Roll of Parliament, in the first year of the reign of King *Henry* the IVth, whereof we have brought the original with us."

And a debate arising thereupon,

Resolved, That a conference be desired with the Lords upon the subject-matter of the last conference; and that these Members following, be appointed to prepare and draw up reasons upon the debates of the House, to be offered at the conference; Mr. Secretary *Coventry*, *&c.*

Ordered, That the officer in whose custody is the Record of the first of *Henry* the IVth, mentioned at the conference with the Lords, do attend the Committee appointed to draw up reasons for another conference this afternoon: And they are to meet at three of the clock, in the Speaker's chamber, and to send for Persons, Papers, and Records.

Ordered, That no Member of this House do attend the Lords House, upon any summons from the Lords, without leave of the House.

Veneris, 4 Junii, 1675.

Ordered, That the thanks of the House be returned to Mr. *Speaker*, for causing Mr. Serjeant *Pemberton*, formerly committed by order of this House to the custody of the Serjeant at Arms attending this House, for a breach of privilege, to be seized and taken into custody in *Westminster-hall*, for his breach of privilege.

The House being informed, that Sir *John Churchill*, Mr. Serjeant *Peck*, and Mr. *Charles Porter*, who were ordered to be taken into the custody of the Serjeant at Arms attending this House, are now in *Westminster-hall*:

Ordered, That the Serjeant at Arms now attending this House, do go with his Mace into *Westminster-hall*, and do execute the order of this House, and the warrant of Mr. *Speaker* thereupon; for seizing and bringing in custody Mr. Serjeant *Peck*, Sir *John Churchill*, and Mr. *Charles Porter*, for their breach of the privilege of this House.

The Serjeant returning, gave an account, that he had executed the order of this House, and Mr. *Speaker*'s warrant thereupon, and had brought the said Mr. Serjeant *Peck*, Sir *John Churchill*, and Mr. *Charles Porter*, in custody, into the *Speaker*'s chamber.

The question being put, That Sir *John Churchill*, Mr. Serjeant *Peck*, Mr. Serjeant *Pemberton*, and Mr. *Charles Porter*, be sent to the Tower, for their breach of privilege, and contempt of the authority of this House?

It was resolved in the affirmative.

Ordered, That Mr. *Speaker* do issue his warrant to the Lieutenant of the Tower, to receive them into his custody.

Ordered, That *John Popham*, Esq. the now Serjeant at Arms attending this House, be protected against all persons that shall any ways molest or hinder him from executing his office.

Sir *Thomas Lee* reports from the Committee, the reasons agreed to be offered at the conference to be had with the Lords upon the matters delivered at the last conference; which were twice read, and with some amendments made at the table, severally agreed; and are as follow, *viz.*

"Your Lordships having desired the last conference, upon matters of high importance concerning the dignity of the King, and the safety of the Government, the Commons did not expect to hear from your Lordships at that conference, things so contrary to, and inconsistent with, the matter upon which the said conference was desired, as were then delivered by your Lordships.

"It was much below the expectation of the Commons, that after a representation of your Lordships Message of matters of so high importance, the particular upon which the conference was grounded, should be only the commitment of four Lawyers to the custody of their own Serjeant at Arms, for a manifest violation of the privileges of their House.

"But the Commons were much more surprised, when your Lordships had introduced the conference with an assurance, that it was in order to a good correspondency between the two Houses, that your Lordships should immediately assume a power to judge the orders of the House of Commons for imprisonment of Mr. Serjeant *Pemberton*, Mr. Serjeant *Peck*, Sir *John Churchill*, and Mr. *Charles Porter*, to be illegal and arbitrary; and the execution thereof a great indignity to the King's Majesty; with many other high reflections upon the House of Commons throughout the whole conference; whereby your Lordships have condemned the whole House of Commons as criminal, which is without precedent or example, or any ground or reason so to do.

"It is not against the King's dignity for the House of Commons to punish by imprisonment, a Commoner that is guilty of violating their privileges, that being according to the known laws and customs of Parliament; and the right of their privileges declared by the King's royal Predecessors in former Parliaments, and by himself in this.

"But

" But your Lordſhips claiming to be the ſupreme Court, and that his " Majeſty is higheſt in his royal eſtate in the Court of judicature there, " is a diminution of the dignity of the King, who is higheſt in his royal " eſtate in full Parliament; and is derogatory to the authority of the " whole Parliament, by appropriating it to yourſelves.

" The Commons did not by this impriſonment infringe any privileges " of the Houſe of Peers, but only defend and maintain their own: On the " other ſide, your Lordſhips do highly intrench upon the rights and pri- " vileges of the Houſe of Commons, by denying them to be a court, or " to have any authority or power of judicature; which, if admitted, will " leave them without any power or authority to preſerve themſelves.

" As to what your Lordſhips call a tranſcendent invaſion of the rights " and liberty of the ſubject, and againſt *Magna Charta*, the *Petition of* " *Right*, and many other laws; the Houſe of Commons preſume that your " Lordſhips know, that neither the *Great Charter*, *Petition of Right*, or " any other laws, do take away the law and cuſtom of Parliament, or of " either Houſe of Parliament, or elſe your Lordſhips have much forgot- " ten the *Great Charter*, and thoſe other laws, in the ſeveral judgments " your Lordſhips have paſſed upon the King's ſubjects in caſes of privi- " lege. But the Commons cannot find by *Magna Charta*, or by any other " law or ancient cuſtom of Parliament, that your Lordſhips have any ju- " riſdiction in caſes of Appeals from the Courts of Equity.

" We are further commanded to acquaint you, that the enlargement of " thoſe perſons in priſon, by order of the Houſe of Commons, by the " Gentleman-Uſher of the Black-Rod, and the prohibition which threa- " tens all officers and other perſons whatſoever, not to receive or detain " them, is an apparent breach of the rights and privileges of the Houſe of " Commons: And they have therefore cauſed them to be retaken into " the cuſtody of the Serjeant at Arms attending this Houſe, and have " committed them to the Tower.

" As for the Parliament-Roll of the firſt of King *Henry* the IVth, " cauſed to be read by your Lordſhips at the laſt conference, but " not applied, the Commons apprehend it doth not concern the caſe in " queſtion: For that this Record was made upon occaſion of judgments " given by the Lords, to depoſe and impriſon their lawful King; to " which the Commons were not willing to be made Parties. And there- " fore the Commons conceive it will not be for the honour of your Lord- " ſhips to make further uſe of that Record.

" But we are commanded to read to your Lordſhips the Parliament- " Roll of 4 *Ed.* III. *N.* 6. which, if your Lordſhips pleaſe to conſider, " they doubt not but your Lordſhips will find occaſion to apply it to the " preſent purpoſe."

Ordered, The Thanks of the Houſe be given to the Speaker, for his care in iſſuing the Warrant for retaking the perſons committed yeſterday into cuſtody.

The Serjeant at Arms ordered to be ſent to the Tower; and the other Serjeant at Arms attending, was ordered to apprehend him for betraying his truſt, in not executing his office, in bringing the perſons committed yeſterday to his cuſtody, to the bar of the Houſe.

An Addreſs ordered to be prepared to be preſented to his Majeſty, to deſire a new Serjeant at Arms to attend the Houſe.

Saturday, June 5, 1675.

Mr. Secretary *Coventry* acquainted the Houſe, that it was his Majeſty's deſire, that the Houſe would adjourn till four of the clock in the afternoon, and that both Houſes ſhould at that time attend him in the Banquetting-houſe at *Whitehall*.

A debate ariſing touching the removal of *John Popham*, Eſq. Serjeant at Arms in ordinary, attending the Houſe yeſterday, the further debate thereof was adjourned till five of the clock in the afternoon. And then the Houſe adjourned till four in the afternoon.

In the Afternoon,

The Houſe then met at the time they adjourn'd to, and went in a body to his Majeſty at *Whitehall*; and the Houſe of Lords being alſo preſent, his Majeſty made the following Speech:

My Lords and Gentlemen,

YOU may remember, that at the meeting of this Seſſion I told you, no endeavours would be wanting to make the continuance of this Parliament unpracticable. I am ſorry that experience hath ſo quickly ſhewed you the truth of what I then ſaid; but I hope that you are well convinced, that the intent of all theſe contrivances is only to procure a diſſolution. I confeſs I look upon it as a moſt malicious deſign of thoſe who are enemies to me and the Church of England; *and were the contrivers known, I ſhould not doubt but the diſlike of their practices would alone be a means of bringing the Houſes to a good underſtanding. But ſince I cannot preſcribe any way how to arrive to the diſcovery of it, I muſt tell you plainly my opinion, that the means of coming to any compoſure between yourſelves, cannot be without admitting of ſuch free conferences as may convince one another by the reaſons then offered; or enable me to judge rightly of the differences, when all hath been ſaid on both ſides which the matter will afford: for I am not to ſuffer theſe differences to grow to diſorders in the whole Kingdom, if I can prevent it; and I am ſure my judgment ſhall always be impartial between my two Houſes of Parliament. But I muſt let you know, that whilſt you are in debate about your privileges, I will not ſuffer my own to be invaded. I have nothing more to ſay to you at this time, but to deſire, as I did when we met firſt, that you would yet conſider, and not ſuffer ill men's deſigns to hinder the Seſſions from a happy concluſion.*

[The Houſe of Lords preſented an Addreſs to his Majeſty, to remove the Lieutenant of the *Tower*; whereupon the Lord-Treaſurer reported his Majeſty's anſwer, *viz.* " That his Majeſty hath conſidered the cir- " cumſtances of the matter, and is not ſatisfied how with juſtice he can " remove him."]

The Houſe then took into conſideration his Majeſty's Speech, and reſolved, *nemine contradicente*, That the humble Thanks of this Houſe be returned to his Majeſty, for the gracious expreſſions in his Speech this day made to both Houſes of Parliament; and ſuch Members of this Houſe as are of his Majeſty's Privy-Council are deſired to preſent the humble Thanks of this Houſe to his Majeſty.

Reſolved, That it doth not appear to this Houſe, that any Member thereof hath either contrived or promoted the difference between the two Houſes of Parliament; or in aſſerting the Rights of the Commons of *England*, and the privileges of this Houſe; or to have done any thing inconſiſtent with his duty, or the truſt repoſed in him. And then adjourned to *Monday, June* 7.

On *Monday, June* 7, the Houſe reſolved, That what Serjeant *Popham* did in retaking the four Lawyers into his cuſtody, and conducting them to the *Tower* of *London*, was in purſuance of his duty, and by the order of the Houſe; and the further debate concerning the ſaid Serjeant at Arms was adjourned till *Wedneſday* morning.

A copy of an order from the Houſe of Lords for the hearing Counſel in the caſe of Sir *John Fagg*, a Member of this Houſe, to-morrow morning, was then read and debated: And,

Reſolved, That as to the caſe of appeal brought againſt Sir *John Fagg*, in the Houſe of Lords, he ſhall have the protection and aſſiſtance of this Houſe.

Reſolved, nem. con. That if any perſon or perſons ſhall be aiding or aſſiſting in putting in execution any ſentence or judgment that ſhall be given by the Houſe of Lords, upon the Appeal brought by Dr. *Shirley* againſt Sir *John Fagg*, a Member of this Houſe, ſuch perſon or perſons ſhall be adjudged and taken to be betrayers of the rights and liberties of the Commons of *England*, and the privileges of this Houſe; and ſhall be proceeded againſt accordingly.

Ordered, That theſe Votes be made publick, by ſetting them up in *Weſtminſter-hall*, and in the Lobby of this Houſe; and the Clerk of the Houſe to take care to ſee it done.

In the afternoon the Houſe proceeded in the further conſideration of effectual means for the preſervation of their rights and privileges, and reſolved, *nem. con.* That no perſon committed by order or warrant of this Houſe, for breach of the privileges or contempt of the authority of the Houſe, ought to be diſcharged during the Seſſion of Parliament, without the order or warrant of this Houſe.

Reſolved, nem. con. That the Lieutenant of the *Tower* of *London*, in receiving and detaining in cuſtody, Sir *John Churchill*, Serjeant *Peck*, Serjeant *Pemberton*, and Mr. *Porter*, hath performed his duty according to law; and for his ſo doing, he ſhall have the aſſiſtance and protection of this Houſe.

Reſolved, That the Lieutenant of the *Tower*, in caſe he hath, or ſhall receive any writ, warrant, order, or command, to remove or deliver any perſon or perſons committed to his charge, for breach of the privileges or contempt of the authority of the Houſe of Commons, by order or warrant of the Houſe; ſhall not make any return thereof, or yield any obedience thereto, before he hath firſt acquainted the Houſe therewith, and received their order and direction how to proceed therein.

Ordered, That theſe reſolutions be immediately ſent to the Lieutenant of the *Tower*; and then the Houſe adjourned.

Tueſday, June 8, 1675.

A meſſage ſent to the Lords to remind them of the laſt conference; and for a conference upon the ſubject-matter delivered by the Lords at the laſt conference.

Sir *John Robinſon* informing the Houſe, that he had received the four Lawyers committed to his cuſtody by this Houſe, and denied to deliver them to the Gentleman-Uſher of the Black-Rod; and that he was ſerved laſt night with four Writs of *Habeas Corpus*, to bring the ſaid four Lawyers before the King and his Parliament at *Weſtminſter*, this morning, and craved the advice of the Houſe what to do therein:

Ordered, The Thanks of the Houſe be given to the ſaid Sir *John Robinſon* for his behaviour therein; and Mr. *Speaker* intimated to him, that he ſhould forbear to return the ſaid Writs of *Habeas Corpus*, which were read and debated; and the further debate thereof was adjourned till to-morrow-morning, and a Committee appointed to ſearch the Lords Journals to ſee what hath been done in the caſe of the four Lawyers, the Writs of *Habeas Corpus*, and Mr. Serjeant *Popham*; and to ſearch for precedents on the Writs of *Habeas Corpus*: and adjourn'd.

Mercurii, 9 *die Junii.*

Sir *Thomas Clarges* reports from the Committee, to whom it was referred to ſearch for precedents touching Writs of *Habeas Corpus* returnable in Parliament; that the Committee had found ſeveral precedents of Writs of *Habeas Corpus* returnable in Parliament, and conſidered of them: And that the Committee thereupon had agreed upon four Reſolves to be preſented to the Houſe, which he read in his place, and afterwards delivered the ſame in at the Clerk's table, where they being twice read, were upon the queſtion ſeverally agreed to, and are as follow:

" *Reſolved, nem. con.* 1. That no Commoners of *England*, committed " by the order or warrant of the Houſe of Commons, for breach of privi- " lege, or contempt of the authority of the ſaid Houſe, ought, without or- " der of this Houſe to be by any Writ of *Habeas Corpus*, or any other autho- " rity whatſoever, made to appear and anſwer, or receive any determination " in the Houſe of Peers, during that Seſſion of Parliament wherein ſuch " perſons were ſo committed.

" *Reſolved, nem. con.* 2. That the order of the Houſe of Peers for the " iſſuing out the Writs of *Habeas Corpus* concerning Mr. Serjeant *Pem-* " *berton*, Mr. Serjeant *Peck*, Sir *John Churchill*, and Mr. *Charles Porter*, " is inſufficient and illegal; for that it is general, and expreſſes no parti- " cular cauſe of privilege, and commands the King's Great Seal to be " put to writs not returnable before the ſaid Houſe of Peers.

" *Reſolved, nem. con.* 3. That the Lord-Keeper be acquainted with theſe " reſolutions, to the end that the ſaid Writs of *Habeas Corpus* be ſuper- " ſeded, as contrary to law and the privileges of this Houſe.

" *Reſolved, nem. con.* 4. That a meſſage be ſent to the Lords to ac- " quaint their Lordſhips, that Mr. Serjeant *Peck*, Sir *John Churchill*, Mr. " Serjeant *Pemberton*, and Mr. *Charles Porter*, were committed by order " and warrant of this Houſe for manifeſt breach of the privilege, and " contempt of the authority of this Houſe."

Ordered, That Col. *Birch* do go up to the Lords with a meſſage, that a conference be deſired upon the ſubject-matter of the laſt conference.

A meſſage was this day ſent from his Majeſty in the Houſe of Lords, by Sir *Edward Carteret*, Uſher of the Black-Rod, commanding this honourable Houſe to attend his Majeſty forthwith in the Houſe of Peers; and accordingly Mr. *Speaker* went up with the Houſe, where his Majeſty was pleaſed to make the following Speech to them:

My Lords and Gentlemen,

'I Think I have given ſufficient Evidence to the World, that I have 'not been wanting on my Part, in my Endeavours to procure the full 'ſatisfaction of all my Subjects, in the Matters both of Religion and 'Property: I have not only invited you to thoſe Conſiderations at our 'firſt Meeting, but I have been careful, through this whole Seſſion, that 'no concern of my own ſhould divert you from them.

'Beſides, as I had only deſigned the Matter of it to be the procuring 'of good Laws, ſo for the gaining of them, I have already waited much 'longer than I intended; and ſhould have been contented ſtill to have 'continued my Expectation, had there any Hopes remained of a good 'Concluſion. But I muſt confeſs, the ill Deſigns of our Enemies have 'been too prevalent againſt thoſe good ones I had propoſed to myſelf, in 'behalf of my People; and thoſe unhappy Differences between my two '*Houſes* are grown to ſuch a Height, that I find no poſſible means of put-'ting an End to them, but by a Prorogation. It is with great unwilling-'neſs that I make uſe of this Expedient, having always intended an Ad-'journment for the preſerving of ſuch Bills as were unfiniſhed. But my 'Hopes are, that by this Means the preſent Occaſion of Differences be-'ing taken away, you will be ſo careful hereafter of the Public, as not 'to ſeek new ones, nor to revive the old.

'I intend to meet you here again in Winter, and have directed my 'Lord-Keeper to prorogue you till the thirteenth Day of *October* next.'

October 13, 1675, the King came to the Houſe, and began thus:

My Lords and Gentlemen,

'I Meet you now with more than an uſual Concern for the event of this 'Seſſions; and I know it's but what may be reaſonably expected from 'the Care I have for the Preſervation of the Government. The Cauſes of 'the laſt prorogation, as I for my Part do not deſire to remember, ſo I 'hope no Man elſe will, unleſs it be to learn from thence how to avoid 'the like Occaſion for the future: And I pray conſider how fatal the 'Conſequences may be, and how little Benefit is like to redound to the 'People by it. However, if any of that Kind ſhall ariſe, I deſire you 'would defer thoſe Debates, till you have brought ſuch publick Bills to 'Perfection, as may conduce to the Good and Safety of the Kingdom.'

[The reſt of the Speech relates to his Majeſty's recommending the Security of the Proteſtant Religion, the Supply for building Ships, and publick Debts, *&c.*]

Then the Lord *Finch*, by his Majeſty's Order, made a Speech to both Houſes, recommending Unanimity, and making good Laws, and the Care of Religion, *&c.*

The Earl of *Shaftesbury*'s Speech in the Houſe of Lords, upon the Debate of appointing a Day for the hearing Dr. *Shirley*'s Cauſe, the 20th of *October*, 1675.

My Lords,

OUR All is at Stake, and therefore you muſt give me Leave to ſpeak freely before we part with it. My Lord Biſhop of *Salisbury* is of Opinion, *That we ſhould rather appoint a Day to conſider what to do upon the Petition, than to appoint a Day of hearing*; and my Lord-Keeper, for I may name them at a Committee of the whole Houſe, tells us in very eloquent and ſtudied language, *That he will propoſe us a Way far leſs liable to Exception, and much leſs offenſive and injurious to our own Privileges, than that of appointing a Day of hearing.* And I beſeech your Lordſhips, did you not after all theſe fine Words expect ſome admirable Propoſal? But it ended in this; *That your Lordſhips ſhould appoint a Day, nay, a very long Day, to conſider what you would do in it:* And my Lord hath undertaken to convince you, that this is your only Courſe, by ſeveral undeniable Reaſons; the firſt of which is, *That 'tis againſt your Judicature to have this Cauſe, which is not proper, before us, nor ought to be relieved by us.* To this, my Lords, give me Leave to anſwer, That I did not expect from a Man profeſſing the Law, that after an Anſwer by Order of the Court was put in, and a Day had been appointed for hearing, which by ſome Accident was ſet aſide; and the Plaintiff moving for a ſecond Day to be aſſigned, that ever, without hearing Counſel of both Sides, the Court did enter into the Merits of the Cauſe. And if your Lordſhips ſhould do it here in a Cauſe attended with the Circumſtances this is, it would not only be an apparent Injuſtice, but a plain *Subterfuge*, to avoid a Point you durſt not maintain.

But my Lord's ſecond Reaſon ſpeaks the Matter more clearly; for that is, *Becauſe 'tis a doubtful Caſe, whether the Commons have not Privilege*, and therefore my Lord would have you *to appoint a further, and a very long Day to conſider of it:* Which, in plain *Engliſh* is, that your Lordſhips ſhould confeſs upon your Books, that you conceive it on ſecond Thoughts a doubtful Caſe; for ſo your appointing a Day to conſider will do; and that for no other Reaſon, but becauſe my Lord-Keeper thinks it ſo: which I hope will not be a Reaſon to prevail with your Lordſhips, ſince we cannot yet, by Experience, tell that his Lordſhip is capable of thinking your Lordſhips in the right, in any Matter againſt the Judgment of the Houſe of Commons; 'tis ſo hard a Thing even for the ableſt of Men to change ill Habits.

But my Lord's third Reaſon is the moſt admirable of all, which he ſtiles unanſwerable, *viz. That your Lordſhips are all convinced in your Conſciences, that this (if proſecuted) will cauſe a Breach.* I beſeech your Lordſhips conſider, whether this Argument, thus applied, would not overthrow the Law of Nature, and all the Laws of Right and Property in the World: For 'tis an Argument, and a very good one, that you ſhould not ſtand or inſiſt on Claims, where you have not a clear Right, or where the Queſtion is not of Conſequence and Moment, in a Matter that may produce a dangerous and pernicious Breach between Relations, Perſons, or Bodies Politick, joined in Intereſt and high Concerns together. So, on the other Hand, if the Obſtinacy of the Party in the wrong, ſhall be made an unanſwerable Argument for the other Party to recede and give up his juſt Rights; how long ſhall the People keep their Liberties, or the Princes or Governors of the World their Prerogatives? How long ſhall the Huſband maintain his Dominion, or any Man his Property, from his Friend's or his Neighbour's Obſtinacy? But, my Lords, when I hear my Lord-Keeper open ſo eloquently the fatal Conſequences of a Breach, I cannot forbear to fall into ſome Admiration how it comes to paſs, that (if the Conſequences be ſo fatal) the King's Miniſters in the Houſe of Commons, of which there are ſeveral that are of the Cabinet, and have daily Reſort to his Majeſty, and have the Direction and Truſt of his Affairs; I ſay, that none of theſe ſhould preſs theſe Conſequences there, or give the leaſt Stop to the Career of that Houſe in this Buſineſs; but that all the Votes concerning this Affair, nay, even that very Vote, *That no Appeal from any Court of Equity is cognizable by the Houſe of Lords*, ſhould paſs *nemine contradicente.* And yet all the great Miniſters with us here, the Biſhops and other Lords of greateſt Dependance on the Court, contend this Point, as if it were *pro Aris & Focis.* I hear his Majeſty in *Scotland* hath been pleaſed to declare againſt Appeals in Parliament; I cannot much blame the Court, if they think (the Lord-Keeper and the Judges being of the King's naming, and in his Power to change) that the Juſtice of the Nation is ſafe enough; and I, my Lords, may think ſo too, during this King's Time, though I hear *Scotland*, not without Reaſon, complain already. Yet how future Princes may uſe this Power, and how Judges may be made not Men of Ability or Integrity, but Men of Relation and Dependance, and who will do what they are commanded; and all Men's Cauſes come to be judged, and Eſtates diſpoſed on, as great Men at Court pleaſe.

My Lords, the Conſtitution of our Government hath provided better for us; and I can never believe ſo wiſe a Body as the Houſe of Commons, will prove that fooliſh Woman which plucks down her Houſe with her Hands.

My Lords, I muſt preſume in the next Place, to ſay ſomething to what was offered by my Lord Biſhop of *Salisbury*, a Man of great Learning and Abilities, and always verſed in a ſtronger and cloſer Way of reaſoning, than the Buſineſs of that noble Lord I anſwered before did accuſtom him to; and that Reverend Prelate hath ſtated the Matter very fair upon two Heads:

The firſt, *Whether the hearing of Cauſes and Appeals, and eſpecially in this Point, where the Members have Privilege, be ſo material to us, that it ought not to give way to the Reaſon of State, of greater Affairs that preſſed us at that time?*

The ſecond was, *If this Buſineſs be of that Moment, yet whether the appointing a Day to conſider of this Petition, would prove of that Conſequence and Prejudice to your Cauſe?*

My Lords, to theſe give me Leave in the firſt Place to ſay, that this Matter is no leſs than your whole Judicature; and your Judicature is the Life and Soul of the Dignity of the Peerage of *England*; you will quickly grow burdenſome, if you grow uſeleſs: You have now the greateſt and moſt uſeful End of Parliaments principally in you, which is not to make new Laws, but to redreſs Grievances, and to maintain the old Land-Marks. The Houſe of Commons Buſineſs is to complain, your Lordſhips to redreſs, not only the Complaints from them that are the Eyes of the Nation, but all other particular Perſons that addreſs to you. A Land may groan under a Multitude of Laws, and I believe ours does; and when Laws grow ſo multiplied, they prove oftener Snares than Directions and Security to the People. I look upon it as the Ignorance and Weakneſs of the latter Age, if not worſe, the Effect of the Deſigns of ill Men; that it is grown a general Opinion, that where there is not a particular Direction in ſome Act of Parliament, the Law is defective; as if the Common Law had not provided much better, ſhorter, and plainer, for the Peace and Quiet of the Nation, than intricate, long perplexed Statutes do; which has made Work for the Lawyers, given Power to the Judges, leſſened your Lordſhips Power, and in a good Meaſure unhinged the Security of the People.

My Lord Biſhop tells us, *That your whole Judicature is not in queſtion, but only the Privilege of the Houſe of Commons, of their Members not appearing at your Bar:* My Lords, were it no more, yet that for Juſtice and the People's Sake you ought not to part with: How far a Privilege of the Houſe of Commons, their Servants, and thoſe they own, doth extend, *Weſtminſter-Hall* may with grief tell your Lordſhips. And the ſame Privilege of their Members being not ſued, muſt be allowed by your Lordſhips as well; and what a Failure of Juſtice this would prove, whilſt they are Lords for Life, and you for Inheritance, let the World judge: For my Part, I am willing to come to Conference whenever the Diſpute ſhall begin again; and dare undertake to your Lordſhips, that they have neither Precedent, Reaſon, nor any juſtifiable Pretence to ſhew againſt us; and therefore, my Lords, if you part with this undoubted Right merely for aſking, where will the aſking ſtop? And, my Lords, we are ſure it doth not ſtop here; for they have already, *Nemine Contradicente*, voted againſt your Lordſhips Power of Appeals from any Court of Equity! ſo that you may plainly ſee where this Caution and Reaſon of State means to ſtop; not one Jot ſhort of laying your whole Judicature aſide, for the ſame Reaſon of paſſing the King's Money, of not interrupting good Laws, and whatever elſe muſt of Neceſſity avoid all Breach, upon what Score ſoever; and your Lordſhips plainly ſee the Breach will be as well made upon your Judicature in general, as upon this; ſo that when your Lordſhips have appointed a Day, a very long Day, for to conſider whether Dr. *Shirley*'s Cauſe be not too hot to handle; and when you have done the ſame for Sir *Nicholas Stanton*, whoſe Petition I hear is coming in, your Lordſhips muſt proceed to a Vote, to lay all private Buſineſs aſide for ſix Weeks: For that Phraſe of private Buſineſs hath obtained upon this laſt Age, upon that which is your moſt publick Duty and Buſineſs; namely, the Adminiſtration of Juſtice. And I can tell your Lordſhips, beſides the Reaſon that leads to it, that I have ſome Intelligence of the deſigning ſuch a Vote. For on the ſecond Day of your Sitting, at the Riſing of the Lords Houſe, there came a Gentleman into the Lobby, belonging to a very great Perſon, and aſked in very great Haſte, *Are the Lords up? Have they paſſed the Vote?* And being aſked, *What Vote?* He anſwered, *The Vote of no private Buſineſs for ſix Weeks.*

My Lords, if this be your Buſineſs, ſee where you are; if we are to poſtpone our Judicature for fear of offending the Houſe of Commons for ſix Weeks, that they in the interim may paſs the Money, and other acceptable Bills that his Majeſty thinks of Importance; are ſo many wiſe Men in the Houſe of Commons to be laid aſleep, and to paſs all theſe acceptable Things; and when they have done, to let us be let looſe upon them?

Will they not remember this next time there is want of Money; or may not they rather be aſſured by thoſe Miniſters that are amongſt them, and go on ſo unanimouſly with them, that the King is on their Side in this Controverſy? And when the public Buſineſſes are over, our time will be too ſhort to make a Breach, or vindicate ourſelves in the Matter. And then I beg your Lordſhips, where are you, after you have aſſerted but

the laſt Seſſions your right of Judicature, ſo highly, even in this point; and after the Houſe of Commons had gone ſo high againſt you on the other hand, as to poſt up their declaration and remonſtrances on *Weſtminſter-Hall* doors; the very next Seſſion after, you poſtpone the very ſame cauſes; and not only thoſe, but all Judicatures whatſoever? I beſeech your Lordſhips, will not this prove a fatal precedent and confeſſion againſt yourſelves? 'Tis a Maxim, and a rational one among the Lawyers, *That one precedent where the Caſe hath been conteſted, is worth a thouſand where there hath been no conteſt.* My Lords, in ſaying this, I humbly ſuppoſe I have given a ſufficient anſwer to my Lord Biſhop's ſecond queſtion; *Whether the appointing a day to conſider what you will do with this Petition, be of that conſequence to your right?* For it is a plain confeſſion, that it is a doubtful caſe, and that infinitely ſtronger than if it were a new thing to you, never heard of before: for it is the very ſame caſe, and the very ſame thing deſired in that caſe, that you formerly ordered, and ſo ſtrongly aſſerted; ſo that upon time, and all the deliberation imaginable, you declare yourſelves to become doubtful, and you put yourſelves out of your own hands, into that power that you have no reaſon to believe on your ſide in this queſtion.

My Lords, I have all the duty imaginable to his Majeſty, and ſhall with all ſubmiſſion give way to any thing he ſhould think of importance to his affairs: but in this point it is to alter the conſtitution of the Government, if you are aſked to lay this aſide; and there is no reaſon of State can be an argument to your Lordſhips to turn yourſelves out of that intereſt you have in the conſtitution of the Government; 'tis not only your concern that you maintain yourſelves in't, but 'tis the concern of the pooreſt man in *England*, that you keep your ſtation: 'tis your Lordſhips concern, and that ſo highly, that I will be bold to ſay, the King can give none of you a requital or recompence for it. What are empty titles? What is preſent power, or riches, and a great eſtate, wherein I have no firm nor fixed property? 'Tis the conſtitution of the Government, and maintaining it, that ſecures your Lordſhips and every man elſe in what he hath: the pooreſt Lord, if the birth-right of the Peerage be maintained, has a fair proſpect before him for himſelf or his poſterity; but the greateſt title, with the greateſt preſent power and riches, is but a mean creature, and maintains thoſe in abſolute Monarchies, no otherwiſe than by ſervile and low flatteries, and upon uncertain terms.

My Lords, 'tis not only your Intereſt, but the Intereſt of the Nation, that you maintain your rights; for let the Houſe of Commons and Gentry of *England* think what they pleaſe, there is no Prince that ever govern'd without Nobility or an Army: if you will not have one, you muſt have t'other, or the Monarchy cannot long ſupport, or keep itſelf from tumbling into a Democratical Republic. Your Lordſhips and the People have the ſame cauſe, and the ſame enemies. My Lords, would you be in favour with the King? 'Tis a very ill way to it, to put yourſelves out of a future capacity, to be conſiderable in his ſervice. I do not find in ſtory, or in modern experience, but that 'tis better, and a man is much more regarded that is ſtill in a capacity, and opportunity to ſerve, than he that hath wholly deprived himſelf of all for his Prince's ſervice. And I therefore declare, that I will ſerve my Prince as a Peer, but will not deſtroy the Peerage to ſerve him.

My Lords, I have heard of twenty fooliſh models and expedients to ſecure the Juſtice of the Nation, and yet to take this right from your Lordſhips, as the King by his commiſſion appointing Commoners to hear Appeals; or that the Twelve Judges ſhould be the perſons, or that perſons ſhould be appointed by Act of Parliament, which are all not only to take away your Lordſhips juſt right, that ought not to be altered any more than any other part of the Government, but are in themſelves, when well weighed, ridiculous: I muſt deal freely with your Lordſhips, theſe things could never have riſen in men's minds, but that there have been ſome kind of provocation that has given the firſt riſe to it. Pray, my Lords, forgive me, if on this occaſion I put you in mind of Committee-dinners, and the ſcandal of it, thoſe droves of Ladies that attended all cauſes; 'twas come to that paſs, that men even hired or borrowed of their friends handſome ſiſters or daughters to deliver their Petitions: but yet for all this, I muſt ſay that your judgments have been ſacred, unleſs in one or two cauſes; and thoſe we owe moſt to that Bench, from whence we now apprehend moſt danger.

There is one thing I had almoſt forgot to ſpeak to, *which is the conjuncture of time, the hinge upon which our reaſon of State turns*; and to that, my Lords, give me leave to ſay, if this be not a time of leiſure for you to vindicate your privileges, you muſt never expect one. I could almoſt ſay, that the harmony, good agreement, and concord that is to be prayed for at moſt other times, may be fatal to us now; we owe the peace of theſe laſt two years, and the diſengagement from the *French* Intereſt, to the two Houſes differing from the ſenſe and opinion of *Whitehall:* ſo at this time, the thing in the world this Nation has moſt reaſon to apprehend, is a general peace, which cannot now happen without very advantageous terms to the *French*, and diſadvantageous to the Houſe of *Auſtria*. We are the King's great Counſellors, and if ſo, have a right to differ, and give contrary counſels to thoſe few that are neareſt about him: I fear they would advance a general peace, I am ſure I would adviſe againſt it, and hinder it at this time by all the ways imaginable. I heartily wiſh nothing from you may add weight and reputation to thoſe counſels who would aſſiſt the *French*. No money for ſhips, nor preparations you can make, nor perſonal aſſurances our Prince can have, can ſecure us from the *French*, if they are at leiſure. He is grown the moſt potent of us all at ſea: he has built 24 ſhips this laſt year, and has 30 more in number than we; beſides the advantage, that our ſhips are all out of order, and his ſo exquiſitely provided for, that every ſhip has his particular ſtore-houſe. 'Tis incredible the money he hath, and is beſtowing in making harbours; he makes Nature itſelf give way to the vaſtneſs of his expence: and after all this, ſhall a Prince ſo wiſe, ſo intent upon his affairs, be thought to make all theſe preparations to ſail over land, and fall on the back of *Hungary*, and batter the walls of *Kaminitz?* Or is it poſſible he ſhould overſee his Intereſt in ſeizing of *Ireland*, a thing ſo feaſible to him, if he be maſter of the Seas, as he certainly now is; and which, when attained, gives him all the *Southern Mediterranean*, *Eaſt* and *Weſt-India* Trade, and renders him both by ſituation, and excellent harbours, perpetual Maſter of the Seas without diſpute?

My Lords, to conclude this point, I fear the Court of *England* is greatly miſtaken in it, and I do not wiſh them the reputation of the concurrence of the Kingdom: and this out of the moſt ſincere loyalty to his Majeſty, and love to my Nation.

My Lords, I have but one thing more to trouble you with, and that peradventure is a conſideration of the greateſt weight and concern, both to your Lordſhips and the whole Nation. I have often ſeen in this Houſe, that the arguments, with ſtrongeſt reaſon, and moſt convincing to the Lay-Lords in general, have not had the ſame effect upon the Biſhops bench; but that they have unanimouſly gone againſt us in matters, that many of us have thought eſſential and undoubted rights: and I conſider, that 'tis not poſſible that men of great learning, piety, and reaſon, as their Lordſhips are, ſhould not have the ſame care of doing right, and the ſame conviction what is right, upon clear reaſon offered, that other your Lordſhips have. And therefore, my Lords, I muſt neceſſarily think we differ in principles; and then 'tis very eaſy to apprehend, what is the cleareſt ſenſe to men of my principle, may not at all perſuade or affect the conſcience of the beſt man of a different one. I put your Lordſhips the caſe plainly, as 'tis now before us. My principle is, *That the King is King by Law, and by the ſame Law that the poor man enjoys his cottage*; and ſo it becomes the concern of every man in *England*, that has but his liberty, to maintain and defend, to his utmoſt, the King in all his rights and prerogatives. My principle is alſo, *That the Lords Houſe, and the Judicature and Rights belonging to it, are an eſſential part of the Government, and eſtabliſhed by the ſame Law:* the King governing and adminiſtring Juſtice by his Houſe of Lords, and adviſing with both his Houſes of Parliament in all important matters, is the Government I own, I am born under, and am obliged to. If ever there ſhould happen in future ages (which God forbid) a King governing by an Army, without his Parliament, 'tis a Government I own not, am not obliged to, nor was born under. According to this principle, every honeſt man that holds it, muſt endeavour equally to preſerve the frame of the Government, in all the parts of it, and cannot ſatisfy his conſcience to give up the Lords Houſe for the ſervice of the Crown, or to take away the juſt rights and privileges of the Houſe of Commons to pleaſe the Lords. But there is another principle got into the world, my Lords, that hath not been long there; for Archbiſhop *Laud* was the firſt author that I remember of it; and I cannot find that the Jeſuits, or indeed the *Popiſh* Clergy, have ever own'd it, but ſome of the Epiſcopal Clergy of our *Britiſh* Iſle; and 'tis withal, as 'tis new, ſo the moſt dangerous, deſtructive Doctrine to our Government and Law, that ever was. 'Tis the firſt of the Canons publiſhed by the Convocation 1640. *That Monarchy is of Divine Right.* This Doctrine was then preached up, and maintained by *Sibthorp*, *Manwaring*, and others, and of later years, by a book publiſhed by Dr. *Sanderſon*, Biſhop of *Lincoln*, under the name of Archbiſhop *Uſher*; and how much it is ſpread amongſt our dignified Clergy, is very eaſily known. We all agree, *That the King and his Government is to be obeyed for Conſcience ſake*; and that the divine precepts require not only here, but in all parts of the world, obedience to lawful Governours. But that this family are our Kings, and this particular frame of Government is our lawful conſtitution, and obliges us, is owing only to the particular Laws of our Country. This *Laudean* Doctrine was the root that produced the Bill of Teſt laſt Seſſion, and ſome very perplexed Oaths, that are of the ſame nature with that, and yet impoſed by ſeveral Acts of this Parliament.

In a word, if this Doctrine be true, our *Magna Charta* is of no uſe, our Laws are but rules amongſt ourſelves during the King's pleaſure. Monarchy, if of divine right, cannot be bounded or limited by human Laws; nay, what's more, cannot bind itſelf: and all our claims of right by the Law, or conſtitution of the Government, all the juriſdiction and privilege of this Houſe, all the rights and privileges of the Houſe of Commons, all the properties and liberties of the people, are to give way not only to the Intereſt, but the will and pleaſure of the Crown. And the beſt and worthieſt of men, holding this principle, muſt vote to deliver up all we have, not only when reaſon of State, and the ſeparate Intereſt of the Crown require it; but when the will and pleaſure of the King is known would have it ſo. For that muſt be, to a man of that principle, the only rule and meaſure of Right and Juſtice. Therefore, my Lords, you ſee how neceſſary it is, that our principles be known; and how fatal to us all it is, that this principle ſhould be ſuffered to ſpread any further.

My Lords, to conclude, your Lordſhips have ſeen of what conſequence this matter is to you, and that the appointing a day to conſider, is no leſs than declaring yourſelves doubtful, upon ſecond and deliberate thoughts; that you put yourſelves out of your own hands, into a more than a moral probability of having this Seſſion made a precedent againſt you. You ſee your duty to yourſelves and the people; and that 'tis really not the Intereſt of the Houſe of Commons, but may be the inclination of the Court, that you loſe the power of Appeals: but I beg our Houſe may not be *Felo de ſe*, but that your Lordſhips would take in this affair the only courſe to preſerve yourſelves, and appoint a day, this day three weeks, for the hearing of Dr. *Shirley*'s cauſe, which is my humble motion.

Saturday, Nov. 13, 1675. An order from the Lords to hear Sir *John Fagg*'s cauſe to-morrow morning, was this day read in the Houſe of Commons, and debated, and the farther debate thereof adjourned till *Monday* morning next.

Monday, Nov. 15. The Houſe reſolved, That the proſecuting Appeals in the Lords Houſe, by Dr. *Thomas Shirley* againſt Sir *John Fagg*, a Member of this Houſe, is a breach of the privileges of this Houſe; and that the ſaid Sir *John Fagg* do not make any defence at the Lords Bar, in the ſaid Appeal; and the further debate thereof was adjourned till to-morrow morning.

Tueſday, Nov. 16. Adjourned the further debate of Sir *John Fagg*'s buſineſs till to-morrow morning; and on *Wedneſday*, adjourned the further debate till *Thurſday*; when Sir *John Fagg*'s buſineſs was reſumed, and reſolved, That a conference be deſired of the Lords, for avoiding differences between the two Houſes; and then adjourned till *Friday* morning.

Veneris, 19 *die Novembris.*

Sir *William Coventry* reports from the Committee, to whom it was referred to prepare and draw up reaſons to be offered at the conference, to be deſired with the Lords, for avoiding the occaſions of reviving the differences between the two Houſes; and a paper of reaſons agreed by the ſaid Committee, to be reported to the Houſe, being read; and the ſame being agreed to, is as followeth, *viz.*

His Majeſty having recommended to us, at the opening of this Seſſions of Parliament, the avoiding this difference, if poſſible: and if it could not be prevented, that then we ſhould defer theſe debates till we had brought ſuch publick bills to perfection, as may conduce to the good and ſafety of the Kingdom: The Commons eſteem it a great misfortune, that contrary to that moſt excellent advice, the proceedings in the Appeal, brought the laſt Seſſion againſt Sir *John Fagg*, by Dr. *Shirley*, hath been renewed, and a day ſet for hearing the cauſe; and therefore the Commons have judged it the beſt way, before they enter into the argument of defence of their rights in this matter, to propoſe to your Lordſhips the putting off the proceedings in that matter for ſome ſhort time; that ſo they may, according to his Majeſty's advice, give a diſpatch to ſome bills now before them, of great importance to the King and Kingdom; which being finiſhed, the Commons will be ready to give your Lordſhips ſuch reaſons againſt thoſe proceedings, and in defence of their rights, as we hope may ſatisfy your Lordſhips that no ſuch proceedings ought to have been.

Reſolved, That a meſſage be ſent to the Lords, to deſire a conference, to preſerve the good correſpondence between the two Houſes.

Reſolved, That whoſoever ſhall proſecute any Appeal before the Lords, againſt any Commoner of *England*, from any Court of Equity, ſhall be deemed a betrayer of the rights and privileges of the Commons of *England*; and ſhall be proceeded againſt accordingly: and the reſolution ordered to be affixed in the *Lobby*, *Weſtminſter-hall-gate*, and all Inns of Court and *Chancery*; and then adjourned till next morning, *Nov.* the 20th.

Die Sab. Nov. 20.

Ordered, That Dr. *Thomas Shirley* be taken into cuſtody by the Serjeant at Arms attending this Houſe, as alſo Sir *Nicholas Stanton*, for ſerving Mr. *Onſlow* with an order to attend the Lords; and then adjourned to *Monday Nov.* 22.

On *Saturday Nov.* 20. 1675, Dr. *Thomas Shirley* appeared at the bar of the Houſe of Lords, and his Counſel Mr. *Wallop* appearing, who would have excuſed himſelf, but was ordered to appear again on *Monday* morning next to plead the cauſe; and the other two Counſel (one being in the country, and the other ſick) were excuſed; and the ſaid Dr. *Shirley*, Sir *Nicholas Stanton*, and Mr. *Wallop* were ordered to have the protection of the Houſe: And upon Debate of the Commons Vote made yeſterday,

Ordered, That the paper poſted up in ſeveral places, ſigned by *William Goldsbro*, Cler. Dom. Com. againſt the Judicature of the Houſe of Peers, in caſes of Appeals from Courts of Equity, is illegal, unparliamentary, and tending to the diſſolution of the Government. And then upon conſideration of the ſaid vote of the Commons, it was propoſed by Lord *Mohun* to make an Addreſs to his Majeſty to diſſolve the Parliament, and call another and frequent Parliaments; and upon debate thereof, about eight o'clock at night they came to this queſtion, and carried it by two votes only, That there ſhould be no Addreſs; the numbers being fifty and forty-eight: and then adjourned to *Monday*.

On which day the Houſe being met, a meſſage was ſent by his Majeſty, for the Houſe to attend him forthwith in the Houſe of Peers; which the Houſe accordingly did, when his Majeſty paſſed three Bills, and the Lord-Keeper, by his Majeſty's order, prorogued both Houſes of Parliament, till the 15th day of *February* come twelvemonth, 1676, which ended the diſpute.

The Proteſtation, with reaſons of ſeveral Lords for the Diſſolution of this Parliament, entered in the Lords Journal, *November* 22, 1675, the day the Parliament was prorogued.

WE whoſe names are under-written, Peers of this Realm, having propoſed, *That an humble Addreſs might be made to his Majeſty from this Houſe, that he would be graciouſly pleaſed to diſſolve this Parliament*; and the Houſe having carried it in the negative: for the juſtification of our loyal intentions towards his Majeſty's ſervice, and of our true reſpect and deference to this honourable Houſe; and to ſhew that we had no ſiniſter and indirect ends in this our humble propoſal, do with all humility herein ſet forth the grounds and reaſons why we were of opinion, that the ſaid humble Addreſs ſhould have been made.

1. We do humbly conceive, that it is according to the ancient Laws and Statutes of this Realm, that there ſhould be frequent and new Parliaments, and that the practice of ſeveral years hath been accordingly.

2. It ſeems not reaſonable that any particular number of men ſhould for many years ingroſs ſo great a truſt of the people, as to be their Repreſentatives in the Houſe of Commons: and all other the Gentry and the Members of Corporations of the ſame degree and quality with them, ſhould be ſo long excluded. Neither, as we humbly conceive, is it advantageous to the Government, that the Counties, Cities and Boroughs ſhould be confined for ſo long a time to ſuch Members as they have once choſen to ſerve for them; the mutual Correſpondence and Intereſts of thoſe who chuſe and are choſen, admitting of great variations in length of time.

3. The long continuance of any ſuch as are entruſted for others, and who have ſo great a power over the purſe of the Nation, muſt, in our humble opinion, naturally endanger the producing of factions and parties, and the carrying on of particular Intereſts and Deſigns, rather than the publick Good.

And we are the more confirmed in our deſires for the ſaid humble Addreſs, by reaſon of this unhappy breach fallen out betwixt the two Houſes, of which the Houſe of Peers hath not given the leaſt occaſion; they having done nothing but what their anceſtors and predeceſſors have in all times done, and what is according to their duty, and for the Intereſt of the People that they ſhould do: which notwithſtanding, the Houſe of Commons have proceeded in ſuch an unprecedented and extraordinary way, that it is, in our humble opinion, become altogether unpracticable for the two Houſes, as the caſe ſtands, jointly to purſue thoſe great and good ends for which they were called.

For theſe reaſons, we do enter our proteſtation againſt, and diſſent unto, the ſaid Vote.

Buckingham,	Cheſterfield,	Hallifax,	Mohun,
Wincheſter,	Stamford,	Yarmouth,	De la Mer,
Saliſbury,	Berks,	Newport,	Townſend,
Bridgwater,	Clarendon,	Sandys,	Grey *of* Rolſton.
Dorſet,	Shafteſbury,	Wharton,	
Weſtmorland,	Faulconbridge,	Petre,	

Theſe were all the Lords that were in the Houſe early enough to ſign the proteſtation before the Parliament was prorogued.

XXXII. Proceedings againſt Mr. *Francis Jenkes*, for a Speech made by him on the *Huſtings*, at *Guildhall*, on *Midſummer-day*, 1676, 27 Car. II.

[Publiſhed by his Friends.]

MR. *Jenkes* having been a Trader for many years, and obſerving the daily decay of trade in the City, occaſioned by ſuch miſchiefs, as lay not in the induſtry of its inhabitants, but only in the power of the Government to redreſs; and that did require a more ſpeedy redreſs than a Parliament prorogued for fifteen months could afford: after having in vain ſolicited the Lord-Mayor for a Common-Council, that might conſider of a Petition about trade, out of a hearty zeal for the good of the City, as well as encouraged by the conſent and deſire of many ſober Citizens, the liberty reſerved to the Lord-Mayor, Aldermen and Common-Council, by the Statute of the 13th of this King, concerning Petitions, the votes of a majority of temporal Lords at the laſt Seſſions, together with the unanſwerable reaſons given in their proteſtation; did at the Folk-mote (or Common-hall) holden the 24th of *June* laſt paſt, in the *Guildhall* of *London*, thus deliver himſelf:

Mr. *Common Serjeant*,

" IT ſeems a vain thing for this Court to be ſerious about the choice of " Magiſtrates and Officers for the well government of this city; except " they firſt take care to remedy thoſe many miſchiefs and grievances, which " this city now groans under; and which ſeem ſo to threaten the ruin and " deſtruction of the whole, that if there be not ſome ſpeedy redreſs, there " will be little need of Magiſtrates and Officers, for there will be no city " or people left here to be governed.

" *London* has once already been burn'd to aſhes, and firing is now become " ſuch a trade, that not only *London*, the Burrough of *Southwark*, and " the places adjoining, but all the Cities, Burroughs, Towns corporate, " and places of principal trade throughout the whole Kingdom, are per- " petually in danger; ſo that no rational or conſiderate man amongſt us " can promiſe himſelf, his wife, his children, or eſtate one night's ſe- " curity, but they may all be devour'd in the conſuming flames, ex- " cept ſome ſpeedy and effectual courſe be taken.

" But this is not all; for were our houſes ſecure from fire, yet ſuch is " the general decay of trade, if not remedied, as muſt unavoidably bring " the whole city to poverty and ruin: and it is conceived, that this is " very much occaſion'd by the *French*, who have laid ſuch great impoſi- " tions upon our Woollen Cloth, Stuffs and other Manufactures, that we " have almoſt loſt our trade with *France*. They have ſpoiled our trade with " *Holland*, *Flanders*, and *Germany*, by a deſtructive war. They have " ruined our trade at home, and beggar'd many thouſands of our honeſt " and induſtrious Weavers, and other *Engliſh* Manufacturers and Traders, " by the vaſt quantity of their Silks, and other unneceſſary commodities " imported hither. So that upon an exact balance of the trade between " us and them taken, it has been demonſtrated, that this city and King- " dom doth loſe eleven hundred thouſand pounds every year. By means " whereof, they who in Queen *Elizabeth*'s time might not be ſuffer'd to " build men of war, are now grown ſo powerful at Sea, as to be able to " beat both *Dutch* and *Spaniard*, and have made themſelves in a manner " ſole maſters of the *Mediterranean* Sea. And they are grown ſo preſump- " tuous, as daily to affront our *Engliſh* Merchants, and ſometimes in his " Majeſty's own ports. The Privateers daily take our Merchant-ſhips, " plunder others, ſtrip, impriſon and torment our ſeamen, to the great " diſcouragement of our *Engliſh* Navigation, and almoſt ruin of the Mer- " chant.

" I ſhall inſtance in but one thing more, but that is worſe than all the " reſt; that is, the juſt apprehenſion that is upon the minds of good " men, of danger to his Majeſty's perſon, and the Proteſtant Religion. " I had not ſpoken this at this time and place, but having the honour to

" ſerve the City in Common-Council; I have endeavoured at ſeveral times " to bring theſe things before the Court, but could not. In the end " of the laſt Common-Council I did deſire my Lord-Mayor, that a " Common-Council might ſpeedily be held, to hear and conſider of a " petition about trade, ſubſcribed by a great number of citizens of good " quality; and his Lordſhip did then promiſe, that a Common-Coun- " cil ſhould ſpeedily be held: But it is a good time ſince, and there " have been many fires and loſſes, but no Common-Council.

" Wherefore methinks it does become the wiſdom and gravity of this " Court, not to admit of any longer delay in a matter wherein their All " is concerned. And I do humbly move, (and I conceive it is not only " my ſenſe, but the ſenſe of the far greater part of this Court) that ſome " Members of this Court may accompany the Sheriffs and Mr. Common- " Serjeant, before we proceed to any other matter, to wait upon my " Lord Mayor and the Court of Aldermen, to deſire that a Common- " Council might ſpeedily be held, humbly to petition his Majeſty, that " for the quieting and ſatisfying the minds of his liege people, and for " remedy of the many miſchiefs and grievances we now groan under, he " would graciouſly be pleaſed (according to the Statutes of the 4th and " 36th of *Ed.* III.) timely to call a new Parliament."

Scarcely were the words, *a new Parliament*, pronounced, but the greateſt part of the Aſſembly cried out, *Well moved, well moved!* And tho' none ſpake up formally to the Sheriffs, yet ſeveral amongſt them ſpake enough to ſhew a high approbation of what had been ſaid, and not one word was ſpoken in contradiction: which when the Common-Serjeant ſaw, to prevent (as is conceived) others ſpeaking to the ſame matter, he ſpake to this purpoſe:

" That what had been moved, ſeemed to be the general ſenſe of the " whole Court; and ſince the Gentleman that made the motion was " pleaſed to join him with the Sheriffs, and that he muſt offer his opi- " nion in the matter, it was this, That it was not ſo proper to carry up " that meſſage before they did proceed to their elections, as firſt to deter- " mine their elections, and then carry up an account of theſe and that " together."

But many in the Court did inſiſt upon the motion, and deſired a meſſage might be ſent up immediately; whereupon one of the Sheriffs ſpake, and did acknowledge, " That what had been ſaid by the Gentleman that " ſpake firſt, was true; but that he was an old citizen, and had long " known Common Halls, and he did believe that the proper work of the " day was the election of officers; and therefore he did deſire that the " Court would proceed, and not to carry up the meſſage till after that " was done." To which one replied, " That according to his utmoſt " underſtanding, that Court was one of the antienteſt, greateſt, and " moſt powerful Courts of this City; and although the cuſtomary buſi- " neſs of this day were the choice of officers, yet that Court had cogni- " zance of any thing whatever that did relate to the good of the City; " and therefore it was conceived, that nothing was more proper at that " time, than this which concerned the preſervation of the City from " utter ruin."

Upon which the other Sheriff directing his diſcourſe to the Aſſembly, ſaid, " That what the Gentlemen had moved there, was true, and not " unknown to moſt of the perſons there preſent; but that he was of his " brother's opinion, that it was fit firſt to go on to the work of the day, " and not to carry up that meſſage till after the election."

Many perſons being ſtill diſſatisfied, and calling for a preſent meſſage to be ſent up, the Gentleman who firſt moved the buſineſs, made it his requeſt, " That ſince there ſeemed a difference touching the circum- " ſtance of time, that they would proceed to election, and carry up the " meſſage with the perſons elected, as the Sheriffs deſired;" to which the Common Hall unanimouſly agreed. Upon which, ſilence being made, the Common Hall proceeded to election of Sheriffs; and made their election, and ſent up an account thereof to the Lord Mayor and Aldermen by the Sheriffs and Common-Serjeant, as is uſual in ſuch caſes.

The Lord Mayor and Aldermen preſently came down, and took their Seats in the Court of *Huſtings*, according to cuſtom; upon which, the Common-Serjeant came forth to the front of the Court, and declared the names of the perſons elected, and immediately gave back. Whereupon the Common Hall called out for an anſwer to their meſſage; upon which, the Common-Serjeant ſtepping forward again in the preſence of the Lord Mayor, Aldermen and Sheriffs, ſaid, " That he had acquainted his " Lordſhip and the Aldermen with their requeſt, and that his Lordſhip " had commanded him to declare unto them, That he would be ready " to join with them in that or any other thing for the good of the City." And with that the Lord Mayor and Aldermen, *&c.* left the Court of *Huſtings*, and diſmiſſed the Aſſembly.

After dinner, the Recorder, Sir *John Howel*, out of a great pretence of loyalty, but indeed a perſonal grudge againſt Mr. *Jenkes*, conveyed the news to *Whitehall*; where, with his uſual ſtrain of *Rhetorick*, he made ſuch a diſmal repreſentation of the matter, and was ſo powerful in his eloquence, as to occaſion both the Sheriffs and ſome other of the City-officers to be ſent for; who were examined by the Lord Chief Juſtice *Rainsford*, in the preſence of the King, the Lord Chancellor, Lord Treaſurer, Duke *Lauderdale*, and other Lords.

The Sheriffs and two others made affidavits; but a copy of them could never be obtained.

Upon the 27th of *June*, Mr. *Jenkes* was ſummoned by a meſſenger to appear at the Council-board the next day; accompanied with many of his friends, he attended in the Lobby, near the Council-Chamber, according to his ſummons, and after ſome time was called in; but his friends preſſing to follow him, (as is uſual on ſuch occaſions) were kept out, and not one ſuffered to go in with him.

The King ſitting in Council, the Lord Chancellor, Duke *Lauderdale*, and other Lords about him, the Clerk read an affidavit made by the two Sheriffs, the Common Crier, and one *John Green*, an Attorney; the ſubſtance whereof was,

That Fr. Jenkes, *at a Common Hall, in* London, *the* 24th *of* June *laſt paſt, did complain of grievances; and did deſire, that before they went upon any other buſineſs, certain Members of that Court might accompany the Sheriffs and the Common Serjeant to wait upon the Lord Mayor, then in the chamber, to deſire that a Common-Council might be called to petition his Majeſty, in the name of the City, to call a* new Parliament.

The affidavit being read, the Council-board proceeded to this effect:

Lord Chancellor. Sir, What ſay you to this matter?

Mr. *Jenkes.* I deſire to know if this be all you have to charge againſt me?

A Lord. Then you make little of this, you will find it to be enough.

L. Chan. Sir, did you move for a Common-Council to petition for a new Parliament?

Mr. *Jenkes.* Is it any crime to petition for a new Parliament?

To which his Lordſhip not thinking fit to give anſwer, proceeded,

L. Chan. Anſwer to the matter in charge.

Mr. *Jenkes.* With the liberty of his Majeſty and this Board, I will.

The King. Go on.

Mr. *Jenkes.* May it pleaſe your Majeſty, of all the ſubjects you have—

A Lord. (interrupting him) Anſwer to the matter.

Mr. *Jenkes.* If his Majeſty will be pleaſed to hear me, I hope you will.

King. Let him go on.

Mr. *Jenkes.* May it pleaſe your Majeſty, of all the ſubjects you have, none are more loyal than your City of *London*, and in the City none more loyal than myſelf: And no man there did more deſire, and, in my circumſtances, act more, in order to your Majeſty's Reſtoration, than myſelf. And I do defy any citizen, or other whomſoever, to ſay I have forfeited my loyalty by any one individual act——

King. (interrupting him) Sir, you are not Lord-Mayor, and I am very well ſatisfied with the loyalty of the City, and that it needs no ſuch vouchers.

L. Chan. Speak to the matter.

Mr. *Jenkes.* May it pleaſe your Majeſty, being ſummoned to a Court of Common Hall in *London*, which is a Court that conſiſts of the main body of the City—

L. Chan. (interrupting him) Sir, you are under a double miſtake; for firſt, it was not a Court; and next, it did not conſiſt of the main body of the City of *London*.

Mr. *Jenkes.* With your Lordſhip's leave, it was a Court which did conſiſt of all the Livery of the City of *London*; which, if I underſtand any thing, is the main body of the City of *London*. And every Member of that Court hath freedom to propoſe and debate any ſuch matter or thing as he believes is for the ſervice of his Majeſty, and the good of the City; and no man can uſe more underſtanding than God hath given him. And I aſſure your Lordſhip, what I then moved was according to the utmoſt of my underſtanding for his Majeſty's ſervice, and the good of the City. And, my Lord, if I were under a miſtake, I had the fortune to have good company; for what I moved was approved by the whole Court.

King. It was not ſo.

Secretary. We have a depoſition to the contrary.

Mr. *Jenkes.* It was ſo.

Other Lords. It was not ſo.

Mr. *Jenkes.* May it pleaſe your Majeſty, if you have a hundred depoſitions to the contrary, if the matter of fact were ſo, it was ſo; and I do affirm it was approved by the whole Court.

A Lord. How came you to be a Privy-Councillor?

Mr. *Jenkes.* I never had any ſuch ambitious thought in my head.

A Lord. How came you then to meddle with matters of State?

Mr. *Jenkes.* I thought any of his Majeſty's ſubjects, in an humble manner, might petition his Majeſty for a remedy of any grievance whatſoever.

A Lord. Do you think any one may petition for a Parliament?

Mr. *Jenkes.* I believe they may.

The King. I know whoſe ſcholar you are, and I'll take care that none ſuch as you ſhall have to do with the Government.

Several Lords. What was't you moved? What was't you moved?

Mr. *Jenkes.* My Lords, what I ſpake was not in a corner, but openly in the face of a multitude, and therefore cannot want a witneſs to atteſt it.

A Lord. Juſt now it was a Court, and now it is a multitude.

Mr. *Jenkes.* We Citizens pretend not to place our words ſo exactly in form, but that there may be ſome miſtake in them; but I think my expreſſion was no great abſurdity: For though it were a Court, yet the perſons there were ſo numerous, that it may not be very improper to term them a multitude. Yet, if I have failed in due expreſſion, I beg his Majeſty's pardon. I know ſomewhat of the cuſtoms of the City of *London*, and the powers and privileges of the Courts there; and ſomewhat alſo of the laws of *England*; but what the powers and cuſtoms of this Court are, I know not, and therefore ſhall deſire to ſay little, leſt I ſhould unwillingly offend.

L. Chan. Sir, pray tell us, who adviſed you in this matter?

The King. Who adviſed you?

Mr. *Jenkes.* What I then propoſed was conſented to by the whole Court, and ſo became their Act, as I ſaid before.

L. Chan. and others. Anſwer directly to the queſtion, or declare you will not.

Mr. *Jenkes.* Since I ſee your Majeſty and the Lords are angry, though I am not ſenſible that I have given you any juſt cauſe for it; I muſt not ſay I did it without advice, leſt you ſhould be more angry; and to name any particular perſon (if there were ſuch) would be a mean and unworthy thing, therefore I deſire to be excuſed all farther anſwer to ſuch queſtions; ſince the law doth provide, that no man be put to anſwer to his own prejudice.

King. We will take that for an anſwer.

L. Chan. Since you name the law, by the law you ſhall be tried.

Mr. *Jenkes.* I thank you and this Board.

L. Chan. You may withdraw.

He immediately withdrew, and the room being cleared of all his friends, and other company; Mr. *Jenkes* was kept there for the ſpace of an hour and an half; and, after that, without being called in any more, was, by a warrant of the Council, ſent to the priſon of the Gatehouſe within the liberties of *Weſtminſter*. Soon after his commitment, he demanded of the Keeper a copy of the warrant by which he was committed; as he might, and by law ought to have. The Keeper gave him a promiſe of it, but delaying the performance for two days, Mr. *Jenkes* reſolutely demanded it of him as his duty, but could not yet obtain it. Some time after, the Keeper ſent him one voluntarily, by his man, with this excuſe, That before he had poſitive order to deny him one, and now had to give it him.

The

The Copy of the Warrant.

WHereas it appears to his Majeſty in Council, by the examination of Sir *Thomas Gold*, Sir *John Shorter*, Knights, Sheriffs of the City of *London*, *John Wells*, Common-Crier of the ſaid City, and *John Green*, one of the Attorneys of the Lord-Mayor's Court, taken upon oath before the Lord-Chief-Juſtice *Rainsford*, That *Francis Jenkes*, of the ſaid City, Linen-Draper, did, on the 24th of this inſtant *June*, at a Common-Hall, then aſſembled at the *Guildhall* of the ſaid City, for chuſing Officers for the enſuing year, in a moſt ſeditious and mutinous manner, openly move and ſtir the perſons then preſent, that before they did go on to the choice of new Officers (which was the only occaſion of that aſſembly) they ſhould go to the Lord-Mayor, and deſire him to call a Common-Council, that might make an addreſs to his Majeſty in the name of the City, to call a new Parliament. And whereas the ſaid *Francis Jenkes*, being now called in, and heard before his Majeſty in Council, was ſo far from denying or extenuating his offence, that he did in a preſumptuous and arrogant manner endeavour to juſtify the fame:

Theſe are therefore to command you, to take into your cuſtody the body of the ſaid *Francis Jenkes*, herewith ſent you, and him to keep ſafely, until he ſhall be delivered by due courſe of law; for which this ſhall be your warrant.

Dated at the Council-Chamber in *Whitehall*, this 28th day of *June*, 1676.

To the Keeper of the Gatehouſe, *Weſtminſter*, or his Deputy.

Lindſey.	*W. Maynard.*	*R. Carr.*
Peterborough.	*Tho. Chichely.*	*Finch.*
C. Craven.	*Danby.*	*Ormond.*
G. Carter.	*Angleſey.*	*Bridgwater.*
Lauderdale.	*Arlington.*	*Hen. Coventry.*
Northampton.	*Bathe.*	*J. Ernle.*
Carbery.	*J. Williamſon.*	*Robert Southwell.*

Next day being the 29th of *June*, divers of Mr. *Jenkes*'s friends waited upon Mr. Secretary *Williamſon*, and deſired to become bail for him; but Mr. Secretary refuſed to take any bail: but told them, if they did mind him of it on *Wedneſday* morning, he would move it at the Council. But Mr. *Jenkes* believing that to be (as it proved) but a delay, ordered ſome of his friends to wait upon the Lord Chief-Juſtice *Rainsford*, and moved him for an *Habeas Corpus ad Subjiciend. & Recipiend. &c.* which accordingly was done, but his Lordſhip denied to grant it, alledging no other reaſon, but that it was Vacation: though his Lordſhip could not but know that writ to be the Subject's right at all times, as well out of Term as in Term; and Mr. *Jenkes*'s friends were ready to offer him multitudes of precedents when it had been granted out of Term, both anciently, and ſince his Majeſty's Reſtoration.

Mr. *Jenkes* reſolving to leave no legal courſe to attain his liberty untried; upon *Friday*, the 30th of *June*, at a general Seal, did by his Counſel move the Lord-Chancellor for an *Habeas Corpus*. At firſt his Lordſhip did ſeem much ſurprized, and did refuſe to hear his Counſel; but after a little pauſe, his Lordſhip bid Mr. *Jenkes*'s Counſel to move it again the next Seal, and ordered the Seal to be put off from *Tueſday* the 4th, until *Thurſday* the 6th of *July*.

Upon *Wedneſday* the 5th of *July*, Mr. *Jenkes*'s friends waited upon Mr. Secretary *Williamſon*, and deſired him, according to his promiſe, to move in Council, that Mr. *Jenkes* might be bailed; but he ſaid he had ſpoke with the King, and could do nothing without a Petition. So upon *Thurſday* the 6th of *July*, being a publick Seal, Mr. *Jenkes*'s Counſel did again move the Lord-Chancellor (according to his Lordſhip's order), and aſſerted the authority of the Lord *Coke*, who is moſt clear in the caſe, 2 *part*, *Inſt. fol.* 53. ſpeaking of the Writ of *Habeas Corpus* in the *King's-Bench*, he ſaith, The like Writ is to be granted out of the Chancery, either in Term (as in the *King's-Bench*) or in the Vacation; for the Court of Chancery is *Officina Juſtitiæ*, and is ever opened, and never adjourned: So as the Subject being wrongfully impriſoned, may have Juſtice for the liberty of his perſon, as well in the Vacation time as in Term.

And in the 4th *Inſt. fol.* 88. ſpeaking of the Court of Chancery, he ſaith, And this Court is the rather always open, for that if a man be wrongfully impriſoned in the Vacation, the Lord-Chancellor may grant an *Habeas Corpus*, and do him Juſtice according to law; *vid.* 4 *Inſt. fol.* 182, 190. Thus the Lord *Coke*.

Mr. *Jenkes*'s Counſel did likewiſe offer a precedent or two; but the Lord Chancellor making light of the Lord *Coke*'s opinion, ſaying, *The Lord* Coke *was not infallible*; and ſlighting all that Mr. *Jenkes*'s Counſel offered, over-rul'd the matter, denying to grant the Writ.

On *Tueſday* morning, *July* 11, at the Quarter-Seſſions, holden for the liberty of *Weſtminſter*, Mr. *Jenkes* being ſtill a priſoner in the Gatehouſe, did move by his Counſel to be bailed; where this was the ſubſtance of what paſſed, as it was taken by a perſon preſent.

Court. We have no ſuch name in our Calendar; and we ſitting here by a limited commiſſion, can take no notice of any perſon that is not in our Calendar.

Counſel. Every Keeper of a Priſon, either in County or Franchiſe, ought by the Statute of 3 *Hen.* VII. *cap.* 3. to certify the names of every priſoner in their cuſtody, at the next general Gaol-delivery there, to be calendar'd before the Juſtice of Gaol-delivery, that the parties may be delivered according to law, upon pain of 100*l.* for every default there recorded. And I demand that this default of the Gaoler may be recorded according to that Statute; and that you would, as you may, command him to calendar him now.

The Statute was read.

Court. We are no general Gaol-delivery, for we cannot try ſeveral felons, but they muſt be tried at the general Gaol-delivery for the County.

Coun. You are a general Gaol-delivery for all offences within the cognizance of your Franchiſe; and therefore, unleſs the fact for which he is committed be ſuch as is above your cognizance, he ought to be tried here; and if it be ſuch a fact, he ought notwithſtanding to be calendar'd here, that you may ſend him to the County-Gaol, where he may be tried.

Gaoler. I never did calendar any man that was committed by the Council-table.

Coun. The neglect hath not taken away your duty; and as often as you have omitted ſo to do, ſo oft have you deſerved to be fined. And I do again demand of this Court, that this default of yours may be recorded.

The Court inclined to the Gaoler, and would not record his fault; whereupon the Counſel proceeded.

Coun. Since you exclude him from the benefit of your preſent Commiſſion, I apply myſelf to you, without reſpect to that, as you are Juſtices of Peace in general; and as ſuch, you have power to bail any man bailable by law, except in ſome particular caſes, where you are reſtrained by Statute.

Court. By whom is he committed?

Coun. By the Council-board.

Court. Do you believe the Council-board can commit to priſon?

Coun. I admit it.

Court. We don't know for what offence he is committed.

Coun. I have here a Copy of the Commitment, and deſire it may be read.

But the Gaoler refuſing to own it for a true copy, tho' given by himſelf, and the Court requiring a nicer proof that it was a true Copy, than could at that time be made, they ordered the Counſel to attend in the afternoon; and in the mean time the Gaoler to give a true Copy. In the afternoon the Counſel appearing, the Court called to him, and aſked him what he had to ſay.

Coun. I have now a Copy given and ſigned by the Gaoler for a true Copy, and deſire it may be read.

The Gaoler, who was to prove it a true Copy, upon the Counſel coming into the Court, took an occaſion to ſlink away; and the Court (as if it had been by deſign) were ready to take hold of that opportunity to evade the buſineſs; but Mr. *Jenkes*'s friends fetched him back, and he ſwearing it to be a true Copy, it was read.

Court. What is it you demand?

Coun. What I did before; That there being nothing in this Warrant, for which he is not bailable by law, I demand that he may be bailed.

Court. You have taken a wrong courſe in coming to us.

Coun. I preſume he applies himſelf properly to you; for he being a priſoner within your Liberty, you are the moſt proper perſons to bail him. As Juſtices of the Peace, you have power to bail any man within your juriſdiction, bailable by law, and where you may bail by the law, you ought ſo to do: and I demand it for Mr. *Jenkes*.

Court. Where do you find ſuch power given to Juſtices of the Peace?

Coun. By the ſame Statute of *Hen.* VII. that I cited againſt the Gaoler; the enacting part whereof ſaith, *That the Juſtices of the Peace in every Shire, City or Town, or two of them at the leaſt, whereof one to be of the* Quorum, *have authority or power to let any ſuch priſoner or perſons, mainpernable by the law, that have been impriſoned within their ſeveral Counties, City or Town, to bail or mainprize, unto their next general Seſſions; or unto the next Gaol-delivery of the ſame Gaols of every Shire, City or Town, as well within Franchiſes as without, where any Gaols be, or hereafter ſhall be*, &c.

The whole Statute was read, and the Court taking hold of the preamble, ſaid, This Statute was made for the prevention of bailing felons not bailable by law, and enables us only to bail felons bailable by law.

Coun. The preamble of the Act recites the miſchief occaſioned by the Statute of 1 *R.* III. but the enacting part repeals that Act, and gives you a general power of letting any perſon, mainpernable by the law, to bail; and I am ſure no Statutes made for the liberty of the Subject, ought to receive ſuch a ſtrait conſtruction.

Court. Do you conſider by whom he is committed? The Privy-Council?

Coun. I do, and think that alters not the caſe.

Court. He is committed by a ſuperior Court, and we, who are an inferior one, cannot bail him.

Coun. It is not the Court that commits, but the fact for which the party is committed, ought to direct you in bail. The Statute of *Hen.* VII. hath no ſuch exception in it; nor hath any other ſince put any ſuch reſtraint upon you.

Court. Would you have us bail him, after the Lord-Chancellor and the Lord Chief-Juſtice have refuſed to grant a *Habeas Corpus?*

Coun. They did not deny the *Habeas Corpus* becauſe he was not bailable by law, but becauſe the courſe of their Courts, in their opinions, would not admit it: But, however, if you ought to bail him, (as by the Statute, I think, you ought) their refuſal does not leſſen your duty.

Court. We doubt very much that any inferior Court can bail a man committed by a ſuperior one.

Coun. Scruples and fears do not alter the law: This doubt was once made in the *King's-Bench*, in the great caſe of *Selden*, and others; but the law was for the priſoner before that time, and was ſufficiently ſettled then; and this caſe differs nothing from that in reaſon.

Court. It does, for that was upon a *Habeas Corpus* out of the *King's-Bench*.

Coun. That is but a circumſtantial difference. The *Habeas Corpus* from that Court is only to remove the Priſoner, and the cauſe before them, that juſtice may be done to him: Mr. *Jenkes* is already within your juriſdiction, and the Statute gives you authority to bail him; and your authority makes it your duty, and I rely upon that.

Court. We conſidered upon it at dinner, and do believe it a rare caſe, and fit to be adviſed upon; and we will adviſe.

Why did you not move yeſterday when my Lord Chief-Juſtice was in Town? Now there are no Judges in Town to adviſe with.

Coun. That we did not come yeſterday was no deſign, for he is not ſo fond of a Gaol; and if it be an indiſcretion, yet that is no ſufficient reaſon to detain a man in priſon. However, if you have power (which you ought

ought to know) you have it as well when they are not in Town, as when they are. Is he bailable by law, or not?

Court. There is nothing in the warrant, for which he is not bailable by law.

Coun. For what reaſon then do you deny him?

Court. We do not deny him, but we will adviſe, becauſe he is committed by a ſuperior Court.

Coun. No man ought to be impriſoned for any miſdemeanour before conviction, without bail; and it is againſt the Petition of Right, that any man bailable by Law, ſhould be detained in Gaol without it. I don't know how, by ſuch denials as this, the being committed by a ſuperior Court may grow to be reaſon; but at preſent I think the Petition of Right ſpoils it for being a good one.

Court. You can give us no precedent of any one being bailed by Juſtices at the Seſſions, who was committed by the Council-board.

Coun. I believe it is a rare caſe that a man ſhould be forced to apply himſelf to ſuch, but I think I can furniſh you with an inſtance; and that is of one *Cannon*, a Quaker, who was committed by the Privy-Council about *Chriſtmas* laſt, and was bailed at the Seſſions of the *Old-Bailey*.

A pert By-ſtander, no ways concerned, ſuggeſted to the Court, and the Court repeated after him,

Court. He was committed to *Newgate*-priſon, and was calendar'd there.

Coun. If you ſtick to the reaſon of being committed by a ſuperior Court, that is no anſwer; but if it muſt be an anſwer, Mr. *Jenkes* is committed to the priſon of this liberty, and ought to have been calendar'd here; and then I do again demand that the Gaoler be fined.

Court. We think it a rare caſe, and fit to be adviſed upon; and our Commiſſion we here ſit by, directs us to do ſo in difficult caſes.

Coun. I told you before, I had nothing to do with the Commiſſion you here ſit by; and you yourſelves excluded me from it: but I apply myſelf to you as Juſtices of the Peace merely, and as ſuch you ought to take upon you the knowledge of your office.

Court. In the great caſe of *Selden*, that you cited, the Judges took two Terms to adviſe.

Coun. You very well know what opinion was had of their doing ſo. Will you adviſe upon it to-night with the King's Counſel, and I'll attend you to-morrow morning?

Court. We think fit to adviſe with the Judges about it, till next Seſſions.

Coun. I can eaſily interpret what ſuch adviſing means.

Court. You ſay you apply yourſelf to us as Juſtices of the Peace merely, then you may come to any two of us a fortnight hence, or more, and perhaps we may adviſe in the mean time.

Coun. I believe it will be a difficult matter to get any two of you together upon this occaſion.

Mr. *Jenkes* finding all theſe Common Doors to liberty ſhut againſt him, did by advice betake himſelf to another method, not leſs legal than the former; tho' the power granted by the Statutes to Juſtices of Peace, and the conſtant iſſuing of the Writ of *Habeas Corpus* upon demand (both more eaſy courſes) have occaſioned it to be of more ſeldom uſe.

Juſtice *Fitzherbert*, in his *Natura Brevium* (an Author, and a Book of juſtly venerable authority in our law), in his Chapter of *Main-prize*, declares, That if a man be taken by the King's commiſſion, and kept in priſon for felony or miſdemeanours, he may by his friends put in ſureties in the Chancery, that he will appear before the Juſtices, *&c.* and be of good behaviour, *&c.* and that body for body; and thereupon he ſhall have a Writ out of the Chancery, unto the Sheriff, or unto the Conſtable of the caſtle where he is impriſoned, to ſet him at liberty, if he be impriſoned for that cauſe and no other.

Which words ſeem plainly to declare the Writ of *Main-prize* to be the ſubject's right, and not to leave a diſcretional power to the Officers of Chancery in granting it. But the ſcarcity of precedents being the great objection againſt the *Habeas Corpus* out of Chancery, Mr. *Jenkes* reſolved to offend no more in that kind, and therefore cauſed a ſearch to be made in the *Rolls* in the *Tower*, for the Writs of *Main-prize*, where a multitude of them was found, and many in the caſe of a commitment by the King's command. A copy of one, and a note of ſeveral others were taken out, to back the authority of *Fitzherbert*. With this proviſion, on *Monday*, *July* 17, four of Mr. *Jenkes*'s friends, ſubſtantial Merchants, attended by a Counſel, went to the Lord Chancellor; and tho' upon tender of themſelves as bail for him, they might have demanded their Writ of *Main-prize* as the ſubject's right, without other formality, yet they addreſſed themſelves to him in a more reſpectful manner, by way of petition, thus:

To the Right Honourable *Henry* Lord *Finch*, Baron of *Daventry*, and Lord High-Chancellor of *England*; the humble Petition of *A. B. C. D.* of *London*, Merchants, friends to *Francis Jenkes*, now a Priſoner in the Gatehouſe of *Weſtminſter*, ſheweth,

THAT the ſaid *Francis Jenkes* was committed to the ſaid Priſon, by virtue of a warrant, a true copy whereof is hereunto annexed, for a fact bailable by law; for which, and no other cauſe, he yet remains there a Priſoner: And that in this and all other caſes of like nature, your Petitioners are adviſed, upon putting in bail in the Court of Chancery, according to the ancient courſe and uſage thereof, a Writ of *Main-prize* ought to iſſue under the Great Seal, to be directed to the Sheriff or Keeper of the Priſon where ſuch priſoner ſtands committed, to deliver the priſoner ſo committed.

That your Petitioners being men of good eſtates, (as ſhall, if your Lordſhip require, be made out to your Lordſhip) do deſire, and are ready to become bail for the ſaid *Francis Jenkes*; according to the courſe of the Chancery, and according to the Law.

The Petitioners therefore pray, that your Lordſhip would accept of bail accordingly; and that thereupon your Lordſhip would order a Writ to be made forthwith, to be directed to the Keeper of the Gatehouſe, for the diſcharge of the ſaid *Francis Jenkes*. And your Petitioners ſhall always pray, *&c.*

The Petition being ſent in to, and read by his Lordſhip, was returned by the Secretary with this anſwer; "That his Lordſhip did very well approve of the Petition; but ſince Mr. *Jenkes* was committed by the Coun-

"cil-board, he thought fit that they ſhould be petitioned, and ſhould "bail him."

But Mr. *Jenkes*'s friends not being ſatisfied with that anſwer, preſſed to ſpeak to his Lordſhip, and were by his Lordſhip's order called in, who coming towards them, ſpake to this effect:

Lord Chan. Who is't that puts you on theſe improper methods?

Coun. We preſume this addreſs to your Lordſhip to be a proper courſe in our caſe, and is ſuch as we have precedent for.

Lord Chan. Are you a Lawyer?—*Coun.* Yes, my Lord.

Lord Chan. Have you read *Fitzherbert*'s *Nat. Brevium?* Look in his Writ *de Homine replegiando*.

Coun. We have nothing to do with that Writ, but it is by *Fitzherbert* that we are directed to this courſe, in his Chapter of *Main-prize*, where he ſaith (what is before cited); and we are confirmed in his opinion by a multitude of precedents out of the cloſe Rolls in the *Tower*: I have the copy of one here, and the Number and Roll of many more.

The precedent ſhewn to his Lordſhip was this:

Ex Rol. clauſ. de Anno Regni Regis *Ed.* III. XI. parte prima, membr. 28.

De Deliberand. Ric. Monyword *à priſona.*

REX Seneſcallo & Mareſcallo Hoſpitii noſtri, ſalutem; cum *Ric. Monyword*, in Priſona Mariſcallæ noſtræ per præceptum noſtrum, pro quibuſdam tranſgreſſionibus & contemptibus nobis factis ut dicitur detentus, exiſtat ſub cuſtodia Janitoris noſtri, &c. *Williel. Stury*, Chivalier, *Th. Pride*, de Comitat. *Salop. Oliverius* de *Bourdeaux*, de Com. *Berk. Andreas Aubray*, *Johannes Piſſelan*, & *Petrus Fan*, de London, *coram nobis in Cancellaria noſtra, perſonaliter conſtituti manuceperunt predictum* Richard. viz. *quilibet eorum corpus pro corpore habere coram nobis, vel Juſticiariis noſtris, aut conſilio noſtro, quandocunq; & ubicunq; voluerimus ad mandatum noſtrum ad ſtand. rect. de tranſgreſſionibus & contemptibus & aliis exceſſibus quibuſcunq; unde indictatus vel reſtatus eſt, & quod bene & fideliter erga nos, & populum noſtrum, de cetero ſe gerit, vobis mandamus, quod prefatum* Richard. *a Priſ. prædicta, ſi ea occaſione, & non alia, detineatur, in eadem deliberari faciatis, per manucaptionem ſupradictam.*

Teſte Rege *apud* Weſtmonaſt. *decimo nono die* Martii, *Per iſtum Regem.*
Convenit cum *Recordo*, *Laur. Halſted*, Deput. *Algernon May*, militis.

The Note of the Number and Roll of ſeveral Writs of *Main-prize*, upon ſurety put into Chancery, ſhewn to his Lordſhip, was this:

2 *Ed.* III. *part.* 1. To the Conſtable of the *Tower*, to deliver *John Brice.*

2 *Ed.* III. *part* 1. *mem.* 29. To the Conſtable of the *Tower*, to deliver *Bernard Pouch.*

2 *Ed.* III. *part.* 1. *mem.* 28. To the Conſtable of the *Tower*, to deliver *Henry Compton.* Teſte 26 *Martii.*

Eodem Rot. 23. To the Conſtable of the *Tower*, to deliver *John de Waſſenham.* Teſte 18 *Aprilis.*

44 *Ed.* III. *part* 1. *mem.* 6. *cuſtod. Foreſt.* For delivery of ſeveral perſons committed for hunting in Foreſts ſince the *Stat.* 28. *Ed.* III. *cap.* 9.

Eodem Rot. mem. 10. The like. Teſte 20 *Aug.*

Eodem Rot. mem. 17. The like.

Eodem Rot. mem. 25. The like for *Will. de Clark.*

3 *Rich.* II. *mem.* 3. To the Sheriff of *London*, to deliver *Nich. de Swederton* and *John Deye.* Teſte 5 *December.*

Eodem Rot. mem. 22. To the Juſtices of *North Wales*, to deliver *Lloyd.*

Lord Chan. One precedent of diſcretion is worth a thouſand of theſe precedents.

His Lordſhip read the precedent, and obſerving it to bear Teſte the 19th day of *March*, which could never be in Term, aſked, When it was returnable? and ſaid, it muſt be returnable in ſome Court at *Weſtminſter*.

Coun. This precedent hath no return, neither doth the nature of the Writ in this caſe require one; for it is only a mandate to the Gaoler, to ſet him at liberty upon ſureties firſt taken in Chancery for his appearance before the Juſtices; which Juſtices, and the time of his appearance, I ſuppoſe, are to be named in the Recognizance.

Lord Chan. Whether there ought to be a return, is the queſtion; beſides, this is a Writ directed immediately to the Marſhal of the Houſhold, and is a different caſe.

Coun. With ſubmiſſion to your Lordſhip, it makes no difference who is the Gaoler; and thoſe I have given your Lordſhip the Number and Roll of, are to ſeveral Gaolers.

Then *Fitzherbert*'s *Nat. Brevium* was ſhewn to his Lordſhip, and upon reading the words there, *If a man be impriſoned by the King's commiſſion*, &c. his Lordſhip ſaid, That it was intended of one impriſoned by virtue of a Commiſſion out of Chancery.

Coun. I humbly preſume, that is not the ſenſe of the Book; the precedents I have ſhewn your Lordſhip ſeem to interpret it, and are upon other Comments; and *Fitzherbert*, in his *Abridgement*, *Tit. Main-prize*, *pl.* 23, cites a Book-caſe, that ſhews this to have been a courſe in the Chancery; but we ſubmit it to your Lordſhip's judgment.

Lord Chan. A little ſubmiſſion in a proper place will do, but he hath a mind to come out with a high hand.

Coun. He has a mind to be diſcharged by law, as the warrant for his commitment directs.

Lord Chan. I am not to controul any Act of the Privy-Council.

Coun. At the laſt motion for a *Habeas Corpus*, your Lordſhip was pleaſed to ſay, That though that was not a proper method for Mr. *Jenkes* to obtain his liberty by, yet there was one: and upon that encouragement from your Lordſhip, ſearch has been made, and this courſe we have now taken, found to have been the ancient courſe; and we did preſume, the ſame that your Lordſhip meant.

Lord Chan. You have uſed a great deal of induſtry to miſs the right way. Your precedents of *Edw.* III. and *Rich.* II. (three hundred years old) I'll conſider of till next Term. Upon which anſwer, Mr. *Jenkes*'s friends withdrew.

Now the plenty of precedents proved as great a fault as want of them did before; and their Age, which uſed to add to their authority, and give them a greater reſpect, made them contemned. Such always is the ſucceſs, where *ſtat pro ratione voluntas.* In the afternoon, the Secretary that firſt

carried in the Petition, came to Mr. *Jenkes* in a diſſembled confuſion, and told him, That he had committed a miſtake in returning the Petition; That his Lordſhip had aſked him for it, and would be very angry with him if he had it not; That he had left his Lordſhip looking over ſome papers, and had taken that opportunity of coming for it; and deſired that he might have it, to preſerve him from his Lordſhip's diſpleaſure.

Note, *That he returned it by his Lordſhip's Order.*

Tho' the Morning's action gave Mr. *Jenkes* a great deal of reaſon to ſuſpect the Secretary's tale to be a mere contrivance, and eaſy to ſurmiſe the truth; yet he took no notice of what had then paſſed, but ſent the Petition (which was then in ſome of his friends hands) that evening to him. Upon the ſecond thoughts which his Lordſhip beſtowed upon the matter of the Petition, he was better reconciled to it, and proved better than his word in conſidering the precedents; for inſtead of pauſing upon them till the next Term, he was pleaſed to carry them and the Petition to the Privy-Council, the next *Wedneſday*; where, tho' all the particulars are not known, upon credible information, this was the ſubſtance of what paſſed:

His Lordſhip acquainted the Board with the Addreſs that had been made to him; and moved, that the Petition might be there read. After it was read, his Lordſhip told them, that it had ſome appearance of law, and deſired that the Attorney-General might give his opinion. Mr. Attorney told him, if it were law, his Lordſhip ought to grant it; if it were not law, then to deny it; if it were of ſuch difficulty as he could not ſatisfy himſelf, that then he ſhould adviſe with the Judges.

His Lordſhip then moved for an order of Council for his direction in the matter; to which ſome of the Lords replied, That they were a Court of State, and not of Law, and that it did belong to him, as Lord Chancellor, to inform them of matters of law: Thereupon his Lordſhip, clapping his hands to his breaſt, ſaid, I thank God I have courage enough to ſerve his Majeſty.

About the latter end of *July*, ſome of Mr. *Jenkes*'s friends attended his Lordſhip again, and offered him bail; inſiſting upon the Writ of *Main-prize* as the ſubject's right; alledging to his Lordſhip the hazards that his health, his family, and his trade were expoſed to by his confinement. His Lordſhip aſked them, why they had not petitioned the King and Council? and told them, if Mr. *Jenkes* thought it better to lie in priſon and complain, than petition and be bailed, he might do as he pleaſed.

They told him they had tendered bail to Mr. Secretary *Williamſon*, who promiſed them to move the King in Council in it: But when they reminded him of it upon the next Council-day, he was pleaſed to excuſe himſelf. His Lordſhip toldt hem, he never heard they had tender'd bail; but the Writ of *Main-prize* was forgotten in all his anſwer.

They then told him, that the general report was, that the King and Council had referred it to his Lordſhip; but his Lordſhip would take no notice of that likewiſe, but ſaid, the King would adviſe with the Judges when they came to Town. His Lordſhip withdrew from them; and they left word with his Secretary, That Mr. *Jenkes* looked upon himſelf to be his Lordſhip's Priſoner.

On the — of *Auguſt*, Mr. *Jenkes*'s friends went again to my Lord Chancellor's; but his Secretary told them, his Lordſhip could not be ſpoke with.

They prevailed with his Secretary to go up to him, and remind his Lordſhip of his laſt anſwer of adviſing with the Judges; and tell him, that ſeveral of the Judges had been in Town, and they did now deſire his Lordſhip's Reſolution.

The Secretary at his return told them, that as ſoon as he began to mention the buſineſs, his Lordſhip fell into a fit of the Stone; but when that was over, he would mention it to him. About two hours after, they returned; and the Secretary being abſent, another of his Lordſhip's ſervants came to them, and told them that his Lordſhip was not well, and could not be ſpoke with; but had ordered him to tell them, that Mr. *Jenkes* might adviſe with his Counſel what was fit to be done, for he was none of his Counſel; and if he would petition the King and Council, he might; and that That was his anſwer.

On the 11th of *Auguſt*, being the laſt Council-day that was to be before the 3d of *October*, Mr. *Jenkes* thought fit again to tender bail to the Council; and that the Lord Chancellor, who diſowned all knowledge of his doing ſo before, and that the whole Council might know of it, he ſent this Letter by his bail to the Lord Privy-Seal, then Preſident of the Council, which was publicky read.

" *My Lord,*

" I Have been impriſoned ſince the 28th of *June*, to my great loſs, charge, and prejudice of my health. I have hitherto been denied bail, *Habeas Corpus*, and the Writ of *Main-prize*; which I am informed, were never before denied to any of his Majeſty's ſubjects in the like caſe: And this only for moving in a lawful Court, and in a quiet and peaceable manner, that which I did believe to be for his Majeſty's ſervice, and the good of the City and Kingdom, and the preſervation of the Proteſtant Religion; and which I conceive I can make appear to be according to the Laws and Statutes of this Realm, if I am publickly called thereto. Wherefore I do not beg a diſcharge, for I deſire nothing more than to clear my Innocence by a public trial: but ſince Mr. *Murrel* and others, committed to this priſon for matters of a far other nature, are daily bailed out; my humble requeſt to your Lordſhip is, that you would be pleaſed to move his Majeſty, that I, as well as any other of his Majeſty's ſubjects, may enjoy the benefit of the Laws; and that the Writ of *Main-prize* may be granted to me; or that my bail, which now attend, may be taken: Your Lordſhip will very much oblige

" *Your Lordſhip's humble Servant,*

" Francis Jenkes."

This Letter was by ſome improved into a Petition; and when they had given it that name, (tho' that was the only thing wanting to pleaſe the Lord Chancellor) yet it could not procure the acceptance of bail; but the method propoſed by his Lordſhip, proved as ineffectual as thoſe that were demanded of him. The Lord Chancellor's Reſolutions being ſufficiently diſcovered, Mr. *Jenkes*'s friends forbore all farther ſollicitation of his Lordſhip, and made freſh application to the Lord Chief-Juſtice *Rainsford*, on *Auguſt* 18, then juſt returned from the Circuit.

The time of Seſſions at the *Old-Bailey* drawing on, they cauſed two Writs of *Habeas Corpus* to be made (the common courſe of removing priſoners from one Gaol to another); one, *ad deliberandum*, directed to the Keeper at the Gate-houſe; and the other, *ad recipiendum*, directed to the Sheriffs of *London*, and deſired his Lordſhip to ſign them, that Mr. *Jenkes* might be removed and brought to trial; for that the Keeper of the Gate-houſe not calendaring any State-Priſoner, (as he called him) at the Seſſions for *Weſtminſter*, he might lie there all his life-time without trial, which no ſubject ought to do. His Lordſhip excuſed himſelf upon his late return to Town, which had not yet afforded him leiſure to adviſe; and ſent them to the Attorney-General, to know whether he were ready for a trial, before he would give them any anſwer.

Mr. Attorney, upon their coming to him, very worthily told them, That he had no order in it, but that he would not oppoſe the granting of thoſe Writs: adding, God forbid but that the Law ſhould have its due courſe.

They returned to the Lord Chief-Juſtice with this anſwer, and offered to make oath that it was Mr. Attorney's anſwer; but he would give credit to nothing, but a note under Mr. Attorney's own hand. They told him, it was hard that a man ſhould lie in priſon, who was willing to bring himſelf upon trial; that Writs of this nature were every day granted, and did preſume, could not reaſonably be denied. His Lordſhip anſwered, he would know whether Mr. Attorney were ready for a trial. They replied, That they did not know when Mr. Attorney would be ready, and Mr. *Jenkes* muſt ſtay for his Trial till then.

They then moved his Lordſhip, as they had done formerly, That he would grant a *Habeas Corpus* to bring him before his Lordſhip, and that he would accept of ſubſtantial Citizens for bail, who ſhould render him whenſoever Mr. Attorney ſhould call for him; alledging, that ſuch Writs had been frequently granted by the Lord Chief-Juſtice *Keeling*, and one of the now Juſtices of the *King's-Bench*.

His Lordſhip returned, That he did not doubt the ſecurity they ſhould offer him; but he had never granted ſuch a Writ, and he knew not upon what authority others had done it: And in ſhort, refuſed to grant either that or the other Writs.

After all theſe denials of right, Mr. *Jenkes* reſolved to ſit ſtill, with the ſatisfaction, that his ill ſucceſs was not imputable to the injuſtice of his cauſe; but to the pleaſure or fear of thoſe that had the power of making it otherwiſe: And with patience to expect it till the Term ſhould ſet open the priſon-doors; which will not brook the denial of a *Habeas Corpus*, tho' a long Vacation muſt.

No further addreſs was therefore made to either of their Lordſhips; but themſelves, after they had taken the pleaſure of denying him, were pleaſed to condeſcend to intercede for him: for as we heard, by very credible information, the Lord Chief-Juſtice went to the Lord Chancellor and told him, " That the Writs demanded of him, were according to Law, and " could not be denied; and that he had only taken time till he had ac- " quainted his Lordſhip with it."

The Lord Chancellor directed him to the Lord Treaſurer for further advice; who ſent him to the King. As ſoon as his Majeſty underſtood, that what was demanded was the ſubject's right, he immediately commanded that the laws ſhould have their due courſe, which their Lordſhips had ſtopped: And accordingly he was bailed.

[He was afterwards, in 1683, tried with *Thomas Pilkington*, *Henry Corniſh*, Eſqrs. and others, for a Riot at *Guildhall*, and fined 300 marks. See *State-Trials*, *Vol.* III. *p.* 541.

XXXIII. Articles of High Miſdemeanours, humbly offered and preſented to the Conſideration of his moſt Sacred Majeſty, and his moſt Honourable Privy-Council, againſt Sir William Scroggs, Lord Chief-Juſtice of the *King's-Bench*; exhibited by Dr. *Oates*, and Captain *Bedlow*, 31 *Car.* II.

I. THAT the ſaid Lord Chief-Juſtice, contrary to his oath, the duty of his place, in contempt of the King, his Crown and Dignity, did ſet at liberty ſeveral perſons accuſed upon oath before him of High-Treaſon, without their being ever tried, or otherwiſe acquitted; as namely, the Lord *Brudenell*, &c.

II. That at the Trial of Sir *George Wakeman* and others at the Seſſions-Houſe in the *Old-Bailey*, for High-Treaſon, the ſaid Lord Chief-Juſtice (according to the Dignity of his place) managing the ſaid Trial, did brow-beat and curb Dr. *Titus Oates* and Mr. *William Bedlow*, two of the principal Witneſſes for the King in that caſe; and encourage the Jury impannelled and ſworn to try the malefactors, againſt the ſaid witneſſes, by his publickly ſpeaking ſlightly and

ſlightly and abuſively againſt them and their evidence, and the miſrepeating and omitting of material parts of their evidence; whereby the parties indicted were by the ſaid Jury acquitted of the fact then charged againſt them, and fully proved by the ſaid witneſſes *.

III. That the ſaid Lord Chief-Juſtice, after the Trial of the ſaid Sir *George Wakeman*, and others for High-Treaſon, as aforeſaid, in the further abuſe of the ſaid Dr. *Titus Oates*, and Mr. *William Bedlow*, and in their great diſparagement ſpeaking of them; ſaid, that before the Trial of Sir *George Wakeman* (meaning the aforeſaid Trial) the witneſſes (meaning the aforeſaid Dr. *Titus Oates*, and the ſaid Mr. *William Bedlow*) were to be believed; but that at and after the ſaid Trial, they were not to be believed by him, nor ſhould not be believed by him; or to that very effect.

IV. That the ſaid Lord Chief-Juſtice, by reaſon of his office, hath taken upon him the power to oppreſs by impriſonment, his Majeſty's loyal ſubjects; namely, *Henry Care*, for writing and cauſing to be printed divers ſingle-ſheet Books in *Engliſh*, called *The Packet of Advice from* Rome; for the information and diſcovery of the idolatrous errors and impieties of the *Romiſh* Church, to his Majeſty's loyal and obedient Proteſtant Subjects (in this conjuncture of time very uſeful): although the ſaid Lord Chief-Juſtice neither did, nor could alledge or charge the ſaid *Care* with any thing contained in the ſaid Book, that was any ways criminal or derogatory to his Majeſty's Laws, Crown or Dignity; and refuſed to take very good Bail for him, though offered; and afterwards leſs bail taken for him upon his *Habeas Corpus* in Court; but by the ſaid Lord Chief-Juſtice's means, he was continued bound all the Term to his good behaviour; and at the end thereof until the next Term; although no particular crime was, or could be proved againſt or laid to his charge.

V. That to the great oppreſſion of his Majeſty's loyal Subjects, the ſaid Lord Chief-Juſtice, contrary to Law, and in manifeſt breach of his oath, hath, without any reaſonable cauſe, impriſoned a Feme-Covert, and divers others his Majeſty's ſaid Subjects, and refuſed to take bail, though tendered, and the matter bailable, as in the caſe of Mrs. *Jane Curtis*, Mr. *Francis Smith*, *&c.*

VI. That the ſaid Lord Chief-Juſtice is very much addicted to ſwearing and curſing in his common diſcourſe; and to drink to exceſs, to the great diſparagement of the dignity and gravity of his ſaid place. He did in his common diſcourſe at dinner at a Gentleman's houſe of Quality, publickly and openly uſe and utter many oaths and curſes, and there drank to exceſs.

VII. That *Charles Price* being accuſed upon oath, before the ſaid Lord Chief-Juſtice, to be a *Popiſh* Prieſt and Jeſuit, and impriſoned for the ſame, and alſo divers other perſons accuſed upon oath for High-Treaſon; as namely, Sir *Francis Mannock*, *Richard Vaughan*, Eſq. and *Daniel Arthur*, Merchant; the ſaid Lord Chief-Juſtice ſet them at large upon bail, without conſulting his Majeſty's Counſel, or his witneſſes, and againſt their conſent; divers of which perſons have not ſince appeared, but have forfeited their recognizances, and the perſons not to be found.

VIII. That the ſaid Lord Chief-Juſtice, to the great diſcouragement of his Majeſty's loyal Proteſtant Subjects; to the manifeſt encouragement of the Roman Catholick Subjects; when information hath been duly and legally given to him of the abode, or perſon of a Popiſh Prieſt or Jeſuit, and a warrant deſired from him to take or ſearch for ſuch Prieſts or Jeſuits, he hath in a ſlighting and ſcornful manner refuſed the ſame, and bid the Informer go to Sir *William Waller*, who buſied himſelf in ſuch matters mainly.

IX. That the Trial of *Knox* and *Lane*, at the Bar of the *King's-Bench* Court for their miſdemeanours, in endeavouring to take away the credit of Dr. *Titus Oates*, and Mr *William Bedlow*, two of the principal witneſſes for his Majeſty, in the proving of the Conſpiracy and Conſpirators againſt his Majeſty's Life, and Government of theſe Kingdoms of *England*, *Scotland*, and *Ireland*, the deſtruction of the Proteſtants and Proteſtant Religion, and introducing and ſettling of Popery there; although the evidence was ſo full and clear againſt them, that the Jury found them guilty without going from the bar; yet the ſaid Lord Chief-Juſtice, in further diſcouragement and diſparaging the evidence of the ſaid Dr. *Titus Oates*, and Mr. *William Bedlow*, would not, nor did not give any charge to the Jury therein, but roſe up ſuddenly, after the evidence cloſed by the Counſel, and left the ſaid Court abruptly, before the ſaid Jury had given in their verdict.

X. That the ſaid Lord Chief-Juſtice, knowing that one *William Oſborn* was in the conſpiracy and contrivance with the ſaid *Knox* and *Lane*, in the laſt article mentioned, to take away the credit of the ſaid Dr. *Titus Oates*, and Mr. *William Bedlow*; and knowing the ſaid Dr. *Titus Oates*, and Mr. *William Bedlow*, to be material witneſſes for his Majeſty, in proving of the conſpiracy and conſpirators, in the ſaid laſt article mentioned, and had been ſo againſt ſeveral of the ſaid conſpirators that had been tried, and were to be ſo againſt ſeveral others of the ſaid conſpirators that were impeached or accuſed for the ſaid High-Treaſon, and were to be tried for the ſame; and knowing the ſaid *William Osborn* had been detected before the Lords in Parliament aſſembled, for his ſaid conſpiracy and contrivance with the ſaid *Knox* and *Lane*; and that upon his own oath, thereupon denying the fact in their ſaid conſpiracy and contrivance to be true: yet out of his malice to the ſaid Dr. *Titus Oates*, and Mr. *William Bedlow*; and as much as in him lay to endeavour the diſparagement, if not the ſuppreſſing of the further diſcovery of that helliſh and damnable plot; the ſaid Lord Chief-Juſtice, without the knowledge, conſent or approbation of his Majeſty, or any of his learned Counſel in the Law, or the ſaid Dr. *Titus Oates*, or Mr. *William Bedlow*; did voluntarily give the ſaid *Osborn* liberty to make an affidavit before him upon oath, of the truth of the ſaid fact, he had before, as aforeſaid, denied upon his oath; with intent that the ſame might be made uſe of againſt the ſaid Dr. *Titus Oates*, and Mr. *William Bedlow*, to their diſparagement, and the apparent prejudice of his Majeſty, againſt the ſaid conſpirators, in the ſaid High-Treaſon.

XI. That he the ſaid Lord Chief-Juſtice, to manifeſt his ſlighting opinion of the evidence of the ſaid Dr. *Titus Oates*, and Mr. *William Bedlow*, in the preſence of his moſt ſacred Majeſty, and the Right Honourable the Lords and others of his Majeſty's moſt Honourable Privy-Council; did dare to ſay, that he had thought that Dr. *Titus Oates*, and Mr. *William Bedlow*, always had an accuſation ready againſt any body.

XII. That at the aſſize holden at *Monmouth* laſt, the ſaid Lord Chief-Juſtice, in the preſence of ſeveral Juſtices of the Peace for the ſaid County, did ſay to Mr. *William Bedlow*, that he did believe in his conſcience, that *Richard Langhorn*, whom he condemned, died wrongfully, to the great diſparagement of his Majeſty's Crown and Dignity, the Juſtice of the Court, the Jury and Evidence.

XIII. That the ſaid Lord Chief-Juſtice, contrary to the dignity of his place, did make merchandize of the Trials of certain Prieſts to be tried in *Staffordſhire*, and took twenty guineas in earneſt; then ſold the ſaid Trials to other perſons, refuſing to return the ſaid twenty guineas to thoſe from whom he had received them. And furthermore, before the Trial of Sir *George Wakeman*; he the ſaid Lord Chief-Juſtice did bargain with two Bookſellers for one hundred and fifty guineas, for them to print the Trials; and in caſe they would not lay down the money before he went into the Court, he would not go into the Court, but would go into the Country: and if the ſaid Trial, by reaſon of its length, could not be finiſhed in one day, he would have a hundred guineas more, or to that very effect.

The Anſwer of Sir *William Scroggs*, Knt. Lord Chief-Juſtice of the *King's-Bench*, to the Articles of Mr. *Titus Oates*, and Mr. *William Bedlow*.

I. TO the firſt he ſaith, that the Lord *Brudenell* was bailed by the Court of *King's-Bench* in open Court, and afterwards by the Court diſcharged; with this, that *William Bedlow* did importune the Lord *Weſtmorland* to get the ſaid Lord *Brudenell* diſcharged, for that he had nothing to ſay againſt him, as he ſaid to the Lord *Weſtmorland*. See the Rules of Court.

II. To the ſecond, he ſaith, That as to his omitting or miſrepeating the evidence at Sir *George Wakeman's* Trial, it is a reflection upon the whole Court to ſuppoſe it true, and that they ſhould let it paſs. But he ſaith, that Mr. *Oates* being aſked at that Trial, why he did not charge Sir *George Wakeman* at the Council-Table with a letter under his own hand concerning the death of the King? He anſwered, He did not know but that he did: to which it was replied, It is plain he did not; for then the Council would have committed him. To which Mr. *Oates* replied, That that Council would commit nobody for the plot; which might be the cauſe of the miſdemeanour of frowning in the articles mentioned.

III. To the third, he ſaith, he doth not remember that ever he expreſſed much concerning their credit before their Trial; but that there were ſome paſſages at that Trial which gave him great cauſe of doubt: which he hopes he might do, without making it an article of miſdemeanour.

IV. and V. To the fourth and fifth, he ſaith, That the perſons in the articles mentioned, were committed by him for publiſhing ſeveral libellous and ſcandalous papers, which were proved againſt them upon oath: which commitments, even of a *Feme-Covert* alſo, notwithſtanding Mr. *Oates* and Mr. *Bedlow*'s ſkill, were according to Law: though there is no Law for theſe perſons to call me to account for judicial acts done upon other men.

VI. To the ſixth, which is an inſolent ſcandal, he referreth himſelf to the teſtimony of that Gentleman of Quality, whoever he be.

VII. To the ſeventh, he ſaith, That the perſons in this article were bailed and diſcharged by the Court, where the Attorney-General was firſt called; but indeed Mr. *Oates* and Mr. *Bedlow*'s conſent was not aſked.

VIII. To the eighth, he ſaith, he conceives himſelf not obliged to do all the buſineſs that Juſtices of the Peace may do; and though without an offence he might have given ſuch an anſwer as is mentioned, yet he did not, but a ſervant of his did.

IX. To the ninth, he ſaith, That when the cauſe was tried, he told the Jury the matter was plain, and ſo did the reſt of the Court; upon which he went away, without any compliment to Mr. *Oates*, to try cauſes in *London*.

X. To the tenth, he ſaith, That *Osborn* made only two affidavits before him: the ſubſtance of one was, that one *Bowring*, a ſervant to Mr. *Oates*, had ſaid, that he had heard Mr. *Oates* ſay, that the Kingdom of *England* would never flouriſh, until it became elective, and the Kings choſen by the People. The other affidavit was when he was ſent to him by an order of Council to be examined; wherein amongſt other things he ſwears, that though at the Trial of *Knox* and *Lane*, it was aſked where *Osborn* was, and Mr. *Oates*'s Counſel anſwered, that he was fled; yet *Osborn* ſwears, that he at that time was at his father's houſe in the country, and that Mr. *Oates* knew it; that he took his leave of him the day before he went, and told whither he went, and ſaw a letter wrote by Mr. *Oates* to his father to ſend for him. Notwithſtanding it was carried at the Trial, as if he had been fled no man knew whither; ſo that the affidavit which the article chargeth me for permitting to be made, was not ſworn before me.

XI. He ſaith, it is more to be wondered how Mr. *Oates* ſhould dare to charge that as an article of miſdemeanour, which was ſaid in the King's preſence, and yet repeated falſe too.

XII. That at *Monmouth Aſſizes* he did tell Mr. *Bedlow*, that he was more unſatisfied about Mr. *Langhorn*'s Trial than all the reſt; and the rather, for that he was credibly informed ſince the Trial, that Mr. *Langhorn*'s ſtudy was ſo ſituated, that he that walked in his Chamber could

* Sir *Francis Winnington* in his Speech in the Parliament, 1680, printed in the *Faithful Regiſter*, or, *the Debates of the Houſe of Commons, in four ſeveral Parliaments*, ſays, at *Wakeman*'s Trial, thoſe perſons who at former Trials had been treated with that reſpect that is due to the King's Evidence, and whoſe Credit and Reputation had ſtood clear without exception in all other Trials, were now not only brow-beaten, but their Evidence preſented to the Jury as doubtful and not to be depended on, and ſo at all other Trials of Papiſts from that time forward. By which many of the greateſt offenders were quitted and cleared as to the Plot, and thoſe that were brought for defaming the King's Evidence, and ſuborning Witneſſes, in order thereto, very kindly treated, and diſcharged with eaſy ſentences, eſpecially if Papiſts; but if Proteſtants, though only for printing or vending ſome unlicenſed Book, were impriſoned and largely fined. But I beg leave to particularize in the caſe of one *Care*, who was indicted for printing a Weekly intelligence, called *The Packet of Advice from* Rome, *or the Hiſtory of Popery*. This man had a ſtrange knack of writing extraordinary well upon that ſubject, and that Paper was by moſt perſons thought not only very ingenious, but alſo very uſeful at this time for the information of the people, becauſe it laid open very intelligibly the errors and cheats of that Church. However, upon an information given to the Court of *King's-Bench* againſt this *Care*, this Rule was made;

Ordinatum eſt, quod Liber intitulat. The Weekly Packet, &c. *non ulterius imprimatur, vel publicetur per aliquam perſonam quamcunque. Per Cur.*

I think it amounts to little leſs than a total prohibition of printing any thing againſt Popery.

could not ſee Mr. *Langhorn* write in his ſtudy: which was Mr. *Bedlow*'s evidence.

XIII. He ſaith, the matter complained of is a mere contract with other men, of which he thinks himſelf not bound to give Mr. *Oates* and Mr. *Bedlow* any other account, but that by the taking of twenty guineas he loſt forty; and that his backwardneſs to go into the Court at *Wakeman*'s Trial, makes it look as if he had not had ten thouſand pounds to favour *Wakeman* in his Trial.

If theſe Articles ſhall appear to your Majeſty to be frivolous, or ſcandalous, or not true; I humbly pray your Majeſty's juſt reſentment thereon, in Honour to your Courts and Government.

And that ſuch an unknown Attempt may not go unpuniſhed; that the promoters may be left to be proceeded againſt according to Law.

The Articles of Mr. *Titus Oates*, and Mr. *William Bedlow*, againſt the Lord Chief-Juſtice *Scroggs*, were heard this 21ſt of *January*; 1679, before the King and Counſel; and upon the hearing of both ſides, Mr. *Oates* and Captain *Bedlow* are left to be proceeded againſt according to Law.

But I don't find the Chief-Juſtice recover'd any damages.

XXXIV. Proceedings againſt Sir William Scroggs, Knt. Lord Chief-Juſtice of the *King's-Bench*, and other Judges, in Parliament, 1680. 32 *Car.* II.

Novem. 13, 1680.

Several Perſons were examined in the Houſe of Commons about the diſmiſſing of a Grand-Jury in Middleſex. *After which, ſeveral Members of the Houſe ſpoke as follows*; viz.

Sir *William Jones.*

MR. *Speaker*, Sir, the preſervation of the Government in general, as well as our particular ſafeties, have a dependance upon the matter that is now before you, in which there are ſo many miſcarriages ſo complicated, as there ariſeth ſome difficulty how to examine them. I cannot but obſerve, how the Proclamation is here again mentioned; by which you may conclude, there lieth a great weight upon the people's right to petition by means thereof, and that the beſt way to remove it, is to find out the adviſers and contrivers of that Proclamation, in order to proceed againſt them according to their deſerts. Without which, what you have done in aſſerting the Right of Petitioning, will remain with ſome doubt; and thoſe that adviſed the proclaiming to the people, that it is ſeditious to petition the King, without that chaſtiſement they deſerve. And therefore, I humbly conceive, you will do well to conſider of it as ſoon as you can. It is not ſtrange, that the Proclamation ſhould be made uſe of with Country Gentlemen, to get abhorrers to petitioning, ſeeing the Judges themſelves have made uſe of it to that purpoſe. *They ſhould have known, that though a Proclamation might be of great uſe, to intimate the obſervation of a Law, yet that it had never been uſed inſtead of a Law.* But yet I do not admire ſo much at this as I do at the diſcharge of the Grand Jury, before they had finiſhed their preſentments. *It tends ſo much to the ſubverſion of the eſtabliſhed Laws of this Land, that I dare pronounce, that all the Laws you have already, and all that you can make, will ſignify nothing againſt any great man, unleſs you can remedy it for the future.* I obſerve, there were two reaſons why this Grand-Jury were ſo extrajudicially diſcharged; one, becauſe they would otherwiſe have preſented the Duke of *York* for a Papiſt; the other, becauſe they preſented a Petition to be deliver'd to the King for the ſitting of the Parliament, which they ſaid it was not their buſineſs to deliver. Though I cannot but obſerve, how upon other occaſions they did receive Petitions, and delivered them to the King; *and all the difference was, that the Petitions ſo delivered were againſt ſittings of Parliaments.* The truth is, I cannot much condemn them for it; for if they were guilty of ſuch crimes as the witneſſes have this day given you information of, I think they had no reaſon to further Petitions for the ſitting of a Parliament. But, Sir, this buſineſs will need a further Information, and therefore, I humbly pray it may be referred to a Committee.

Sir *Francis Winnington.*

Mr. Speaker, Sir, I think we are come to the old times again, *When the Judges pretended they had a rule of Government, as well as a rule of Law*; and they have acted accordingly. If they did never read *Magna Charta*, I think they are not fit to be Judges; if they have read *Magna Charta*, and do thus ſo contrary, they deſerve a ſevere chaſtiſement. To diſcharge Grand-Juries of purpoſe to diſappoint them of making their preſentments, is to deprive the Subject of the greateſt benefit and ſecurity the Law hath provided for them. *If the Judges, inſtead of acting by Law, ſhall be acted by their ambition, and endeavour to get promotions rather by worſhipping the riſing Sun, than by doing Juſtice*, this Nation will ſoon be reduced to a miſerable condition. Suppoſe that after the diſcharge of this Grand-Jury, ſome Perſon had offered to preſent ſome Murder, Treaſon, or other capital crime, for want of the Grand-Jury, there would have been a failure of Juſtice. As faults committed by Judges are of more dangerous conſequence than others to the Public, ſo there do not want precedents of ſeverer chaſtiſements for them than for others. I humbly move you firſt to paſs a Vote upon this buſineſs of diſcharging Grand-Juries, and then to appoint a Committee to examine the miſcarriages of the Judges in *Weſtminſter-hall*, and to report the ſame with all ſpeed to you.

Mr. *S. Titus.*

Mr. Speaker, Sir, As it hath been obſerved that this buſineſs has ſome reference to the Proclamation, ſo I believe there is ſomething of the plot in it too; and therefore, *I think if this Plot do not go on, it will have the worſt luck that ever Plot had*; ſeeing the Judges, as well as moſt other perſons in public places, have given it as much aſſiſtance as they could. But whereas ſome have ſpoken ill of theſe Judges, I deſire to ſpeak well of them in one thing: I am confident they have herein ſhewed themſelves grateful to their benefactors; for I do believe that ſome of them were preferr'd to their places of purpoſe, becauſe they ſhould do what they have done. Laws of themſelves are but dead letters: unleſs you can ſecure the execution as well of thoſe you have already, as of thoſe you are now making, we ſhall ſpend our time to little purpoſe. Therefore I ſecond the motion that hath been made for a Vote, to declare the ſenſe of the Houſe as to the diſcharging of Grand-Juries, and for referring the further examination to a Committee.

Mr. *W. Sacheverel.*

Mr. Speaker, Sir, the buſineſs of this debate is a great inſtance of our ſick and languiſhing condition. As our Ships, Forts, and Caſtles are for ſecuring us from the danger of our Enemies from abroad, ſo our Laws from our enemies at home; and if committed to ſuch perſons as will turn their ſtrength upon us, are equally dangerous. Sir, *We all know how the Government of* Scotland *hath been quite altered ſince his Majeſty's Reſtauration, by ſome Laws made there; pray let us have a care that ours be not altered by the corrupt proceedings of Judges, leſt we be reduced to the ſame weak condition of defending ourſelves againſt Popery and arbitrary Government here, that they are there.* If Judges can thus prevent the penalties of the Law, by diſcharging Grand-Juries before they have made their preſentments, and can make Laws by their Rules of Court, I think the Government may ſoon be ſubverted; and therefore, that it is high time for this Houſe to ſpeak with thoſe Gentlemen. In former times ſeveral Judges have been impeached, and hanged too, for leſs crimes than theſe; and the reaſon was, becauſe they had broke the King's oath as well as their own. If what hath been ſaid of ſome of theſe Judges be fully proved, they ſhall not want my Vote to inflict on them the ſame chaſtiſement. The truth is, Sir, I know not how the ill conſequences we juſtly fear from Judges, can be prevented, as long as they are made *durante beneplacito*, and have ſuch dependencies as they have. But this muſt be a work of time: in order to remedy our preſent grievances, let us paſs a Vote upon this buſineſs of diſcharging Grand-Juries, and that it may be penn'd as the caſe deſerves. If you pleaſe, let it be drawn up by a Committee, that may withdraw for that purpoſe; and let there be alſo one appointed to examine the miſcarriage of the Judges.

Mr. *H. Powell.*

Mr. Speaker, Sir, I would beg leave to obſerve to you, becauſe I think it may be neceſſary to be conſidered by your Committee, what an opinion was given not long ſince by ſome of theſe Judges about Printing; which was, that Printing of News might be prohibited by Law; and accordingly a Proclamation iſſued out. I will not take on me to cenſure the opinion as illegal, but leave it to your further conſideration. *But I remember there was a conſultation held by the Judges a little before, and they gave their opinion, that they knew not of any way to prevent Printing by Law, becauſe the Act for that purpoſe was expired. Upon which, ſome Judges were put out, and new ones put in, and then this other opinion was given.* Theſe things are worthy of a ſerious examination: for if Treaſurers may raiſe money by ſhutting up the *Exchequer*, borrowing of the Bankers, or retrenchments, and the Judges make new Laws by an ill conſtruction, or an ill execution of the old ones; I conclude, that Parliaments will ſoon be found uſeleſs, and the liberty of the people an inconvenience to the Government. And therefore, I think, Sir, you have been well moved to endeavour to paſs your cenſure on ſome of theſe illegal proceedings by a Vote, and to refer the farther conſideration to a Committee.

Sir *Francis Winnington.*

Mr. Speaker, In the front of *Magna Charta* it is ſaid, *Nulli negabimus, nulli deferemus Juſtitiam*; we will defer or deny Juſtice to no man: to this the King is ſworn, and with this the Judges are entruſted by their Oaths. I admire what they can ſay for themſelves: if they have not read this Law, they are not fit to ſit upon the Bench; and if they have, I had almoſt ſaid, they deſerve to loſe their heads.

Mr. Speaker, The ſtate of this poor Nation is to be deplored, that in almoſt all ages, the Judges, who ought to be preſervers of the Laws, have endeavour'd to deſtroy them; and that to pleaſe a Court-faction, they have by treachery attempted to break the bonds aſunder of *Magna Charta*, the great treaſury of our peace. It was no ſooner paſs'd, but a Chief-Juſtice (*Hubert de Burg*) in that day, perſuades the King he was not bound by it, becauſe he was under age, when it was paſs'd. But this ſort of inſolence the next Parliament reſented, to the ruin of the pernicious Chief-Juſtice. In the time of *Richard* II. an unthinking, diſſolute Prince, there were Judges that did inſinuate into the King, that the Parliament were only his creatures, and pended on his will, and not on the fundamental conſtitutions of the Land; which treacherous advice proved the ruin of the King: and for which all thoſe evil Inſtruments were brought to Juſtice. In his late Majeſty's time, his misfortunes were occaſioned chiefly by the corruptions of the Long Robe; his Judges by an extrajudicial opinion gave the King power to raiſe money upon an extraordinary occaſion without Parliament, and made the King Judge of ſuch occaſions: Charity prompts me to think they thought this a ſervice to the King, but the ſad conſequences of it may convince all mankind, that

that every illegal act weakens the Royal Interest; and to endeavour to introduce absolute Dominion in these Realms, is the worst of Treasons: because whilst it bears the face of friendship to the King, and designs to be for his service, it never fails of the contrary effect.

The two great Pillars of the Government, are Parliaments and Juries; it is this gives us the title of freeborn *Englishmen*. For my notion of free *Englishmen* is this, that they are ruled by Laws of their own making, and tried by men of the same condition with themselves. The two great and undoubted privileges of the people, have been lately invaded by the Judges that now sit in *Westminster-hall*; they have espoused Proclamation against Law; they have discountenanced and opposed several legal Acts, that tended to the sitting of this honourable House; they have grasped the legislative Power into their own hands, as in that instance of Printing; the Parliament was considering that matter, but they, in the interim, made their private opinion to be law, to supersede the judgment of this House: They have discharged Grand Juries, on purpose to quell their presentments, and shelter great Criminals from Justice; and when Juries have presented their opinion for the sitting of this Parliament, they have in disdain thrown them at their feet, and told them they would be no messengers to carry such Petitions; and yet, in a few days after, have encouraged all that would spit their venom against the Government: they have served an ignorant and arbitrary faction, and been the messengers of abhorrences to the King.

Mr. Speaker, What we have now to do, is to load them with shame, who bid defiance to the Law; they are guilty of crimes against Nature, against the King, against their Knowledge, and against Posterity. The whole frame of Nature doth loudly and daily petition to God their Creator; and Kings, like God, may be addressed to in like manner, by petition, not command. They likewise knew it was lawful to petition; ignorance can be no Plea, and their knowledge aggravates their crimes; the children unborn are bound to curse such proceedings, for 'twas not Petitioning, but Parliaments they abhorred. The Atheist pleads against a God, not that he disbelieves a Deity, but would have it so, *Tresilian* and *Belknap* were Judges too; their Learning gave them honour, but their Villainies made their exit by a Rope. The end of my motion therefore is, that we may address warmly to our Prince against them; let us settle a Committee to enquire into their crimes, and not fail of doing Justice upon them that have perverted it; let us purge the Fountain, and the Streams will issue pure.

Then the House agreed to the following Resolutions.

Resolved, *That the discharging of a Grand-Jury by any Judge, before the end of the Term, Assizes, or Sessions, while matters are under their consideration, and not presented, is arbitrary, illegal, destructive to public Justice, a manifest violation of his Oath, and is a means to subvert the fundamental Laws of this Kingdom.*

Resolved, *That a Committee be appointed to examine the Proceedings of the Judges in* Westminster-Hall, *and report the same, with their opinion therein to the House.*

Whereupon a Committee was appointed, and they sat several days, and then made the following Report:

The Report of the Committee of the House of Commons, appointed to examine the Proceedings of the Judges, &c. *Thursday, Dec.* 23, 1680 *.

THIS Committee being informed, that in *Trinity*-Term last, the Court of *King's-Bench* discharged the Grand-Jury, that served for the hundred of *Offulston*, in the County of *Middlesex*, in a very unusual manner; proceeded to enquire into the same, and found by the information of *Charles Umfreville*, Esq; Foreman of the said Jury, *Edward Proby*, *Henry Gerard*, and *John Smith*, Gentlemen, also of the said Jury, That on the 21st of *June* last, the Constables attending the said Jury were found defective, in not presenting the Papists as they ought, and thereupon were ordered by the said Jury to make further presentments of them on the 26th following, on which day the Jury met for that purpose; when several Peers of this Realm, and other persons of honour and quality, brought them a bill against *James*, Duke of *York*, for not coming to Church: but some exceptions being taken to that bill, in that it did not set forth the said Duke to be a Papist, some of the Jury attended the said persons of quality to receive satisfaction therein. In the mean time, and about an hour after they had received the said bill, some of the Jury attended the Court of *King's-Bench* with a Petition, which they desired the Court to present in their name unto his Majesty for the sitting of this Parliament. Upon which, the Lord-Chief-Justice *Scroggs* raised many scruples, and on pretence that they were not all in Court (tho' twenty of the Jury had subscribed the Petition), sent for them, saying, He would dispatch them presently. The Jury being come, and their names called over, they renewed their desire that the Court would present their Petition: but the Chief-Justice asked, if they had any bills? They answered, they had, but the Clerks were drawing them into form. Upon which, the Chief-Justice said, they would not make two works of one business. And the Petition being read, he said this was no article of their charge, nor was there any Act of Parliament that required the Court to deliver the Grand Jury's Petitions: That there was a Proclamation about them; and that it was not reasonable the Court should be obliged to run on their errands; and he thought it much, that they should come with a Petition to alter the King's mind declared in the News-Book. The Jury said, they did it not to impose on the Court, but (as other Juries had done) with all submission they desired it: but the Court refused, bidding the Cryer return them their Petition. And Mr. Justice *Jones* told them, they had meddled with matters of State, not given them in charge, but presented no bills of the matters given in charge. They answered as before, they had many before them, that would be ready in due time. Notwithstanding which, the said Justice *Jones* told them, they were discharged from further service. But *Philip Ward* (the Clerk that attended the said Jury) cried out, No, no, they have many bills before them; for which the Court understanding (as it seems to this Committee) a secret reason, which the Clerk did not, reproved him, asking, If he or they were to give the rule there? The Cryer then told the Court, they would not receive their Petition; the Chief-Justice bid him let it alone, so it was left there; and the Jury returned to the Court-house, and there found several Constables with Presentments of Papists and other offenders, as the Jury had directed them on the 21st before, but could not now receive the said presentments, being discharged; whereby much business was obstructed, tho' none of the said Informants ever knew the said Jury discharged before the last day of the Term, which was not till four days after. And it further appeareth to the Committee, by the evidences of *Samuel Astry*, *Jasper Waterhouse*, and *Philip Ward*, Clerks, that have long served in the said Court, that they were much surprized at the said discharging of the Jury, in that it was never done in their memory before; and the rather, because the said *Waterhouse*, as Secondary, constantly enters on that Grand-Jury's paper, that the last day of the Term is given them to return their verdict on, as the last day but one is given to the other two Grand-Juries of that County, which entry is as followeth:

Trinit. 32 Car. II.

Juratores habent diem ad veredictum suum reddendum usq; diem Mercurii proxime post tres Septimanas sanctæ Trinitatis. — Middlesex. Offulston Hundred.

Being the last day of the Term, and so in all the other Terms the last day is given; which makes it appear to this Committee, that they were not in truth discharged for not having their presentments ready, since the Court had given them a longer day, but only to obstruct their further proceedings; and it appeareth by the evidence aforesaid to this Committee, that the four Judges of that Court were present at the discharging of the said Jury, and it did not appear that any of them did dissent therein; upon consideration whereof, the Committee came to this resolution:

Resolved, That it is the opinion of this Committee, that the discharging of the Grand-Jury of the hundred of *Offulston*, in the County of *Middlesex*, by the Court of *King's-Bench*, in *Trinity* Term last, before the last day of the Term, and before they had finished their presentments, was illegal, arbitrary, and a high misdemeanour.

This Committee proceeded also to enquire into a rule of the Court of *King's-Bench*, lately made against the publishing of a Book, called *The Weekly Packet of Advice from* Rome; or, *The History of Popery*: and *Samuel Astry*, Gent. examined thereupon, informed this Committee, that the Author of the said Book, *Henry Carr*, had been informed against for the same, and had pleaded to the Information; but before it was tried, a rule was made on a motion, as he supposeth, against the said Book; all the Judges of that Court (as he remembers) being present, and none dissenting. The copy of which rule he gave in to this Committee, and is as followeth:

Dies Mercurii proxime post tres Septimanas sanctæ Trinitatis. Anno 32. Car. II. *Regis.*

Ordinatum est quod liber intitulat. The Weekly Packet of Advice from *Rome*; *or*, The History of Popery, *non ulterius imprimatur vel publicetur per aliquam Personam quamcunq; Per Cur.*

And this Committee admiring that Protestant Judges should take offence against a Book, whose chief design was to expose the cheats and foppery of Popery, enquired further into it, and found by the evidence of *Jane Curtis*, that the said Book had been licensed for several months, that her husband paid for the copy, and entered it in the Hall-book of the Company. But for all this, she could not prevail by these reasons, with the Lord Chief-Justice *Scroggs*, to permit it any longer; who said, 'twas a scandalous Libel, and against the King's Proclamation, and he would ruin her if ever she printed it any more. And soon after she was served with the said rule, as the Author, and other Printers were; and by the Author's evidence it appears, that he was taken and brought before the said Chief-Justice by his warrant above a year since, and upon his owning he writ part of that Book, the Chief-Justice called him rogue and other ill names; saying, he would fill all the gaols in *England* with such rogues, and pile them up as men do faggots; and so committed him to prison, refusing sufficient bail, and saying he would gaol him, to put him to charges; and his Lordship observed his word punctually therein, forcing him to his *Habeas Corpus*, and then taking the same bail he refused before. Upon which, this Committee came to this resolution:

Resolved, That it is the opinion of the Committee, that the rule made by the Court of *King's-Bench*, in *Trinity* Term last, against printing a Book, called, *The Weekly Packet of Advice from* Rome, is illegal and arbitrary.

And the Committee proceeded further, and upon Information that a very great latitude had been taken of late by the Judges, in imposing fines on the persons found guilty before them, caused a transcript of all the fines imposed by the *King's-Bench* since *Easter* Term, in the 28th of his Majesty's Reign, to be brought before them, from the said Court, by *Samuel Astry*, Gent. By perusal of which, it appeared to this Committee, that the quality of the offence, and the ability of the person found guilty, have not been the measures that have determined the quantity of many of these fines; which being so very numerous, the Committee refer themselves to those Records as to the general, instancing in some particulars as follow:

Upon *Joseph Brown*, of *London*, Gent. on an Information for publishing a printed Book, called *The Long Parliament dissolved*; in which is set forth these words: *Nor let any man think it strange, that we account it Treason for you to sit and act contrary to our Laws; for if in the first Parliament of* Richard II. Grimes *and* Weston, *for lack of courage only were adjudged guilty of High-Treason for surrendering the places committed to their trust; how much more you, if you turn Renegadoes to the people that intrusted you, and as much as in you lie surrender not a little pitiful Castle or two, but all the legal defence the people of* England *have for their lives, liberties and properties at once! Neither let the vain persuasion delude you, that no precedent can be found, that one* English *Parliament hath hanged up another; though peradventure even that may be proved a mistake: for an unprecedented crime calls for an unprecedented punishment; and if you shall be so wicked to do the one, or rather endeavour to do, (for now you are no longer a Parliament) what ground of confidence you can have that none will be found so worthy to do the other, we cannot understand: and do faithfully* — Trinit. 29. Car. II.

* This Report is printed in *State-Trials*, Vol. III. *page* 218, but without the Impeachment and Answer of the Lord Chief-Justice *Scroggs*, or the Debates in Parliament; so that to make this Proceeding complete, we have printed the Report here again, that Gentlemen may see the whole at one view.

promiſe if your unworthineſs provoke us to it, that we will uſe our honeſt and utmoſt Endeavours (whenever a new Parliament ſhall be called) to chuſe ſuch as may convince you of your Miſtake: The old and infallible Obſervation, That Parliaments are the Pulſe of the People, *ſhall loſe its Eſteem; or you will find, that this your Preſumption was over-fond; however, it argues but a bad Mind to ſin, becauſe it's believed it ſhall not be puniſhed.* The Judgment was, that he be fined 1000 Marks, be bound to the good Behaviour for ſeven Years, and his Name ſtruck out of the Roll of the Attorneys, without any Offence alledged in his ſaid Vocation. And the publiſhing the Libel conſiſted only in ſuperſcribing a Pacquet, with this incloſed, to the *Eaſt-Indies*. Which Fine he not being able to pay, (living only upon his Practice) he lay in Priſon for three Years, till his Majeſty graciouſly pardoned him, and recommended him to be reſtored to his Place again of Attorney, by his Warrant dated the 15th of *December*, 1679. Notwithſtanding which, he has not yet obtained the ſaid Reſtoration from the Court of *King's-Bench*.

Hil. 29 & 30. Car. II. Upon *John Harrington* of *London*, Gent. for ſpeaking theſe Words laid in *Latin* thus: *Quod noſtra Gubernatio de tribus ſtatibus conſiſtebat, & ſi Rebellio eveniret in Regno, & non accideret contra omnes tres ſtatus non eſt Rebellio.* A Fine of 1000*l.* Sureties for the good Behaviour for ſeven Years, and to recant the Words in open Court; which Fine he was in no Capacity of ever paying.

Hil. 31 & 32. Car. II. Upon *Benjamin Harris* of *London*, Stationer, on an Information for printing a Book, called *An Appeal from the Country to the City*, ſetting forth theſe Words: *We in the Country have done our Parts, in chuſing for the generality good Members to ſerve in Parliament: But if (as our two laſt Parliaments were) they muſt be diſſolved or prorogued whenever they come to redreſs the Grievances of the Subject, we may be pitied, not blamed, if the Plot takes effect; and in all Probability it will. Our Parliaments are not then to be condemned, for that their not being ſuffered to ſit, occaſioned it.* Judgment to pay 500*l.* Fine, ſtand on the Pillory an Hour, and give Sureties for the good Behaviour for three Years. And the ſaid *Benjamin Harris* informed this Committee, That the Lord Chief-Juſtice *Scroggs* preſſed the Court then to add to this Judgment, his being publickly whipt; but Mr. Juſtice *Pemberton* holding up his Hands in Admiration at their Severity therein, Mr. Juſtice *Jones* pronounced the Judgment aforeſaid; and he remains yet in Priſon, unable to pay the ſaid Fine.

Notwithſtanding which Severity in the Caſes fore-mentioned, this Committee has obſerved the ſaid Court has not wanted in any other Caſes an extraordinary Compaſſion and Mercy, tho' there appeared no publick Reaſon judicially in the Trial; as in particular:

Hil. 31 & 32. Car. II. Upon *Thomas Knox*, Principal, on an Indictment of Subornation and Conſpiracy againſt the Teſtimony and Life of Dr. *Oates*, for Sodomy; and alſo againſt the Teſtimony of *William Bedloe*; a Fine of 200 Marks, a Year's Impriſonment, and to find Sureties for the good Behaviour for three Years.

Eod. Ter. Upon *John Lane*, for the ſame Offence, a Fine of 100 Marks, to ſtand in the Pillory for an Hour, and to be impriſoned for one Year.

Par. 32 Car. II. Upon *John Tasborough*, Gent. on an Indictment for Subornation of *Stephen Dugdale*, tending to overthrow the whole Diſcovery of the Plot: The ſaid *Tasborough* being affirmed to be a Perſon of good Quality, a Fine of 100*l.*

Eod. Ter. Upon *Anne Price*, for the ſame Offence, 200*l.*

Trin. 32 Car. II. Upon *Nathaniel Thompſon* and *William Badcock*, on an Information for printing and publiſhing a weekly Libel, called *The True Domeſtic Intelligence, or, News both from City and Country*, and known to be Popiſhly affected, a Fine of 3*l.* 6*s.* 8*d.* on each of them.

Eod. Ter. Upon *Matthew Turner*, Stationer, on an Information for vending and publiſhing a Book, called *The Compendium*; wherein the Juſtice of the Nation in the late Trials of the Popiſh Conſpirators, even by ſome of theſe Judges themſelves, is highly arraigned; and all the Witneſſes for the King horribly aſperſed: And this being the common notorious Popiſh Bookſeller of the Town, Judgment to pay a Fine of 100 Marks, and is ſaid to be out of Priſon already.

Trin. 32. Car. II. Upon ——— *Loveland*, on an Indictment for a notorious Conſpiracy and Subornation againſt the Life and Honour of the Duke of *Buckingham*, for Sodomy, a Fine of 5*l.* and to ſtand an Hour in the Pillory.

Mich. 32 Car. II. Upon *Edward Chriſtian*, Eſq. for the ſame Offence, a Fine of 100 Marks, and to ſtand an Hour in the Pillory. And upon *Arthur Obrian*, for the ſame Offence, a Fine of 20 Marks, and to ſtand an Hour in the Pillory.

Upon Conſideration whereof, this Committee came to this Reſolution:

Reſolved, That it is the Opinion of this Committee, that the Court of *King's-Bench* (in the Impoſition of Fines on Offenders of late Years) hath acted arbitrarily, illegally, and partially, favouring Papiſts, and Perſons Popiſhly affected, and exceſſively oppreſſing his Majeſty's Proteſtant Subjects.

And this Committee being informed, That ſeveral of his Majeſty's Subjects had been committed for Crimes bailable by Law, although they then tendered ſufficient Sureties, which were refuſed, only to put them to Vexation and Charge, proceeded to enquire into the ſame, and found that not only the fore-mentioned *Henry Carr* had been ſo refuſed the common Right of a Subject, as is above-ſaid; but that *George Broome*, being a Conſtable laſt Year in *London*, and committing ſome of the Lord Chief-Juſtice *Scroggs*'s Servants, for great Diſorders, according to his Duty, he was in a few Days arreſted by a Tipſtaff, without any *London* Conſtable, and carried before the ſaid Chief-Juſtice, by his Warrant, to anſwer for the ſaid committing of thoſe Perſons aboveſaid; but being there, was accuſed of having ſpoken irreverently of the ſaid Chief-Juſtice, and an Affidavit read to him to that Purpoſe; and was falſely (as the ſaid *George Broome* affirms) ſworn againſt, by two Perſons that uſe to be common Bail in that Court, and of very ill Reputation. Upon which he was committed to the *King's-Bench*, though he then tendered two able Citizens and Common-Council-men of *London* to be his Bail: And he was forced to bring his *Habeas Corpus*, to his great Charge, before he came out; when the Marſhal, Mr. *Cooling*, exacted 5*l.* of him, of which he complained to the Chief-Juſtice; but had no other Anſwer, but he might aſk his Remedy at Law. But the ſaid Marſhal fearing he ſhould be queſtioned, reſtored him two Guineas of it.

And further, this Committee was informed by *Francis Smith*, Bookſeller, That about *Michaelmas* was Twelve-month he was brought before the ſaid Chief-Juſtice, by his Warrant, and charged by the Meſſenger, *Robert Stephens*, That he had ſeen ſome Parcels of a Pamphlet, called *Obſervations on Sir* George Wakeman's *Trial*, in his Shop: Upon which the Chief-Juſtice told him, he would make him an Example, uſe him like a Boor in *France*, and pile him and all the Bookſellers and Printers up in Priſon like Faggots: And ſo committed him to the *King's-Bench*, ſwearing and curſing at him in great Fury. And when he tendered three ſufficient Citizens of *London* for his Bail, alledging, Impriſonment in his Circumſtances would be his utter Ruin; the Chief-Juſtice replied, The Citizens looked like ſufficient Perſons, but he would take no Bail: And ſo he was forced to come out by a *Habeas Corpus*, and was afterwards informed againſt for the ſame Matter, to his great Charge and Vexation. And a while after *Francis* (the Son of the ſaid *Francis Smith*) was committed by the ſaid Chief-Juſtice, and Bail refuſed, for ſelling a Pamphlet, called *A New-Year's Gift* for the ſaid Chief-Juſtice, to a Coffee-houſe; and he declared to them he would take no Bail, for he would ruin them all.

And further it appeared to this Committee, that the ſaid Chief-Juſtice (about *October* was Twelve-month) committed in like manner *Jane Curtis*, ſhe having a Huſband and Children, for ſelling a Book, called *A Satyre againſt Injuſtice*; which his Lordſhip called a Libel againſt him: And her Friends tendering ſufficient Bail, and deſiring him to have Mercy upon her Poverty and Condition, he ſwore by the Name of God ſhe ſhould go to Priſon, and he would ſhew her no more Mercy, than they could expect from a Wolf that came to devour them; and ſhe might bring her *Habeas Corpus*, and come out ſo; which ſhe was forced to do; and after informed againſt and proſecuted, to her utter Ruin, four or five Terms after.

In like manner it appeared to this Committee, that about that time alſo, *Edward Berry*, Stationer, of *Gray's-Inn*, was committed by the ſaid Chief-Juſtice, being accuſed of ſelling *The Obſervations on Sir* George Wakeman's *Trial:* And though he tendered 1000*l.* bail, yet the Chief-Juſtice ſaid, He would take no Bail, he ſhould go to Priſon, and come out according to Law. And after he, with much Trouble and Charge, got out by a *Habeas Corpus*, he was forced by himſelf, or his Attorney, to attend five Terms before he could be diſcharged, though no Information was exhibited againſt him in all that time. In Conſideration whereof, and of others of the like Nature (too tedious here to relate), this Committee came to this Reſolution:

Reſolved, That it is the Opinion of this Committee, that the refuſing ſufficient Bail in theſe Caſes, wherein the Perſons committed were bailable by Law, was illegal, and a high Breach of the Liberty of the Subject.

And this Committee being informed of an extraordinary Kind of a Charge given at the laſt Aſſizes at *Kingſton*, in the County of *Surry*, by Mr. Baron *Weſton*, and proceeding to examine ſeveral Perſons then and there preſent, it was made appear to this Committee, by the Teſtimony of *John Cole*, *Richard Mayo*, and *John Pierce*, Gentlemen, and others, ſome of whom put down the ſaid Baron's Words in writing, immediately, that Part of the ſaid Charge was to this Effect: He inveighed very much againſt *Farel*, *Luther*, *Calvin*, and *Zuinglius*, condemning them as Authors of the Reformation, which was againſt their Princes Minds: And then adding to this Purpoſe; "*Zuinglius* ſet up his Fanaticiſm, and *Calvin* built on that bleſſed Foundation; and, to ſpeak Truth, all his Diſciples are ſeaſoned with ſuch a Sharpneſs of Spirit, that it much concerns Magiſtrates to keep a ſtrait Hand over them; and now they are reſtleſs, amuſing us with Fears, and nothing will ſerve them but a Parliament. For my Part, I know no Repreſentative of the Nation but the King; all Power centers in him: 'Tis true, he does intruſt it with his Miniſters, but he *is* the ſole Repreſentative; and i'faith, he has Wiſdom enough to intruſt it no more in theſe Men, who have given us ſuch late Examples of their Wiſdom and Faithfulneſs." And this Committee taking the ſaid Matter into their Conſideration, came to this Reſolution;

Reſolved, That it is the Opinion of this Committee, that the ſaid Expreſſions in the Charge given by the ſaid Baron *Weſton*, were a Scandal to the Reformation, in derogation of the Rights and Privileges of Parliaments, and tending to raiſe Diſcord between his Majeſty and his Subjects.

And this Committee being informed by ſeveral Printers and Bookſellers, of great Trouble and Vexation given them unjuſtly, by one *Robert Stephens*, called a Meſſenger of the Preſs; the ſaid *Stephens* being examined by this Committee, by what Authority he had proceeded in that Manner, produced two Warrants under the Hand and Seal of the Chief-Juſtice *Scroggs*, which were *in hæc verba:*

'*Angl. ſſ.* WHEREAS there are divers ill diſpoſed Perſons, who do daily print and publiſh many ſeditious and treaſonable Books and Pamphlets, endeavouring thereby to diſpoſe the Minds of his Majeſty's Subjects to Sedition and Rebellion: And alſo infamous Libels, reflecting upon particular Perſons, to the great Scandal of his Majeſty's Government. For ſuppreſſing whereof, his Majeſty hath lately iſſued out his Royal Proclamation: And for the more ſpeedy Suppreſſing the ſaid ſeditious Books, Libels, and Pamphlets, and to the End that the Authors and Publiſhers thereof may be brought to their Puniſhment:

'Theſe are to will and require you, and in his Majeſty's Name to charge and command you, and every of you, upon Sight hereof, to be aiding and aſſiſting to *Robert Stephens*, Meſſenger of the Preſs, in the ſeizing on all ſuch Books and Pamphlets as aforeſaid, as he ſhall be informed of, in any Bookſellers or Printers Shops or Warehouſes, or elſewhere, whatſoever; to the End they may be diſpoſed as to Law ſhall appertain. Alſo if you ſhall be informed of the Authors, Printers, or Publiſhers of ſuch Books or Pamphlets as are above-mentioned, you are

'to apprehend them, and have them before one of his Majesty's Justices 'of the Peace, to be proceeded against according to Law. Dated this '29th day of *November*, 1679.'

To *Robert Stephens*, Messenger of the Press, and to all Mayors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom these may concern.

W. SCROGGS.

Angl. ff. 'WHEREAS the King's Majesty hath lately issued out his 'Proclamation for suppressing the Printing and Publish-'ing unlicensed News-Books, and Pamphlets of News: Notwithstand-'ing which, there are divers persons who do daily print and publish such 'unlicensed Books and Pamphlets:

'These are therefore to will and require you, and in his Majesty's Name 'to charge and command you, and every of you, from time to time, and 'at all times, so often as you shall be thereunto required, to be aiding and 'assisting to *Robert Stephens*, Messenger of the Press, in the seizing of all 'such Books and Pamphlets as aforesaid, as he shall be informed of, in 'any Bookseller's Shop, or Printer's Shop or Ware-houses, or elsewhere 'whatsoever, to the end they may be disposed of as to Law shall appertain. 'Likewise, if you shall be informed of the Authors, Printers or Publishers 'of such Books or Pamphlets, you are to apprehend them, and have them 'before Me, or one of his Majesty's Justices of the Peace, to be proceeded 'against as to Law shall appertain. Dated this 28th Day of *May*, '*Anno Dom.* 1680.'

To all Mayors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom these may concern.

W. SCROGGS.

To *Robert Stephens*, Messenger of the Press.

Upon view whereof this Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, that the said Warrants are arbitrary and illegal.

And this Committee being informed of certain scandalous discourses, said to be uttered in public places by the Lord Chief Justice *Scroggs*, proceeded to examine Sir *Robert Atkins*, late one of the Justices of the *Common-Pleas*, concerning the same; by whom it appears, That at a Sessions-dinner at the *Old-Bailey*, in the Mayoralty of Sir *Robert Clayton*, who was then present; the said Chief Justice took occasion to speak very much against petitioning, condemning it as resembling 41, as factious and tending to Rebellion, or to that effect; to which the said Sir *Robert Atkins* made no reply, suspecting he waited for some advantage over him. But the Chief Justice continuing and pressing him with the said discourse, he began to justify petitioning as the right of the people; especially for the sitting of a Parliament, which the Law requires, if it be done with modesty and respect. Upon which the Chief Justice fell into a great passion; and there is some reason to believe, that soon after he made an ill representation of what the said Sir *Robert* had then spoke, unto his Majesty. And this Committee was further informed, that the said Sir *Robert Atkins* being in circuit with the said Chief Justice, at Summer Assizes was twelve-month, at *Monmouth*, (Mr. *Arnold*, Mr. *Price*, and Mr. *Bedloe* being then in company) the Chief Justice fell severely, in publick, upon Mr. *Bedloe*; taking off the credit of his evidence, and alledging he had over-shot himself in it, or to that effect, very much to the disparagement of his testimony. And the said Sir *Robert* defending Mr. *Bedloe*'s evidence and credit, he grew extreme angry and loud; saying to this effect, *That he verily believed* Langhorn *died innocently*. To which the said Sir *Robert* replied, He wondered how he could think so, who had condemned him himself, and had not moved the King for a reprieve for him. All which matters of discourse, this Committee humbly submit to the wisdom and consideration of this House, without taking upon them to give any opinion therein.

And this Committee proceeded further to inquire into some passages that happened at *Lent* Assizes last for the County of *Somerset*, at the trial of *Thomas Dare*, Gent. there, upon an Indictment for saying falsly and seditiously, *That the Subjects had but two means to redress their grievances, one by petitioning, the other by rebellion:* and found, that though by his other discourse, when he said so, that it appeared plainly he had no rebellious intent in that he said, *Then God forbid there should be a rebellion, he would be the first man to draw the sword against a Rebel*; yet he was prosecuted with great violence: And having pleaded, Not guilty, he moved Mr. Justice *Jones*, (who then sat Judge there) that he might try it at the next Assizes; for that Mr. *Searle* (who was by at the speaking of the words, and a material witness for his defence) was not then to be had, and an affidavit to that purpose was made and received; but the said Justice *Jones* told him, That was a favour of the Court only, and he had not deserved any favour, and so forced him to try it presently. But the Jury, appearing to be an extraordinary one, provided on purpose, being all of persons that had highly opposed petitioning for the sitting of this Parliament, he was advised to withdraw his plea; and the said Justice *Jones* encouraging him so to do, he confest the words, denying any evil intention, and gave the said Justice an account in writing, of the truth of the whole matter, and made a submission in Court, as he was directed by the said Justice, who promised to recommend him to his Majesty; but imposed a fine of 500*l.* on him, and to be bound to good behaviour for three years: Declaring also, That he was turned out from being a Common-Counsellor of the Corporation of *Taunton*, in the said County, on pretence of a clause in their Charter, giving such a power to a Judge of Assize. And the said *Thomas Dare* remains yet in prison for the said Fine; in which matter of the Trial aforesaid, this Committee desireth to refer itself to the judgment of this House.

The Resolutions of the House of Commons upon the said Report.

1. That it is the Opinion of this House, that the discharging of the Grand Jury of the hundred of *Offulston*, in the County of *Middlesex*, by the Court of *King's-Bench*, in *Trinity* Term last, before the last day of the Term; and before they had finished their presentments, was arbitrary and illegal, destructive to publick Justice, a manifest violation of the Oaths of the Judges of that Court, and a means to subvert the fundamental Laws of this Kingdom, and to introduce Popery.

2. That it is the Opinion of this House, that the rule made by the Court of *King's Bench*, in *Trinity* Term last, against printing of a Book, called, *The Weekly Pacquet of Advice from Rome*, is illegal and arbitrary; thereby usurping to themselves legislative power, to the great discouragement of the Protestants, and for the countenancing of Popery.

3. That it is the Opinion of this House, that the Court of *King's Bench*, in the imposition of fines on offenders of late years, have acted arbitrarily, illegally and partially, favouring Papists, and persons popishly affected, and excessively oppressing his Majesty's Protestant Subjects.

4. That it is the opinion of this House, that the refusing sufficient bail in these Cases, wherein the persons committed were bailable by law, was illegal, and a high breach of the Liberties of the Subject.

5. That it is the Opinion of this House, that the said expressions in the charge given by the said Baron *Weston*, were a scandal to the Reformation; and tending to raise discord between his Majesty and his Subjects, and to the subversion of the ancient constitution of Parliaments, and of the Government of this Kingdom.

6. That it is the opinion of this House, that the said Warrants are arbitrary and illegal.

The Resolutions of the Commons, for the Impeachment of the said Judges.

Resolved, That Sir *William Scroggs*, Knt. Chief Justice of the Court of *King's Bench*, be impeached upon the said Report, and the Resolutions of the House thereupon.

Resolved, That Sir *Thomas Jones*, one of the Justices of the said Court of *King's Bench*, be impeached upon the said Report, and Resolutions of the House thereupon.

Resolved, That Sir *Richard Weston*, one of the Barons of the Court of *Exchequer*, be impeached upon the said Report, and Resolutions of the House thereupon.

Ordered, That the Committee appointed to prepare an impeachment against Sir *Francis North*, Chief Justice of the Court of *Common-Pleas*, do prepare impeachments against the said Sir *William Scroggs*, Sir *Thomas Jones*, and Sir *Richard Weston*, upon the said Report and Resolutions.

Ordered, That the said Report, and several Resolutions of this House thereupon, be printed; and that Mr. *Speaker* take care in the printing thereof a-part from this day's other Votes.

January 5, 168$\frac{9}{1}$. *The Articles against Sir* William Scroggs, *Chief Justice of the* King's Bench, *were read as follow:*

Articles of Impeachment of High-Treason, and other great Crimes and Misdemeanours, against Sir *William Scroggs*, Chief Justice of the Court of *King's-Bench*, by the Commons in Parliament assembled, in their own Name, and in the Name of all the Commons of *England*.

1. THAT he the said Sir *William Scroggs*, then being Chief Justice of the Court of *King's Bench*, hath traitorously and wickedly endeavoured to subvert the fundamental Laws, and the established Religion and Government of this Kingdom of *England*; and instead thereof, to introduce Popery and an arbitrary and tyrannical Government, against Law, which he has declared by divers traitorous and wicked Words, Opinions, Judgments, Practices and Actions.

2. That the said Sir *William Scroggs*, in *Trinity* Term last, being then Chief Justice of the said Court, and having taken an oath duly to administer Justice, according to the Laws and Statutes of this Realm; in pursuance of his said traitorous purposes did, together with the rest of the said Justices of the same Court, several days before the end of the said Term, in an arbitrary manner discharge the Grand Jury, which then served for the Hundred of *Offulston*, in the County of *Middlesex*, before they had made their Presentments, or had found several Bills of Indictment which were then before them; whereof the said Sir *William Scroggs* was then fully informed: and that the same would be tendered to the Court upon the last day of the said Term; which day then was, and by the known course of the said Court hath always heretofore been given unto the said Jury for the delivering in of their Bills and Presentments: By which sudden and illegal discharge of the said Jury, the course of Justice was stopped maliciously and designedly, the Presentments of many Papists and other offenders were obstructed, and in particular, a Bill of Indictment against *James* Duke of *York*, for absenting himself from Church, which was then before them, was prevented from being proceeded upon.

3. That whereas one *Henry Carr* had, for some time before, published every week a certain Book, intitled, *The Weekly Pacquet of Advice from* Rome, *or, the History of Popery*; wherein the superstitions and cheats of the Church of *Rome* were from time to time exposed; he the said Sir *William Scroggs*, then Chief Justice of the Court of *King's Bench*, together with the other Judges of the said Court, before any legal conviction of the said *Carr* of any crime, did in the same *Trinity* Term, in a most illegal and arbitrary manner, make, and cause to be entered, a certain rule of that Court, against the printing of the said Book, *in hæc Verba:*

Dies Mercurii proxime post tres Septimanas Sanctæ Trinitatis, Anno 32 *Car.* II. *Regis.*

ORdinatum est quod Liber intitulat' The Weekly Pacquet of Advice from *Rome*, or, The History of Popery, *non ulterius imprimatur vel publicetur per aliquam personam quamcunque.*

Per Cur'

And did cause the said *Carr*, and divers Printers and other persons to be served with the same; which said Rule and other Proceedings were most apparently contrary to all Justice, in condemning not only what had been written without hearing the Parties, but also all that might for the future be written on that subject; a manifest countenancing of Popery and discouragement of Protestants, an open invasion upon the right of the Subject, and an encroaching and assuming to themselves a legislative power and authority.

4. That the said Sir *William Scroggs*, since he was made Chief Justice of the *King's-Bench*, hath, together with the other Judges of the said Court, most notoriously departed from all rules of justice and equality, in the imposition

impoſition of fines upon perſons convicted of Miſdemeanours in the ſaid Court; and particularly in the Term of *Eaſter* laſt paſt, did openly declare in the ſaid Court, in the caſe of one *Jeſſop*, who was convicted of publiſhing falſe News, and was then to be fined, That he would have regard to perſons and their principles in impoſing of fines, and would ſet a fine of 500 *l.* on one perſon for the ſame offence, for the which he would not fine another 100 *l.* And according to his ſaid unjuſt and arbitrary declaration, he the ſaid Sir *William Scroggs*, together with the ſaid other Juſtices, did then impoſe a fine of 100 *l.* upon the ſaid *Jeſſop*; although the ſaid *Jeſſop* had before that time proved one *Hewit* to be convicted as Author of the ſaid falſe News; and afterwards, in the ſame Term, did fine the ſaid *Hewit* upon his ſaid conviction, only five marks: Nor hath the ſaid Sir *William Scroggs*, together with the other Judges of the ſaid Court, had any regard to the nature of the offences, or the ability of the perſons, in the impoſing of fines; but have been manifeſtly partial and favourable to Papiſts, and perſons affected to, and promoting the Popiſh Intereſt, in this time of imminent danger from them: And at the ſame time have moſt ſeverely and grievouſly oppreſſed his Majeſty's Proteſtant ſubjects, as will appear upon view of the ſeveral Records of fines ſet in the ſaid Court. By which arbitrary, unjuſt, and partial proceedings, many of his Majeſty's liege-people have been ruined, and Popery countenanced under colour of juſtice; and all the miſchiefs and exceſſes of the Court of *Star-Chamber*, by Act of Parliament ſuppreſſed, have been again, in direct oppoſition of the ſaid Law, introduced.

5. That he the ſaid Sir *William Scroggs*, for the further accompliſhing of his ſaid traitorous and wicked purpoſes, and deſigning to ſubject the Perſons, as well as the Eſtates of his Majeſty's liege people, to his lawleſs will and pleaſure, hath frequently refuſed to accept of bail, though the ſame were ſufficient, and legally tendered to him by many perſons accuſed before him only of ſuch crimes for which by law bail ought to have been taken, and divers of the ſaid perſons being only accuſed of offences againſt himſelf; declaring at the ſame time, that he refuſed bail, and committed them to gaol only to put them to charges; and uſing ſuch furious threats as were to the terrour of his Majeſty's ſubjects, and ſuch ſcandalous expreſſions as were a diſhonour to the Government, and to the dignity of his office. And, particularly, that he the ſaid Sir *William Scroggs* did, in the year 1679, commit and detain in priſon, in ſuch unlawful manner, among others, *Henry Carr*, *George Broome*, *Edward Berry*, *Benjamin Harris*, *Francis Smith*, ſen. *Francis Smith*, jun. and *Jane Curtis*, citizens of *London*: Which proceedings of the ſaid Sir *William Scroggs*, are a high breach of the liberty of the ſubject, deſtructive to the fundamental laws of this Realm, contrary to the Petition of Right, and other Statutes; and do manifeſtly tend to the introducing of arbitrary power.

6. That he the ſaid Sir *William Scroggs*, in further oppreſſion of his Majeſty's liege-people, hath, ſince his being made Chief-Juſtice of the ſaid Court of *King's-Bench*, in an arbitrary manner, granted divers general warrants for attaching the perſons and ſeizing the goods of his Majeſty's ſubjects, not named or deſcribed particularly in the ſaid warrants: By means whereof, many of his Majeſty's ſubjects have been vexed, their houſes entered into, and they themſelves grievouſly oppreſſed, contrary to Law.

7. Whereas there hath been a horrid and damnable Plot contrived and carried on by the Papiſts, for the murthering the King, the ſubverſion of the Laws and Government of this Kingdom, and for the deſtruction of the Proteſtant Religion in the ſame; all which the ſaid Sir *William Scroggs* well knew, having himſelf not only tried, but given judgment againſt ſeveral of the offenders: Nevertheleſs, the ſaid Sir *William Scroggs* did, at divers times and places, as well ſitting in Court, as otherwiſe, openly defame and ſcandalize ſeveral of the witneſſes, who had proved the ſaid treaſons againſt divers of the conſpirators, and had given evidence againſt divers other perſons, who were then untried, and did endeavour to diſparage their evidence, and take off their credit; whereby, as much as in him lay, he did traitorouſly and wickedly ſuppreſs and ſtifle the diſcovery of the ſaid Popiſh Plot, and encourage the conſpirators to proceed in the ſame, to the great and apparent danger of his Majeſty's ſacred life, and of the well-eſtabliſhed Government, and Religion of this Realm of *England*.

8. Whereas the ſaid Sir *William Scroggs*, being advanced to be Chief-Juſtice of the Court of *King's-Bench*, ought by a ſober, grave and virtuous converſation, to have given a good example to the King's liege-people, and to demean himſelf anſwerable to the dignity of ſo eminent a Station; yet he the ſaid Sir *William Scroggs*, on the contrary, by his frequent and notorious Exceſſes and Debaucheries, and his prophane and atheiſtical Diſcourſes, doth daily affront Almighty God, diſhonour his Majeſty, give countenance and encouragement to all manner of vice and wickedneſs, and bring the higheſt ſcandal on the public Juſtice of the Kingdom.

All which Words, Opinions and Actions of the ſaid Sir *William Scroggs*, were by him ſpoken and done, traitorouſly, wickedly, falſly, and maliciouſly, to alienate the hearts of the King's ſubjects from his Majeſty, and to ſet a diviſion between him and them; and to ſubvert the fundamental Laws, and the eſtabliſhed Religion and Government of this Kingdom, and to introduce Popery, and an arbitrary and tyrannical Government, contrary to his own knowledge, and the known Laws of the Realm of *England*. And thereby he the ſaid Sir *William Scroggs* hath not only broken his own oath, but alſo, as far as in him lay, hath broken the King's oath to his people; whereof he the ſaid Sir *William Scroggs*, repreſenting his Majeſty in ſo high an office of Juſtice, had the cuſtody; for which the ſaid Commons do impeach him the ſaid Sir *William Scroggs*, of the High-Treaſon againſt our Sovereign Lord the King, and his Crown and Dignity, and other the high Crimes and Miſdemeanors aforeſaid.

And the ſaid Commons, by proteſtation ſaving to themſelves the liberty of exhibiting at any time hereafter, any other accuſation or impeachment againſt the ſaid Sir *William Scroggs*, and alſo of replying to the anſwer that he ſhall make thereunto, and of offering proofs of the premiſſes, or of any other impeachments or accuſations that ſhall be by them exhibited againſt him, as the caſe ſhall (according to the courſe of Parliament) require; do pray that the ſaid Sir *William Scroggs*, Chief-Juſtice of the Court of *King's-Bench*, may be put to anſwer to all and every the Premiſſes, and may be committed to ſafe cuſtody; and that ſuch proceedings, examinations, trials, and judgments may be upon him had and uſed, as is agreeable to Law and Juſtice, and the courſe of Parliaments.

Reſolved, That the ſaid Sir *William Scroggs* be impeached upon the ſaid Articles.

Upon which the following Speeches were made.

Sir *Thomas Lee*.

Mr. Speaker, Sir, in my opinion, the matter contained in the laſt ſeven Articles, doth not anſwer the firſt Article nor the Title; for therein you accuſe Sir *William Scroggs* in general words, of High-Treaſon, the higheſt of crimes; and when you come to particulars, you inſtance the diſmiſſing of Grand-Juries, prohibiting the Printing of Pamphlets, inequality in levying of fines, and the like. Sir, I would not be underſtood to be an Advocate for the Lord-Chief-Juſtice *Scroggs*; but I hope that as long as I ſit here, you will always give me leave to be an Advocate for this Houſe; which I cannot more ſignally demonſtrate, than by offering my opinion againſt every thing which I think will reflect upon the Juſtice or Prudence of the Houſe, or prove any hinderance to the finiſhing of thoſe great Affairs you have under debate.

Sir, I am of opinion, that though all theſe things contained in theſe Articles ſhould be fully proved, they will not amount to Treaſon; and although it be true that you do but impeach, and that the Lords are to judge, yet it is not agreeable to the Juſtice of this Houſe, that the Articles ſhould be for *Treaſon*, unleſs you are well ſatisfied that you can make out that the matter contained in the Articles is ſo: which I very much doubt. And therefore I am of opinion, that the Articles ought only to be for High Crimes and Miſdemeanours; which I am the more forward to preſs you earneſtly to, becauſe I am afraid if theſe Articles ſhould go for High-Treaſon, it may occaſion ſome diſpute with the Lords, who haply, if they do not conclude that the matter contained in the Articles amounts to Treaſon, will not commit him, notwithſtanding their Order made in the Earl of *Danby*'s caſe: And that may occaſion ſuch miſ-underſtandings as may hinder all other buſineſs. And alſo if you ſend it up for High-Treaſon, it may occaſion another diſpute with the Biſhops, whether they ſhall withdraw or no, when the Caſe comes to be tried. Upon the whole matter, I think it will be much ſafer that you make the Impeachment for High Crimes and Miſdemeanours only.

Mr. *Daniel Finch* (afterwards Earl of *Nottingham*).

Mr. Speaker, Sir, my obligation to ſerve my Country, calls on me to give you my opinion in this matter, and not any kindneſs to my Lord Chief-Juſtice; for I can ſafely declare, that I do not think him fit for that eminent place now, becauſe indeed I never thought he was fit: So that what I ſhall ſay, proceeds from my kindneſs to the Publick, and particular obligations to this Houſe. I think we ought to be cautious how we increaſe Laws to take away our lives; our fore-fathers were very careful in it, as may appear by the Statute of 25 *Ed.* III. which was made to prevent the Judges from taking on them any power to declare any thing Treaſon but what was expreſs'd within that Statute; reſerving all obvious crimes of that nature to the judgement of the Nation in Parliament, who no doubt may declare other things Treaſon which are not within that Statute. But it is a queſtion with me, whether it can be done any other way than by Bill, that ſo it may be an Act of King, Lords and Commons; and not for the Houſe of Lords only, the Commons only proſecutors, and the King not concerned. That the Lords alone are proper Judges in many caſes, when perſons are proſecuted upon ſome known Law, is not to be doubted: But I much queſtion if they ought to be ſo in caſes of *declarative Treaſon, though upon an Impeachment from the Houſe of Commons:* For that were to allow the Lords alone a power of making a Law in the caſes of the higheſt Nature, even of life and death. Sir, our forefathers thought not good to intruſt their lives nor liberties with any one Eſtate alone; they thought with a multitude of Counſellors there was moſt ſafety: And therefore I hope we ſhall be very cautious how we make a precedent in the caſe. And I am the more earneſt in moving you herein, becauſe I am very confident that no precedent can be offered to make good, that there was ever any thing declared Treaſon in Parliament, which was not felony by ſome expreſs, known law before. And I hope we ſhall be ſo careful of ourſelves and our poſterity, as not to go about to make a breach upon the conſtitution of the Government in this particular, but rather make the Impeachment only for High Crimes and Miſdemeanours.

Sir *Francis Winnington*.

Mr. Speaker, Sir, I cannot agree with that honourable Member that ſpoke laſt, as to his notion that the Parliament cannot declare any thing to be Treaſon, which was not before Felony by ſome known law; the Statute of 25 *Ed.* III. leaves the power at large to Parliaments without any ſuch reſtriction. And I am of opinion, that any thing that tends to the deſtruction or alteration of the Government, hath always been, and ought to be declared in Parliament, Treaſon, if brought there to be judged. The *Parliament doth not in this make new Crimes, and then condemn them*; but *only declares that to be a Crime which was ſo before, and wanted nothing but condemnation*. And it may conſiſt with the prudence of this Houſe, as well to be careful how to weaken thoſe Laws and Cuſtoms which tend ſo much to the preſervation of the Government, as how to increaſe any that may tend to the deſtruction of any one Man, by multiplying precedents for chaſtizing of Treaſon; the crimes for which *Treſilian* and the reſt at that time were impeached, were not Felony by any known Law, and yet they were condemned in Parliament. *Empſon* and *Dudley* were accuſed in general, for endeavouring to ſubvert the Government, which being in general words, was not Felony by any known Law, yet the Judges having recourſe to Parliament, they were condemned. The Articles againſt *Finch*, *Berkley*, and the reſt, were all for High-Treaſon; and the matter contained in their Articles amounted to no more than what is now contained in this. And there is ſo little weight in the caſes that have been offered againſt this, that I think they are offered rather for ornament than argument. *The Chancellor is the Keeper of the King's conſcience, and the Judges of his coronation-oath.* As they are in great places, and have a great power, ſo they ought to be the more careful how they behave themſelves: And as they have greater encouragements, ſo to be ſubject to more ſevere chaſtiſements than others,

the publick being more concerned in their actions; and therefore the custom of Parliaments hath made that treason in them, which is not so in other persons. The words of Judges and Privy-Councillors, in some cases, are *Overt-Acts* of themselves, I think it will become the wisdom of the Nation, to make all the defence and provision they can, against the corrupt doings of Men in such places: And I do not see what danger can arise to our posterities by such proceedings. Is it not with the Parliament we entrust this power? Who can imagine that a Parliament can ever be so constituted, as not to be carefully concerned in their proceedings as to life and death; and only to concern themselves therein, when some extraordinary exigencies in which the Government is much concerned, requires it? What Man would desire to live after he was thought worthy of death by such an assembly? And notwithstanding what hath been said to extenuate the crimes mentioned in these Articles, I think, the *Order that was made in the King's-Bench about Printing, by the Judges, was taking on them a legislative Power*; which hath formerly been judged treason: And I think we live now in as dangerous times as ever, *and under as great a necessity to have a care of the mischiefs that may happen to the Nation by ill Judges, as ever.* And I see no reason to doubt our being able to make good these Articles; and therefore I pray that the Articles may be ingrossed as they are.

Mr. *Powell.*

Mr. Speaker, Sir, I agree that it will become this House very well, to be very cautious how they make precedents in cases of treason, which are the *Sheet-Anchors* of life and death: as also how they weaken parliamentary proceedings, that are necessary to preserve the Government. And I hope that nothing but the true merits of the cause will lead us in a matter of so great importance, and neither wit nor oratory, nor any forced explanation of the laws. I see it agreed by all, that Parliaments have a power of declaring treason. The question is, Which is most customary and securest, to have it done by Bill, that so, King, Lords and Commons may join therein? or whether by an impeachment from the Commons, the Lords being only the Judges? or whether any thing ought or can be declared treason by Parliament, which was not felony by some known law before?

Sir, I am of opinion that it is safest and most agreeable to the policy of this Government, that the declaring of any thing treason in Parliament should be by Bill, that King, Lords and Commons may join therein, that so such a precious thing as the life of the subject should have the greatest security imaginable. However, it is not to be doubted, but it hath been practised otherways, and that many persons have been condemned in Parliament upon impeachment from the Commons, for facts which were not treason by any known Law. And the reason may be, *thereby to prevent the dangers that might arise from some Ministers of State growing so great with the King, as that they should be able to secure him from ever giving his consent to a Bill.* In such a case, by giving ill counsel and other secret courses, (happily as far as treason, yet not known by any law) they would be secure from punishment, if this way of proceeding against such a person, where the King's concurrence is not necessary, were not allowed of. And the preserving of this right is so far from being contrary to the wisdom of our Ancestors, that it is very agreeable to all their proceedings in the constitution of this Government, in order to balance it the better, and preserve it against the designs of great ill Men. And as to the other objection, whether the Parliament can declare any thing treason that was not felony before by some known law; I am quite of another opinion, and do believe that the practice hath been otherways. The Judges in in *Rich.* the IId's time were condemned for giving extrajudicial opinions, which, I think, was not felony by any Statute-Law. A Knight of *Cheshire* was condemned in Parliament, for conspiring the death of the King's uncle: an Earl of *Northumberland*, for giving liveries to so many persons as were judged a little army; and many other cases which I have read of, in which persons have been condemned in Parliament, when their crimes were not felony by any known law. But I do not take any delight in ripping-up old Statutes or Precedents about treasons. I am sorry the misfortunes of our times should make it now necessary. But if the Parliament, as I conclude, have often declared such things as these treason, and the Commons have impeached persons guilty of such crimes for High-Treason, I see no just objection why these Articles should go up as they are drawn: For notwithstanding what hath been said to mitigate the crimes contained in these Articles, I am of opinion, that the order made in the *King's-Bench*, about *Printing, their Warrants for seizing of Books, their dismissing of Grand Juries, doth tend to the subversion of the Government; and hath been, and ever ought to be, in Judges, judged High-Treason.* And therefore, that it cannot consist with the prudence of this House, nor the security of the Nation, that this person should be impeached of less than High-Treason: And therefore I move you, that the Articles may be engrossed.

Mr. *Paul Foley.*

Mr. Speaker, Sir, we are not going about to declare any thing treason, but to offer our Articles, and leave it to the Lords; therefore most of these arguments would be more proper there: for we only impeach, they are to be the Judges, whether the matter be treason or no. It is true, we ought to be cautious what we do in it, because it is not proper that this House should impeach a man for treason, without having good grounds for it. But is not the *Order about Printing a kind of an Act of State to serve instead of a Law?* Is not the use of Grand-Juries a very essential part of this Government? And *is not the dismissing of them, as this Judge did*, a way to render them useless? Are not his *Warrants to seize Books and Papers arbitrary?* and doth not all tend to the subversion of the Government? and what better grounds should we have for our proceedings? I think the Articles are well drawn, and ought to be engrossed as they are.

Sir *Richard Temple.*

Mr. Speaker, Sir, I cannot admit that Parliaments, by impeachments before the Lords, can make any thing treason, but only such matters as were treason by common law, before the Statute of *Edward* the Third. And, I think, we ought to be so cautious of our posterities, as not to press for such precedents, lest you put into the hands of the Lords a power, for which we may have cause to repent hereafter, but never get back again: For the Lords do not use to part with those Powers they once get. There are precedents by which it appears, that the Lords have attempted to make declarative treasons alone, without any impeachment from the Commons. Have a care how you give them encouragement to proceed therein; better keep to the other way of making no declarative treasons but by Bill.

The Articles were read, and Question put:

Resolved, That the said Sir *William Scroggs* be impeached upon the said Articles; and that the said Articles be ingrossed, and carried up to the Lords by my Lord *Cavendish*.

Ordered, That the Committee appointed to examine the proceedings of the Judges in *Westminster-hall*, and to prepare impeachments against Sir *Francis North*, Chief-Justice of the *Common-Pleas*; Sir *Thomas Jones*, one of the Justices of the Court of *King's-Bench*; and Sir *Richard Weston*, one of the Barons of the Court of *Exchequer*, do bring in such impeachments with all convenient speed.

After the Articles were brought into the House of Lords, the Lord Chief-Justice put in the following Answer; *viz.*

The Answer of Sir *William Scroggs*, Knt. Chief-Justice of his Majesty's Court of *King's-Bench*, to the Articles of Impeachment exhibited against him by the Commons of *England*, in the late Parliament assembled.

"THE said Sir *William Scroggs*, by, and under protestation, that there is no manner of High-Treason, nor by any Overt-Act of High-Treason particularly alledged or expressed in the said Articles of Impeachment, to which the said Sir *William Scroggs* can, or is bound by Law to make any answer unto; and saving to himself, (and which he prayeth may be saved to him), both now and at all times hereafter, all, and all manner of benefit and advantage of exception to the insufficiency of the said Articles, in point of law; as well for that there is no overt-act of treason expressed therein, as for all other the defects therein appearing; for the Plea thereto he saith, That he is in no wise guilty of all or any the crimes, offences, or misdemeanours, of what nature, kind, or quality soever, by the said Articles of Impeachment charged upon him, in manner and form, as in and by the said Articles is supposed; which he is ready to aver and prove, as this honourable House shall award; and humbly submitteth himself, and the justice of his cause, to this most honourable House: and prayeth to be discharged of the premisses, and to be hence dismissed and acquitted of all the matters, crimes, misdemeanours, and offences, in and by the said Articles of Impeachment charged upon him, *&c.*

"W. Scroggs."

After this, a Petition of Sir *William Scroggs* was read.

To the Right Honourable the Lords Spiritual and Temporal, in this present Parliament assembled; The humble Petition of Sir William Scroggs, *Knt. Chief-Justice of his Majesty's Court of* King's-Bench; *sheweth,*

"THAT your Petitioner, the last Parliament, was impeached before your Lordships, by the House of Commons, of several Articles stiled High-Treason, and other great Crimes and Misdemeanours.

"To which your Petitioner hath now, with the first opportunity, put in his answer to this honourable House.

"Your Petitioner humbly prays, that your Lordships would be pleased to appoint the House of Commons to reply, that so a convenient day may be appointed for the hearing of the Cause; that your Petitioner may no longer lie under the reproach of the word High-Treason.

"*And your Petitioner, as in duty bound, shall ever pray, &c.*

"W. Scroggs."

Ordered, That the copy of this Answer and Petition shall be sent to the House of Commons.

But the Parliament being soon after prorogued, this affair was dropped. However, the Lord Chief-Justice was removed from his high Station, and allowed a pension for life.

XXXV. The Report from the Committee of the Commons in Parliament, appointed by the Honourable Houſe of Commons, to conſider the Petition of *Richard Thompſon* of *Briſtol*, Clerk; and to examine Complaints againſt him. And the Reſolution of the Commons in Parliament upon this Report, for his Impeachment of High Crimes and Miſdemeanours; *Friday*, *December* 24, 1680. 32 *Car.* II.

The Report from the Committee of the Commons in Parliament, appointed to conſider the Petition of *Richard Thompſon*, and to examine Complaints againſt him.

At the Committee appointed to take into conſideration the Petition of Richard Thompſon, *Clerk*; *and to examine the Complaints againſt him.*

IN the firſt place, the Committee read unto the ſaid *Thompſon*, the heads of the Complaints againſt him; which (for the moſt part) he denying, deſired to have his accuſers brought face to face: Whereupon the Committee proceeded to the examination of witneſſes, to prove the ſaid complaint.

The *firſt* Witneſs examined, ſaith, That there being a great noiſe and rumour, that Mr. *Thompſon* had prepared a Sermon to be preached on the thirtieth of *January*, 1679, the ſaid witneſs went to the ſaid Sermon, and did hear Mr. *Thompſon* publickly declare, that the Preſbyterians were ſuch perſons, as the very Devil bluſh'd at them; and that the villain *Hampden* grudged, and made it more ſcruple of conſcience, to give twenty ſhillings to the King, for ſupplying his neceſſities by Ship-money and Loan, which was his right by Law, than to raiſe Rebellion againſt him. And that the Preſbyterians are worſe (and far more intolerable) than either Prieſts or Jeſuits.

The ſecond ſaith, That hearing a great talk and noiſe ſpread of a Sermon to be preached by Mr. *Thompſon*, on the 30th of *January*, 1679; he was minded to hear the ſame, and accordingly did; at which he writ ſome notes: amongſt which, he ſaith, that Mr. *Thompſon* openly preached, that the Devil bluſh'd at the Preſbyterians; and that the villain *Hampden* grudged more to give the King twenty ſhillings, which was his juſt due by Law (Ship-money and Loan), than to raiſe Rebellion againſt him; and that a Preſbyterian Brother, *qua talis*, was as great a Traitor by the Statute, as any Prieſt or Jeſuit whatſoever.

That he heard, that Mr. *Thompſon* ſaid, that he hoped the Preſbyterians would be pulled out of their houſes, and the Gaols filled with them: and wiſh'd their houſes burnt.

The third ſaith, That he was cited to the Biſhop's Court, to receive the Sacrament laſt *Eaſter*; but being out of town at that time, did receive it at a place called *Purl* in *Wiltſhire*; and that a month after he came home, was again cited to the ſaid Court; and he did accordingly appear, and told the Court, that he hoped his abſence and buſineſs might be accepted for a lawful excuſe; upon which Mr. *Thompſon* immediately ſaid, that they would proceed to excommunicate him. Upon which, this Informant produced his certificate, of which the Chancellor approved, and ſaid it was lawful. Hereupon Mr. *Thompſon* ſaid, that his receiving the Sacrament from any other Miniſter, than the Miniſter of the Pariſh wherein he dwelled, was damnation to his Soul; and that he would maintain this Doctrine.

The fourth ſaith, That being at *Briſtol*-Fair, he heard a great talk and noiſe of a Satyr-Sermon prepared, and deſigned to be preached by Mr. *Thompſon* againſt the Preſbyterians, on the 30th of *January*, 1679; and that very many reſorted to hear him: in which Sermon, the ſaid Mr. *Thompſon* declared and ſaid, that there was a great talk of a plot: but (ſays he) a Preſbyterian is the man; and further added, that the villain *Hampden* ſcrupled to give the King 20*s.* upon Ship-money and Loan, which was due by Law, but did not ſcruple to raiſe Rebellion againſt him.

The fifth ſaith, That Mr. *Thompſon*, in a Sermon preached the 30th of *January*, 1679, did ſay, that the Preſbyterians did ſeem to out-vie *Mariana*, and that *Calvin* was the firſt that preached the *King-killing Doctrine*; and that after he had quoted *Calvin* often, ſaid, if this be true then, a Preſbyterian Brother, *qua talis*, is as great a Traitor as any Prieſt or Jeſuit: and that then he condemned all the Proceedings of Parliament.

The ſixth ſaith, That he the ſaid Mr. *Thompſon*, had utter'd many ſcandalous words concerning the Act for *burying in Woollen*; affirming, that the makers of that Law were a company of *old Fools and Fanaticks*, *and that he would bring a School-boy ſhould make a better Act than that*, *and conſtrue it when he had done*.

The ſeventh ſaith, That Mr. *Thompſon* in a Sermon by him preached (while Petitions for the ſitting of this Parliament were on foot) ſpeaking of a ſecond Rebellion by the *Scotch*, who had framed a formidable Army, and came as far as *Durham*, to deliver a Petition forſooth; and that they ſeemed rather to command than petition their Sovereign to grant; and comparing that Petition with the then Petition on foot, greatly inveighed againſt it, and ſcoffed much at it.

The eighth ſaith, That Mr. *Thompſon* (when the Petition was on foot for the ſitting of this Parliament) uſed at the Funeral Sermon of one Mr. *Wharton* theſe words (pointing at the dead, ſaid), that he was no Schiſmatical petitioning Rebel, and that by his inſtigations, the Grand-Jury of *Briſtol* made a preſentment of their deteſtation againſt petitioning for the ſitting of the Parliament; that the ſaid Mr. *Thompſon* had told him, that he was Governor to Mr. *Narbor*, when he was beyond Sea; and ſaid, that he had been very often (and above one hundred times) at Maſs, in the great Church at *Paris*, and uſually gave Half a Crown to get a place to hear a certain Doctor of that Church, and that he was like to be brought over to that Religion; and that when he went beyond Sea, did not know but that he might be of that Religion before his return. That he is very cenſorious, and frequently caſts evil aſperſions againſt ſeveral Divines at *Briſtol* of great note, *viz.* Mr. *Chetwind*, Mr. *Standfaſt*, Mr. *Croſman*, Mr. *Palmer*, and others, ſaying, that ſuch as went to their Lectures were the brats of the Devil.

The ninth ſaith, That Mr. *Thompſon* in his preaching inveighed bitterly againſt ſubſcribing Petitions for ſitting of this Parliament, ſaying, that it was the ſeed of Rebellion, and like to Forty-one; and that the Devil ſet them on work, and the Devil would pay them their wages; ſaying, that before he would ſet his hand to ſuch Petitions, he would cut it off, yea and cut them off.

The tenth ſaith, That about two years ſince, being in the Chancel of St. *Thomas*'s Church in *Briſtol*, where Queen *Elizabeth*'s Effigies is, Mr. *Thompſon* pointing his finger to it, ſaid, that ſhe was the worſt of women, and a moſt leud and infamous woman; upon which this Informant replied, he never heard any ſpeak ill of her: thereupon Mr. *Thompſon* ſaid, ſhe was no better than a Church-robber, and that *Hen.* VIII. begun it, and that ſhe finiſh'd it.

The eleventh, *Rowe*, ſaith, That in the year, 1678, he waited on the Mayor to Church, and that Mr. *Thompſon*, who was there, railed at *Hen.* VIII. ſaying, he did more hurt in robbing the Abbey-lands, than he did good by the Reformation. That after dinner, Mr. *Thompſon* comes to this Informant, and claps his hands on his ſhoulders, ſaying, Hah, boy, had Queen *Elizabeth* been living, you needed not to have been Sword-bearer of *Briſtol*. The ſaid *Rowe* aſked him Why? He replied, ſhe loved ſuch a luſty Rogue (ſo well) as he was; and he would have been very fit for her drudgery at *Whitehall*.

The twelfth ſaith, That he heard a great noiſe of a Sermon to be preached by Mr. *Thompſon* on the 30th of *January*, 1679, to the ſecond part of the ſame Tune; and that he was preſent at the ſame Sermon, in which Mr. *Thompſon* ſaid, there was a great noiſe of a Popiſh Plot, but, ſays he, here is nothing in it but a Preſbyterian Plot; for here they are going about to petition for the ſitting of the Parliament, but the end of it will be to bring the King's head to the block, as they have done his father.

The thirteenth ſaith, That in *January* laſt, or thereabouts, there was a Petition going about for the ſitting of this Parliament, when Mr. *Thompſon*, in *Redcliff* Church, in his Sermon ſaid, it was a ſeditious and rebellious Petition, and rather than he would ſign it, his hand ſhould be cut off.

The fourteenth ſaith, The 8th day of *April*, he going to pay Mr. *Thompſon* his dues, ſpeaking concerning the Meeters in private; Mr. *Thompſon* ſaid, he would haul them out, and fill the Gaols with them, and hoped to ſee their houſes a-fire about their ears in a ſhort time; and this he, the ſaid *Thompſon*, doubled again and again.

The fifteenth ſaith, That about *December*, 1679, Mr. *Thompſon* came to viſit his mother, being ſick; and diſcourſing of Religion, *Thompſon* ſaid, if he were as well ſatisfied of other things, as he was of juſtification, auricular confeſſion, penance, extreme unction, and criſm in baptiſm, he would not have been ſo long ſeparated from the Catholick Church. And further affirmed, that the Church of *Rome* was the true Catholick Church. He further endeavoured to prove extreme unction, and auricular confeſſion, as well as he could, out of the Epiſtles. Further, he hath heard him ſay, the King was a perſon of a mean and ſoft temper, and could be led eaſily to any thing, but yet a *Solomon* in vices; but that the Duke of *York* was a Prince of a brave Spirit, would be faithful to his Friends, and that it was our own faults that he was a *Roman* Catholick, in that we forc'd him to fly into *France*, where he embraced that Religion. About the ſame time, he the ſaid *Thompſon* ſaid the Church would be militant; but greatly commended the decency of ſolemnizing the Maſs in *France*; and that it was performed with much more reverence and devotion than any other Religion doth uſe. He further heard him ſay, in a Sermon, about the time of petitioning, he would rather cut off his hand than ſign it, and had many bad expreſſions of it; that it was the ſeed of Rebellion, and like Forty and Forty-one. And further, the ſaid Mr. *Thompſon*, at one *Sandford*'s ſhop-door in *Briſtol*, ſpeaking of *Bedloe*, ſaid, that he was not to be believed, becauſe *Bedloe* had ſaid he, meaning Mr. *Thompſon*, was at *St. Omer*'s, where Mr. *Thompſon* ſaid he was not; and that *Bodloe* was of a bad life, and in many Plots, and not to be credited in any thing he ſaid. And that in another diſcourſe he commended the *Romiſh* Clergy for their ſingle life, and is himſelf ſo; and did at the ſame time vilify and rail at the *Engliſh* Clergy for marrying; ſaying, it was better for a Clegyman to be gelt than to marry; and that the *Calviniſts* in *France* were lecherous fellows, and could ſcarce be two years a Prieſt without a wife. About the time, and after the Election of Sir *John Knight* to this Parliament, Mr. *Thompſon* ſaid, he was not fit to be believed, and as bad as any Fanatick. He further ſaid in the Pulpit at St. *Thomas*'s, that after excommunication by the Biſhop, without abſolution from the Spiritual Court, ſuch a one was ſurely damned; and he would pawn his Soul for the truth of it.

Evidence ended; Mr. *Thompſon*, after the Evidence given by every particular Perſon, Face to Face, was aſked to every one, if he had any queſtions to aſk before they called another? Who anſwer'd, he ſhould not ſay any thing at preſent. When the Witneſſes before-mentioned were all examined, Mr. *Thompſon* being deſired to make his defence, and declare whether he were guilty of the matters laid to his charge, did for the greateſt part confeſs words ſpoken to that effect; and in other things endeavoured to turn the words with more favour towards him-

himself; but the witnesses being of great credit, and many more being ready to have made good the same things, the Committee looked upon the business to be of a high nature, and therefore ordered the matter to be reported specially; leaving it to the wisdom of the House.

The Resolution of the House of Commons, upon the said Report.

Resolved, Nemine contradicente,

THAT *Richard Thompson*, Clerk, hath publickly defamed his sacred Majesty, preached Sedition, vilified the Reformation, promoted Popery, by asserting Popish Principles, decrying the Popish Plot, and turning the same upon the Protestants; and endeavoured to subvert the Liberty and Property of the Subject, and the Rights and Privileges of Parliaments; and that he is a scandal and reproach to his function.

And that the said Richard Thompson, *be impeached upon the said Report and Resolution of the House. And a Committee is appointed to prepare the said Impeachment, and to receive further instructions against him; and to send for Persons, Papers, and Records.*

Mercurii, 5 die Januarii, 1680.

A Petition of *Richard Thompson*, Clerk, in custody of the Serjeant at Arms attending this House, was read.

Ordered, That the said Serjeant at Arms be impowered to receive sufficient security, for the forth-coming of the said *Richard Thompson*, to answer to the Impeachment against him.

Jan. 10. 1680. The House was prorogued, which put an end to the intended Impeachment.

XXXVI. The Great Case of Monopolies, between the *East-India* Company, Plaintiffs, and Tho. Sandys, Defendant: Whether their Patent for Trading to the *East-Indies*, exclusive of all others, is good? 35 *Car.* II. 1683.

THE *East-India* Company having a Patent granted them of the sole Trade to the *East-Indies* exclusive of all others, commenced a suit against Mr. *Sandys* for trading thither without licence; in which case, the following Arguments were made, *viz.*

Mr. *Holt* * (afterwards Lord Chief Justice) his Argument.

The Governor and Company of Merchants of *London*, trading to the *East-Indies*, against *Thomas Sandys*, *de Term. Mich.* 35 *Caroli* 2*di*, *Rs. Rot.* 126.

THE Defendant comes and prays *Oyer* of the Letters Patent, which are set forth, as we have declared and pleaded.

To this Plea the Plaintiffs have demurred. My Lord, I do conceive the general question in this case. will be this, Whether or no an action lies by the Company upon this Charter; for that the Defendant not being a member of the Company, has traded into the *East-Indies* without licence of the Company? My Lord, I think there may be two questions made in this case, first, Whether or no this Grant of the King to the Company, to have the sole trade to the *Indies*, exclusive of all others his Subjects, whether that be a good Grant? *Secondly*, Supposing it to be a good Grant, yet whether or no it does rest such an interest, liberty or franchise in the Company, that an action may be brought and maintained by them against any person trading to the *East-Indies*; who is not qualified by this Charter? My Lord, for the first, I do humbly conceive that this Charter granted to the Company to have the sole trade to the *Indies* exclusive of all others is a good Grant; and, My Lord, I shall endeavour to make it appear to be a good Grant, from these considerations: *First*, My Lord, from the consideration of the persons that are to be traded withal, and they are infidels, and not Christians. *Secondly*, My Lord, from the consideration of Foreign Trade itself, how and in what nature by Law, it may be restrained by the King's Royal Power. And in the *third* place, consider the circumstances and particulars of this Grant made to the Company in this case.

My Lord, for the first, that does relate to the persons to be traded with, they being Infidels and not Christians; I do conceive that by the law of the land, no subject of *England* can trade with Infidels, without licence from the King; or at least it is in the power of the King to prohibit it, and for this very reason, because Infidels are by the Law taken notice of, and the Law hath adjudged them to be perpetual enemies; the Law hath set a mark upon them, and they are used as all other enemies are. And so, 7 *Rep.* 17. 6. the express words of my Lord *Coke* are in *Calvin*'s case; says he, Infidels are perpetual enemies. *Reg.* 282. That sets forth the Writ of Protection, that was given to the Prior and Brothers of the Hospital of St. *John* at *Jerusalem*, that it was used for the defence of the Church, *contra Christi & omnium Christianorum inimicos*, 12 *H.* VIII. 4. If a man do beat a man outlawed, a Traitor, or a Pagan, and they bring an action, he may plead his being a Pagan; and in abatement of his action: I mention this, my Lord, to shew what opinion the Law has of these people, judging of them to be enemies as they are Infidels; and for that reason has excluded them from the benefit of the Law, and the common Justice the Nation affords: and from that it may be inferred, that since the Law hath excluded them from common Justice, surely the Law will not allow an intercourse or intimate correspondence with such persons to the subjects of *England*. And, my Lord, this is grounded upon the care that the Government hath, or ought to have, by the constitution of the Government itself, of the Christian Religion, which I conceive is the main end of Government. The profession and preservation of Christianity is of so high a nature, that of itself it supersedes all Law: if any Law be made against any point of the Christian Religion, that Law is *ipso facto* void. Why? Because it is made against the prime and original end of Government. If the King conquer a Christian Country, their Law continues till it be altered by the King; but if he conquers a Pagan country, the Law ceases *ipso facto* to be Law; for the Law of Infidels is contrary and repugnant to the Christian Religion. Why then, if the Christian Religion have the prevalence in Christian countries, there must be some means provided by the Law, whereby the King may have a power to preserve it: and there is nothing more dangerous to the right Religion, than for the Professors of that Religion to have commerce with Pagans; we read how the Children of *Israel* were perverted from the true Religion, by converse with the Nations round about them, in the book of *Judges*.

And *Grotius de bello & pace*, *Lib.* 2. *Chap.* 15. *Parag.* 11. says, *Cavendum est enim ne nimia commixturatio contagium adferat infirmis, quamobrem utile erit, Sedes distingui sicut Israelitæ seorsim ab Ægyptiis habitarunt.*

The Government is to take care that there is not an infection, by correspondence with Infidels; my Lord, 'tis not to be doubted but that the King is to have a care of the Christian Religion. In old times of Popery. *Bracton*, *Lib.* 2. *Ch.* 24. the King of *England*, says he, is *Dei Minister & Vicarius: & 5. ch. Bracton*, *Jus publicum est quod ad Statum.*

This is looked upon to be part of the *Jus publicum*, the care of Religion and sacred things, and the propagation thereof; why then, my Lord, if this be true, then 'tis lawful for the King to take care and use his Royal Authority, to prevent all his subjects from being perverted. My Lord, I think 'tis plain by the Writ of *Ne Exeat Regnum*, that says the King may prohibit any person from going beyond Sea. Why? For the defence of the Realm; that is a sufficient reason, it is not in the power of the party to litigate it with the King, but he must submit. Now always Religion is first to be regarded; *secondly*, The defence of the Kingdom; and *thirdly*, The Trade thereof. Now, my Lord, the subjects of a Christian Prince going to trade with Infidels, being in their company, that may be dangerous to the State and Religion; so that it must necessarily be in the power of the King to controul it. *Hob.* 217. *Courteen*'s case, it was adjudged that an Information did lie at the Common Law, before any Statute, against any persons that should transport Coin, because 'tis against the Policy and State of Government that money should be transported; now if it be against the Policy of State to trade with Infidels, by the same reason that ought to be restrained. In the next place, I will consider foreign trade, and whether the subjects of *England* have right to such a foreign trade, that they can *ad libitum* trade without any controul; and I conceive they have not.

First, My Lord, I conceive that the liberty and right of a foreign trade, depends upon agreement and contract with foreign Princes, in whose country the trade is; and if so be it do depend upon agreement and amity with the Prince; then have not the subjects of *England* such an uncontroulable right of trading, because it depends upon the accidents of Peace and War; which, if there were such a right, it could not. 30. *ch. Magna Charta*, *omnes Mercatores*, *nisi publice antea prohibiti fuerunt*, *habeant salvum & securum conductum exire de Anglia & venire in Angliam*, *& morari & ire per Angliam præterquam in tempore guerræ.* Then he goes on further, if there happen to be War with a foreign Prince, and the Kingdom of *England*, and the Merchants of that Country be found in *England*; this shews that War is an interruption of the Commerce. 12 *H.* VII. *ch.* 6. my Lord, that Statute recites, that the Merchants-Adventurers inhabiting within the city of *London*, and divers parts of *England*, had free passage, *&c.* into divers parts of *Spain* and other places, that were in league and amity with our Kingdom and Sovereign; so that it appears that league and amity is the foundation of Commerce.

Selden, in his *Mare clausum*, says, the rights of trades are founded on the covenants of Princes; What is the reason? Lest the manners and morals of the people should be corrupted by the example of foreign Nations. My Lord, 2 *Rolls Abr.* 214. mentions the Parliament-roll of 1 *H.* V. wherein it is said, that the Commons did petition the King that the Merchants of *England*, paying their customs and other duties, might have liberty to export their goods to any place or country, notwithstanding any proclamation to the contrary: and the King says he will be advised, he would advise with his Council. My Lord, from that time to this it appears that there was no complaint of the King's proclamation as illegal, that did prohibit their trade; but they only pray that he would make an alteration of the Law. But there were several proclamations at that time to restrain the subject from trading with foreigners (therefore they desire he would consent they might trade); but the King in that

* The Six following Arguments in this *Great Case*, were copied from the MSS. of *Samuel Pepys*, Esq. (Secretary to the Admiralty) in *Magdalen* College, *Cambridge*. These Arguments are of great concern to the Publick in general, and to every individual Man in this Kingdom, either immediately or by consequences, since Trade is the Life of a Nation; and must be of great service to the Professors of the Law, to shew on what grounds and reasons the Case was adjudged. And the Proceedings on the *Quo Warranto*, in *State Trials*, Vol. IV. P. 769. having been found useful to the gentlemen of the Law, is the reason why these Arguments, (tho' not so properly a Trial) spoke by some of the greatest Men that ever appeared at the Bar, are here inserted.

The Arguments of *Holt*, *Treby*, *Finch*, *Pollexfen*, and *Sawyer*, are very briefly abridged in *Skinner*'s *Reports*. But the Arguments of Mr. *Williams*, and the Lord Chief Justice *Jefferies*, are not mentioned there.

caſe did think fit to part with his power, but gives the uſual anſwer in ſuch caſes. My Lord, in the next place it is neceſſary for the King to have power to reſtrain a foreign trade; becauſe a foreign trade, as the caſe may be, may be very inconvenient and miſchievous: for 'tis well known, that if ſo be the importation of foreign Commodities do exceed the exportation of domeſtic, that trade is rather a grievance than a benefit; ſo 'tis ſaid, 2 *Inſt.* 325. and, my Lord, there has been ſufficient appearance of this matter of late days.

My Lord, the importation of *Iriſh* cattle, by the 18th of this King, *chap* 2. was declared to be a nuiſance. So the 29th of King *Charles* I. the importation of *French* Commodities: why this, my Lord, is declared, the Statute does not enact it, but declares it to be in itſelf a common nuiſance: why now, if ſo be a trade come to be a nuiſance, that it is rather hurtful than advantageous; the King, by virtue of his prerogative, is to defend the Nation, and protect his Subjects from theſe evils; he has a power to reſtrain theſe evils, eſpecially when we have the judgment of the Parliament, by whom theſe things have been declared to be nuiſances, 10 *Rep.* 141. In the caſe of the Iſle of *Ely*, the firſt Statute that was made concerning Sewers, was in *H.* VI's time; there was a queſtion, that ſince there was a thing ſo neceſſary as the taking care of the Inundation with remedy there before any Statute, ſays the book, the King by his prerogative, as the Fountain of Juſtice, might take care of it, though there was no Statute then. My Lord, when foreign commodities come to be an annoyance to the people, the Law muſt be defective, if the King had not a power to reſtrain them. But in this caſe here 'tis only a regulation of Trade, a grant of it to the Company; and 'tis only ſpecified how they ſhall manage that Trade, to the intent all people might trade under the Government as they ought to do: and I think, my Lord, it is well known, that if this Company had not ſettled and eſtabliſhed a Trade in the *Indies*, Mr. *Sandys*, nor none of theſe Gentlemen could have had an opportunity to do it. And if they have liberty to interfere with the Company, they would ruin the Company, and they themſelves could not trade; but I know what objections will be made againſt me, even by the Defendants Plea. My Lord, that 18 *E.* III. *ch.* 3. to-wit, that the Sea ſhall be open to all Merchants to part with their Merchandize where they pleaſe; which, with ſubmiſſion to your Lordſhips, cannot be taken ſo univerſally as they themſelves would have it. For if you will take the words to be ſo large, without any manner of reſtraint, you will make this Statute to give liberty of trade to the King's enemies, for they are Merchants. But, my Lord, the next anſwer I give to it is this; I conceive the true meaning of the Statute is, that the Sea ſhould be open without paying any extraordinary duties but what might juſtly be impoſed: that is, that none ſhould pay any duty or cuſtom for Navigation, but only the due cuſtom, that is, when they come into Port. And ſo I muſt compare that Statute with *Magna Charta*, 30 *ch. omnes Mercatores niſi publicè antea prohibiti fuerint, habeant ſalvum & ſecurum conductum exire de Anglia & venire in Angliam*, &c. *ſine malis toltetis*; ſo that they have liberty allowed in this caſe to trade without unlawful exactions. But, my Lord, in the third place, ſuppoſing this Statute to be taken as general, as I know the other ſide endeavours it ſhould, yet it cannot extend to this caſe; for I think they can hardly make it out, that at that time there was any trade drove with Infidels, but the trade was drove with Chriſtians: why now, if there was not ſuch a trade had at the making of that Statute, we muſt not extend the Law to this caſe, which differs from the reaſon of trade in other caſes. That there was none, I think appears plainly by Hiſtory; *Hollingſhed*'s Hiſtory of *England*, 163, whereas, ſays he, in times paſt, the chief trade was in *Holland*, *Portugal*, &c. now, ſays he, men not being content with thoſe journeys, they have ſought out the *Eaſt* and *Weſt-Indies*, and have made now and then ſuſpicious Voyages. And it appears by the Statute of *H.* VII. that I mentioned before, that the ancient trade of *England* conſiſted with near Countries, and ſo the trade was at the time of the making of this Statute.

My Lord, I do obſerve as to the Caſe I reported before, when the Commons did petition the King, that they might have liberty to trade notwithſtanding any proclamation, *Rolls Abr.* 214. they were not of an opinion at that time, that this Statute did extend to Merchants, to give them liberty to trade every where at their will and pleaſure; if they had, they would have inſiſted upon it, and urged it to the King, that whereas there was a Statute gave them free liberty, therefore deſire the law might be obſerved: but they do not deny, no, they tacitly acknowledge the King had ſuch a power.

My Lord, it does appear what the ancient trade of *England* was by the Cuſtoms; for at the Common Law there was no Cuſtom but in three things, Wool, Woolfell and Leather; theſe are the Cuſtoms that were due to the King by Common Law: indeed, there was foreign Cuſtom, but that was for a foreign commodity, and was prize; *Dyer* 165. 2 *Inſt.* 52, & 43. *Davies*, *Rep.* 8.

Now, my Lord, if ſo be the trade of the Nation had conſiſted of other commodities, it may be ſuppoſed, there would have been cuſtom paid for them afterwards; in *Ed* III's time, when new Trades were introduced, we find Acts of Parliament made for raiſing new Cuſtom; therefore ſince no Cuſtom was paid, but theſe ancient Cuſtoms, we may ſuppoſe the trade of the Nation moſtly conſiſted of thoſe commodities. *Fitzherbert*, *nat. Br.* 85. *Dyer* 165. Merchants as well as others may be prohibited from going out of the land, or any perſon whatſoever; and *Davies*, *Rep. fol.* 9. *b.* gives one reaſon why the King did permit the Merchants to trade, when it was in his power by Writ of *Ne exeat Regnum*, or a proclamation, to put a ſtop to them.

My Lord, in many caſes, when the doing of an Act may be to the public detriment, the King hath power to reſtrain it, and it cannot be done without the King's licence: *Co. Litt. fol.* 5. a Subject can't build a Caſtle, or other Fortreſs defenſible, without licence of the King; why? becauſe it may be dangerous. Why then ſhould a Subject trade with an Infidel Country, without licence from the King? for by trading with Infidels they indanger their Religion. And therefore, as it requires licence to build a Caſtle, tho' a man otherwiſe might lawfully do it upon his own ground; ſo for the ſame reaſon does it to trade with Infidels, 9 *Rep.* 87. *b.* 2 *Inſt.* 199. A man cannot incloſe his ground to make a Park without licence of the King; in that caſe he takes nothing from any body, but ſuch incloſing and turning profitable ground into a place of pleaſure, may be of public conſequence, and therefore cannot be done without the King's licence, 11 *H.* VII. 23. If two men play at ſword and buckler, and one kill the other, that is felony; but if they play with licence of the King, that is not felony; ſo that the King hath power to prohibit, and by his command make that unlawful, that otherwiſe would be lawful. For the King may command a man, by his Writ, to ſtay in the Kingdom, and if he go contrary to the King's Writ or Proclamation, in that caſe the King may ſeize all his Lands for the contempt, as in the caſe of Sir *Francis Inglefield*: ſo that as the King may govern the trade of the Nation in regard it may be miſchievous, the King may hinder it, when it will be apparently miſchievous.

In the third place, I ſhall conſider the Grant; and the Grant hath theſe things in it: 'Tis a Grant to a Company, that they and their children ſhall trade to the *Indies*, notwithſtanding any ſtatute or diverſity of Faith or Religion; and that they ſhould have the ſole commerce and trade there. There is a prohibition to any of the King's ſubjects to trade there without licence. Now, my Lord, this Grant I take to be good; for, my Lord, tho' it may not in itſelf be lawful without the King's licence, yet it is in the power of the King to make it ſo. And for this reaſon can the King make an alien a denizen.

The reaſon of the Law, why an Alien is uncapable to purchaſe lands here, is becauſe 'tis againſt the policy of the Land for to ſuffer a Foreigner to come into *England*, and enrich himſelf with the lands and goods of the Kingdom, yet the King may cure this incapacity; but notwithſtanding he be made a Denizen, yet does he remain an Alien ſtill, and ſubject to that Prince from whence he came; *Dyer*, 3 *ch. B.* So that notwithſtanding it may be dangerous for an Alien to have land, yet the King is entruſted with it, and he may give this Alien liberty to purchaſe land.

My Lord, it is, as I have obſerved, unlawful to tranſport the Coin of *England*; yet the King may give leave to tranſport Coin, as there is a precedent 5 *Car.* I. of a licence to tranſport 10,000 *l.* So, my Lord, for the trading with Infidels, tho' in itſelf it's againſt the policy of the Government; that is, for the ſubject to have an uncontroulable liberty to trade at their pleaſure; yet the King, who is entruſted with the adminiſtration of the Government, may give authority to do it. And there is a great deal of difference between trading in a Company, and trading out of a Company: if they trade in a Company, they trade under the Government of *England*; if they trade out of a Company, then they trade out of the Government of *England*, and out of its protection. This Company is incorporated and made to have the Government of this trade; they being Chriſtians, no queſtion, are to take care of the Chriſtian Religion; and to take care that their Agents and Factors that trade under this conſtitution, keep up to that Religion they profeſs; but certainly it is quite another thing when people trade of their own head; there they converſe only with Infidels, they cannot have Divine Offices.

My Lord, it has been objected; Oh, but ſay they, if the King give a licence to ſome, tho' they cannot do it without the King's licence, yet the King having diſpenſed with this Law, this diſpenſation ſhall have an univerſal influence, and give licence to others.

My Lord, it ſeems to me a very ſtrange inference; they acknowledge, that make this objection, that without the King's licence, beyond what it is, where the King hath qualified his Grant ſolely to the Company and their Factors, they would have it extend to all the people of *England*. I think 'tis the firſt time that ever the King's licence, or authority that he gives, ſhould be extended beyond itſelf. But, my Lord, the great objection will be, that this is a Monopoly, and therefore the Grant is void in Law; with ſubmiſſion, I think it is none; and I hope I have ſaid ſomething already to prove it to be none, and it does not come within the definition of a Monopoly, 3 *Inſtit.* 181. A Monopoly is an inſtitution or allowance of the King, by his Grant, Commiſſion or otherwiſe, to any perſon or perſons, bodies politick or corporate, of or for the ſole buying, ſelling, making, working or uſing of any thing; whereby any perſon or perſons, bodies politic or corporate, are ſought to be reſtrained of any freedom or liberty that they had before, or hindered in their lawful trade: reſtrained of the freedom they had before, that I think they cannot make out, that they ever had any ſuch freedom. They cannot make out that they were in poſſeſſion of this trade before, therefore this Charter does not reſtrain them of any freedom they had; then ſay they, it hinders others lawful trade.

My Lord, I have made it appear, that the trading with Infidels without licence of the King is not a lawful trade. But to go further, tho' the proof lies on their ſide, they having the affirmation; yet I hope to give ſuch evidence, as is even as much as can be expected in any caſe. In the 43d of Queen *Elizabeth*, a Parliament was ſitting at *Weſtminſter*, and at that very time there was a Charter granted to this Company; and a Charter that had theſe very words, of having the ſole trade excluſive of others; and there had been another Charter granted before of having the ſole trade, 27th of the Queen. Now in this Parliament, 43d of the ſaid Queen, the Parliament fell very vigorouſly againſt Monopolies, and brought in a great catalogue of them. But, my Lord, I do obſerve, that in all the catalogue, and in all the debates of Parliament at that time, there's not one word mentioned of the *Eaſt-India* Company's Charter, neither of the Charter of the 27th of the Queen, nor of the Charter of that very Parliament; nay, there is not ſo much as mention made of the Charter granted to any other Company. My Lord, I have this from a Book that is lately come out, *Townſhend's Collection of Proceedings in Parliament*, 244, 245. there is the whole catalogue of Monopolies, and the full debate of them; but as for any Charters of Corporations, tho' there were many at that time, there is not the leaſt complaint.

My Lord, between the 43d of the Queen, and the 20th of King *James*, is about twenty-three years; in the 43d of the Queen, the diſcourſe of Monopolies firſt began in Parliament; and they were conſidering, it may be ſuppoſed, all this time, how to ſettle the matter of Monopolies, and to declare what were Monopolies. And after all this long conſideration, and ſo great an agitation as it had, they came to make the Statute of 21 *Jac.* which ſeems to be a ſettling and bounding the prerogative of the Crown, and right of the ſubject; it does condemn Monopolies, and has theſe words, all Monopolies, and all Commiſſions for the ſole buying, &c. or uſing of any thing within the King's Dominions, why that is condemned. But, my Lord, it does appear that the Parliament were ſo far from condemning the Charter of this Company, or the Charter of any other Company, that there is an expreſs

proviſo

proviſo that the Statute of Monopolies ſhould not extend to any Company for the ordering or managing of trade, tho' I think the words of the Statute did not reach this caſe, yet they were ſo careful, that they would have a proviſo to ſave this and all other Companies. And, my Lord, there is a Statute, 3 *Jac. cap.* 6. by the preamble of which Statute it appears that the King had granted a Charter to divers Merchants to be a Company, and to have the ſole trade into *Spain* and *Portugal*, excluding all others that were not members. The Statute recites the miſchief of liberty to all the King's ſubjects to trade there: I obſerve, the Parliament did not condemn the Charter to be unlawful, but took it to be good, and that nothing leſs than an Act of Parliament could reſtore the liberty of trade to the ſubjects againſt the Charter; for they do ſay, notwithſtanding the Charter had given the ſole right of trade to the Company, yet it ſhould be lawful for all people to trade there, notwithſtanding that Charter. Now, my Lord, I do think that practice and uſage is a great evidence of the Law: I ſhall ſhew your Lordſhip ſome precedents of ſome Charters, that have been granted to perſons of a ſole trade excluſive of others. 6 *Feb.* 26 *Eliz.* ſhe granted to *Abraham Gilbert* and his aſſociates the ſole trade to *China*, prohibiting others. 6 *March*, 27 *Eliz.* there is a Patent to Sir *Walter Raleigh* to diſcover new Countries that were heatheniſh and under Infidels. 11 *Sept.* 23 of her Reign, there was a Patent to divers *Turkey*-Merchants to have the ſole trade to *Turkey*, excluding all others. 1*ſt* of *Jan.* 34th of the Queen, a Charter granted to the *Turkey*-Company. 5 *July*, 27th of the Queen, there were Letters Patents granted to certain Noblemen and Gentlemen to trade into *Barbary*, and that during twelve years none ſhould trade there, but they, their Agents and Aſſigns. 30 *Eliz.* a Patent made to the Merchants of *Exeter* to have the ſole trade to Rivers of in *Guinea*; 34th of the Queen, another Patent to *Gregory* and *Pope*, to have the ſole trade to *Guinea*. My Lord, all theſe I have now quoted, I have cauſed to be examined on the Rolls, and are to be found there. 2. *Brownlow*, 296. there it was held by my Lord *Coke*, that no ſubject ought to trade to an Infidel Country without licence of the King, for fear of being perverted from the Chriſtian Religion; this my Lord *Coke* ſays, and he ſays he had ſeen an ancient precedent of a licence. *More* 675, *Darcy* and *Allen*. Juſtice *Dodderidge* (that I think was only then Serjeant) argues againſt the Patent, but he did agree that a Grant to a Company to have the ſole trade with Infidels is a good Grant, and the King by his prerogative might reſtrain his ſubjects from it: he admits a Patent for ſole Printing was good; why, becauſe the Publick was concerned; My Lord, the Parliament of late time have been ſo far from looking upon the *Eaſt-India* Company to be a Monopoly, that they have declared it to be for the good of the Kingdom; 14th of this King, *chap.* 24. in the preamble 'tis recited.

Now, my Lord, I hope I have made good, that the King has this power both by precedents, by authorities, and opinions of Lawyers; and alſo the judgment and the opinion of the Parliament: And that it was never condemned, and ſo I conclude this firſt point. The ſecond point, my Lord, in the next place, which I ſhall be very ſhort upon, for that it will be conſequential to what I have endeavoured to prove before; that is ſuppoſing it to be a good Grant, whether if any perſon do trade to the damage of the Company, 'tis a good ground for an action.

Firſt, I do think the Company have, and 'tis very plain they have an inheritance, and 'tis a franchiſe and liberty they could not have, unleſs they had the King's Grant, and others excluded from it; then it does agree with all the caſes of this nature; wherever the King grants a franchiſe to one, and another perſon violates the franchiſe, the King's Patentee may have an action of the caſe, againſt the perſon that does interfere or violate the franchiſe. 22 *H.* VI. 14. 11 *H.* IV. 47. ſuppoſing the King grant a man a Fair or Market, if any man ſet up another Fair or Market, tho' with the licence of the King, yet he that has the Grant ſhall have an action. Now the *Eaſt-India* Company are to be at great charges, nay, there is a truſt repoſed in them, that they ſhall trade, and carry on this trade for the good of the Company; ſo that they are put into a trade, and are obliged to carry it on. The Defendant hath no right; if they have a right, they ſhall have a remedy againſt any that invade it. And for theſe reaſons

I pray your Judgment for the Plaintiffs.

Sir *George Treby* (afterwards Lord Chief-Juſtice) his Argument.

The Governor, and Company of Merchants of *London*, trading into the *Eaſt-Indies*, againſt *Thomas Sandys*. *Trin.* 35 *Caroli Secundi Reg. Rot.* 126.

May it pleaſe your Lordſhip,

I AM of Counſel in this caſe with *Thomas Sandys*, the Defendant. The Caſe ariſes upon a Charter ſet forth by the Plaintiffs, and a Statute pleaded by us; and it is as Mr. *Holt* has opened it. Only I ſhall, for my purpoſe, open it a little more than he did.

It is a ſpecial action on the caſe, declarative; wherein the Plaintiffs declare, that King *Charles* II. our preſent King, by his Letters Patents, bearing date the 3d of *April*, in the 13th year of his reign, reciting that the Governor and Company of Merchants trading into the *Eaſt-Indies*, had been of long time a corporation, and enjoyed divers liberties, privileges and immunities, by virtue of divers Letters Patents, and Charters, granted to them by Q. *Elizabeth* and King *James*; and the King being informed, that divers diſorders and inconveniencies were then lately committed, to the great prejudice of the ſaid Company, and interruption of their trade: Whereupon they had humbly beſought the King, to grant and confirm their ſaid Charter, with ſome alterations and additions, tending to the advancement and benefit of their trade.

The King gives and grants to them, that they ſhall be a corporation perpetual, to have ſucceſſion and capacity, *&c.* And further willed and granted, that they, and every one that was, or ſhould be of the Company, and their ſons at their ſeveral ages of 21, and their apprentices, factors, and ſervants employed by them, might and ſhould freely traffick, and uſe the trade of merchandize by ſea, by ſuch ways and paſſages then found and diſcovered, as they ſhould think fitteſt, into and from the *Eaſt-Indies*; and into and from the Iſlands, Ports, Havens, Cities, Creeks, Towns and Places of *Aſia*, *Africa*, or *America*, or any of them, beyond the Cape of *Bona Eſperanza*, to the Streights of *Magellan*, as by the Court of the Company ſhall from time to time be limited and agreed, without any moleſtation, impeachment or diſturbance; any ſtatute, uſage, diverſity of religion or faith, or any other cauſe or matter whatſoever notwithſtanding, ſo always the ſame trade be not undertaken, or addreſſed, to any Country, Iſland, Port, Haven, City, Creek, Town, or Place, already in the lawful and actual poſſeſſion of any ſuch Chriſtian Prince or State, as at this preſent is, or at any time hereafter ſhal be in league or amity with the King, his heirs or ſucceſſors, and who doth not, or will not accept of ſuch trade.

And further grants, That they and their ſucceſſors, and their factors, ſervants, and aſſignees, in the trade of merchandize for them, and in their behalf, ſhall for ever hereafter have, uſe and enjoy, the whole, entire and only trade and traffick, and the whole, entire, and only liberty, uſe and privilege of trading and trafficking, and uſing the feat and trade of merchandizing, to and from the ſaid *Eaſt-Indies*; and to and from all the Iſlands, Ports, Havens, Cities, Towns and Places aforeſaid.

And further grants to them, that the ſaid *Eaſt-Indies*, or the Iſlands, *&c.* ſhall not be viſited, frequented or haunted by any of his ſubjects, during the time that theſe Letters Patents remain in force, contrary to the true meaning of the ſaid Letters Patents, and the virtue of the prerogative Royal. Charging alſo and commanding, and prohibiting all other ſubjects, that none of them viſit, haunt, frequent, or trade, traffick or adventure by way of merchandizing into or from any part of the ſaid *Eaſt-Indies*, *&c.* unleſs it be by and with the licence and agreement of the Company, in writing firſt had and obtained under the common ſeal.

Here the declaration makes a break, or ſtop, and ſo it would ſeem as if the reſtraint and prohibition were abſolute and general; but upon *Oyer* prayed of the Letters Patents, they being ſet forth *in hæc verba*, it appears to be, *ſub modo*, under the following penalty, *viz.* Upon pain that every ſuch other perſon or perſons, that ſhall trade to or from the *Eaſt-Indies*, ſhall incur the King's Indignation, and forfeiture and loſs of the goods, merchandizes, and other things whatſoever, which ſo ſhall be brought into this Realm of *England*, or any the dominions of the ſame. As alſo the Ship and Ships, with the furniture thereof, wherein ſuch goods, merchandizes and other things, ſhall be brought or found, the one half of all the ſaid forfeitures to be to the King, his heirs and ſucceſſors; the other half to the Company. And further, all and every the ſaid offenders, for the ſaid contempt, to ſuffer impriſonment during the King's pleaſure; and ſuch other puniſhments as to the King, his heirs and ſucceſſors, for ſo high a contempt, ſhall ſeem meet and convenient; and not to be in any wiſe delivered, until they and every of them ſhall become bound to the Governor, in the ſum of 1000*l.* at leaſt; at no time then after to ſail or traffick into any part of the ſaid *Eaſt-Indies*, *&c.* And further grants, That the Company may grant and give licence under the common ſeal, to any perſons to ſail and traffick to the *Eaſt-Indies*; and that the King, his heirs and ſucceſſors, will not, during the Letters Patents, give licence to any perſon to ſail or trade there.

By virtue of which Letters Patents they alledge they have been, and are a corporation; and have had, eſtabliſhed and managed, and do ſtill manage a great trade of merchandize to the ſaid *Eaſt-Indies*, with the inhabitants there; who at the time of making the ſaid Letters Patents, or ſince, were not Chriſtians, nor ſubjects to any Chriſtian Prince or State; but were, and are infidels and enemies of the Chriſtian faith; and have ſpent and laid out many and great ſums of money on that occaſion.

And further ſay, that the commerce and trade aforeſaid cannot be eſtabliſhed, managed or carried on but *per hujuſmodi Corpus Corporatum*, by ſuch a Corporation; and that they ought to have and enjoy the ſole trade there, according to the form and effect of the ſaid Letters Patents.

But the ſaid *Thomas Sandys* being a ſubject of the King, and no member of the Company, nor ſon, apprentice, factor, ſervant, or aſſignee, ſufficiently knowing the premiſes, and deſigning to prejudice the Company, contrary to the form and effect of the ſaid Letters Patents, after the making the ſame, and after the Company had ſettled their trade, 19 *Jan.* 34 *Reg.* did trade into the *Eaſt-Indies*, within the Parts, Regions, and Places above-ſpecified, beyond the promontory of *Good-Hope*, on this ſide the Streights of *Magellan* aforeſaid, in certain Ports and Places, called *Atcheon*, *Mechlopotan*, and *Porta Nova*, with a certain Ship, called the *Expectation*, without the licence, and againſt the will of the Governor and Company, and to the prejudice, impoveriſhment, and manifeſt grievance, and againſt the form and effect of the ſaid Letters Patents; to the damage of the plaintiffs 1000*l.*

The Defendant prays *Oyer* of the Letters Patents; whereupon they are ſet forth *in hæc verba.*

And thereupon the Defendant pleads the Statute, 18 *Ed.* III. *Cap.* 3. whereby 'tis enacted, *That the Sea be open to all manner of Merchants, to paſs with their merchandize where it ſhall pleaſe them.*

Upon this the Plaintiffs demur.

My Lord, I ſhall not differ with Mr. *Holt* in the ſtate of the controverſy, but make the ſame two points, *viz.* 1. Whether this Patent, as it purports an excluſion of all other ſubjects from this trade, be good or void? 2. Whether here be an apt ſuit brought?

In the firſt place, I ſhall not queſtion but the Patent is good, to make theſe perſons a corporation, and all the privileges and benefits they can derive from being a body corporate, they may enjoy, and apply them to trade if they will. Yet as to this particular, I ſhall obſerve thus much, that when ſuch Charters of Incorporation were firſt taken notice of in Q. *Elizabeth*'s and K. *James*'s time, they did not eſcape the cenſure of learned men, who foreſaw the ill uſe of them. *Co. Mag. Char.* 540. Three things which have fair pretences are miſchievous: 1. New Courts; 2. New Offices; 3. New Corporations trading into foreign Parts, or at home; which under the fair pretence of order and government, in concluſion tend to the hindrance of trade and traffick, and in the end produce Monoplies.

1. *Rolls Rep.* 126. Juſtice *Dodderidge* ſays, theſe things would overthrow the Realm.

In this argument I am ſenſible I am to ſpeak of a tender point, *the King's Prerogative:* But I ſhall treat it with that regard and deference that I ought, and as our Books teach us.

The prerogative is great; but it has this general and juſt limitation, That nothing is to be done thereby that is miſchievous or injurious to the ſubject.

Finch's Law, 81, 83, 84. ſpeaks highly of it, as a matter divine: *The King* (ſays he) *carries God's ſtamp, and has the ſhadow of God's excellencies given him; the power of God is always joined with juſtice; for to do wrong, is not omnipotence, but weakneſs. So it is with the King; he can be no wrong-doer, he is all juſtice; therefore he has a prerogative in all things that are not injurious to the ſubject, as he may create Corporations*, &c. (ſays he). And ſo ſay I, he may create Corporations, and this Corporation; but for the ſame reaſon, he cannot add a reſtraint to all other ſubjects from exerciſing this trade.

I ſhall lay for my foundation, that this Patent, as to reſtraining the trade, and excluding all other ſubjects, has the nature of a Monopoly, and is therefore void in that particular.

Mr. *Holt* and I are agreed on the deſcription of a Monopoly, which is made by my Lord *Coke*, *Pla. Coron.* 181, *viz.* an Inſtitution by the King, by his grant, commiſſion, or otherwiſe, to any perſon, or corporations, of or for the ſole buying, ſelling, making, working or uſing of any thing whereby any perſons or corporations are ſought to be reſtrained of any freedom or liberty they had before, or hindered in their lawful trade.

And the like deſcription is made in the preamble of the Act concerning Monopolies, 21 *Jac. cap.* 3. where it is alſo declared, That all grants of Monopolies, and all other matters or things whatſoever, any way tending to the inſtituting, erecting, ſtrengthening, furthering or countenancing of the ſame, are altogether contrary to the laws of this Realm, and utterly void, and of no effect; and in no wiſe to be put in uſe or execution.

If therefore this trade to the *Eaſt-Indies* be a lawful trade, then this Patent for the reſtraining it muſt be a Monopoly. The nature of a Monopoly conſiſts in reſtraining a common right; it appropriates to one, or a few, what others had the lawful uſe of before.

I confeſs, I did a little wonder to hear merchandizing to the *Eaſt-Indies* objected againſt as an unlawful trade, and did not expect ſo much divinity in the argument; but to that I ſhall endeavour to anſwer by and bye.

Generally ſpeaking, merchandizing was always reckoned a lawful trade; every man might uſe the ſea, and trade with other Nations as freely as he might uſe the air.

And for this trade to the *Eaſt-Indies*, it was lawfully uſed before there was a Company, or elſe there had never been a Company. This trade has been long, but this Company is made by theſe Letters Patents 22 years ago.

This is not diſtinguiſhed, nor diſtinguiſhable from the reaſons and rules laid down in the other caſes of Monopolies.

I ſhall chiefly inſiſt upon two caſes in one Book, *Coke* 11 *Rep.* the Taylor of *Ipſwich* his caſe, *fol.* 53. and *Darcy* and *Allen*'s caſe, called the caſe of Monopolies, *fol.* 86. It is the main ground of both thoſe caſes, that at Common-Law no man could be prohibited to exerciſe his trade, for that is an avoidance of Idleneſs, it helps to provide ſuſtenance for a man and his family; and 'tis a ſervice to the King: and the conſequences of reſtraining trade are pernicious, as raiſing prices of commodities and impoveriſhing men, bad commodities, &c.

Now that foreign trade was underſtood to be comprehended under this general reſolution, I deſire your Lordſhip to look upon the report of the Taylor of *Ipſwich*'s caſe, in 1 *Rolls rep.* 4. where it is ſaid, that no trade of Merchandize can be hindered by Patent, and a Charter to hinder trade at Sea is void; as that a hundred men ſhall have the ſole trade, or the like.

The King's prerogative cannot make this good; it is not lawful for a man to reſtrain himſelf from his trade, 5 *Moor* 242. 2 *Leon.* 210. a bond not to uſe his trade of a Dyer or a Smith is void, ſo a bond not to plough his land.

And ſo a bond that a man ſhall not go out of his houſe, for a man muſt ſerve the King, and do his duty with his liberty and his labour; and if Merchants and Mariners ſhould enter into a bond or a covenant not to trade, or not to trade to the *Eaſt-Indies*, it were void. And if it be unlawful for a man to reſtrain himſelf from it, the King cannot reſtrain him.

Another reaſon is, the King cannot by his Letters Patents take away the ſubjects property, and I do not know a greater property than freedom of trade and labour; the King cannot take away ſix-pence that a man has got by his trade, much leſs can he take away his whole trade: if the profit which a man gets by his trade be his own, the liberty whereby he acquires it is his own; otherwiſe the whole property of traders were precarious.

Mr. *Holt* would expound the Statutes that are pleaded, to ſignify that the King ſhall not lay an impoſition upon Merchandize. Though that be not the true meaning of the Statute, yet even that were ſufficient for our purpoſe, and will prove that the King cannot totally prohibit a man to trade, for if he can prohibit abſolutely, he can prohibit *ſub modo*, and require that none ſhall trade unleſs they pay ſo much and ſo much for licence; and ſo by that means he might lay that impoſition, which, it is agreed, he cannot.

In *Darcy*'s Patent there was a rent of a hundred marks *per annum* reſerved to the Queen; and they that drew, and they that argued that Patent, ſuppoſing the Grant of the ſole trade to have been good, made no doubt of the conſequence, that the reſervation was good.

It is truly ſaid by my Lord *Coke*, *Co. Mag. Cha.* 47, & 63. that all Monopolies concerning trade and traffick, are againſt the Common-Law, and divers Statutes; and 'tis as truly ſaid by him, *Co. Placita Coronæ*, 182. that though theſe Monopolies were ever without Law, yet they were never without friends.

Several attempts have been made for them; Mr. *Holt* has cited ſome; for the moſt part, they lurked private, ſometimes they have appeared in Courts of Juſtice, but there they have always been diſappointed.

Rot. Parl. 50 *Ed.* III. *nu.* 33. It appears there had been a Patent granted to one *Peachy* for the ſole ſelling ſweet Wine in *London:* this concerned a thing of delicacy, and was a matter of ſmall moment then; yet the Patent was brought into Parliament, and adjudged void, and the party puniſhed.

Co. Mag. Charta 61. and *Pla. Cor.* 182. A Patent granted by *Philip* and *Mary* (in reſpect of *Philip*'s landing there) that all Malmſeys ſhould be imported at *Southampton*, and not elſewhere, adjudged void. 14 *H.* VIII. was the College of Phyſicians erected by Letters Patents; wherein there was a clauſe, that none without their allowance, ſhould practiſe Phyſick in, or within ſeven Miles compaſs of *London*. *Coke*'s 8. *Rep. p.* 114. Dr. *Bonham*'s caſe, but they were well adviſed that that clauſe in the Letters Patents was void; and therefore 16 *H.* VIII. they procured an Act of Parliament to make good their Letters Patents; and the very reaſon of making that Act, was to give that force to that reſtraint, which could not be by the Letters Patents only.

15th *Jacobi*, was granted a Patent for ſole printing of Law-books, the validity of which happened to come in queſtion in 1668, in *Chancery* between the Patentees and ſome Bookſellers, who had acquired copies of Law-books to be printed, and it was referred to all the Judges.

Many ſpecious reaſons were given to maintain it; as, that the Invention of Printing was new, that it concerned the State, and was matter of public care; that it was in the nature of a Proclamation, and none could make Proclamations but the King. That the King had the making of Serjeants and Officers, and Judges of Law; that they were printed in a particular language and character, with abbreviations, &c. But it was the opinion of all the Judges certified to my Lord-Keeper, that thoſe perſons who had acquired Copies ſince the Patent, could not be reſtrained by the Patent from printing them.

Lord Chief-Juſtice. It received another Judgment in the Houſe of Lords.

Sir *George Treby.* Not this caſe, my Lord.

But beſides the Common-Law, our point is moſt ſtrongly eſtabliſhed by particular Statutes, and it has been the wiſdom and care of Princes and Parliaments in all times to aſſert this freedom of trade.

Magna Charta, cap. 30. All Merchants (if they were not openly prohibited before) ſhall have their ſafe and ſure conduct to depart, come and tarry, to buy and ſell without any manner of evil toll, by the old and rightful cuſtoms, except in time of War.

It is true, as Mr. *Holt* ſays, that this provides againſt *Mala tolneta*, but 'tis plain too, that it eſtabliſhes their liberty of trading, and coming and going with their Merchandize.

My Lord *Coke* ſays, indeed, that this reſpects Aliens only, but more ſtrongly proves that the *Engliſh* had this liberty; for they would never have extended it to Aliens, and have left the *Engliſh* without it.

From this exception *(niſi antea publicè prohibiti fuerint)* it cannot be inferred that the King may reſtrain his ſubjects from trade; for my Lord *Coke*, in his *Comment. fol.* 57. ſays, that this prohibition muſt be intended by Act of Parliament, for that it concerns the whole Realm, and is implied by the word *publicè*.

Beſides that, this prohibition muſt relate to Aliens only, and that likely in reſpect of War too.

Subſequent Statutes make it moſt clear. 2 *Edw.* III. *cap.* 9. Merchants, Strangers ſhall go and come with their Merchandize. 6 *Ed.* III. *(Stat.* 1.*) cap.* 1. all Merchants, Strangers and others, may freely buy and ſell their commodities, from whenceſoever they come, without interruption; notwithſtanding Charters or Uſage to the contrary. Which Charters and Uſage (if any be) the King, Lords and Commons hold to be of no force, as being to the damage of the King and his great Men, and the oppreſſion of the Commons.

14 *Ed.* III. (*Stat.* 2.) *cap.* 2. All Merchants, Aliens, Denizens and Foreigners (except thoſe which be of enmity) may without let, come with their Merchandize, tarry and return.

25 *Edw.* III. (*Stat.* 4.) *cap.* 2. If any Charter, Proclamation, Command, Uſage, Allowance or Judgment be made to the contrary, it ſhall be void.

28 *Ed.* III. *(Stat.* 1.*) cap.* 2. eſtabliſhes the like freedom, as in the time of that King's Progenitors, and there is uſed the word *Engliſh* Merchants, as in other Statutes the word Denizens.

I obſerve that it was then looked upon as an ancient right, it having been in the time of his Progenitors.

2 *R.* II. *cap.* 1. 11 *R.* II. *cap.* 7. and 16 *R.* II. *cap.* 1. are to the like purpoſe.

When there has been occaſion to prohibit any Merchandize, it has been done by Acts of Parliament.

27 *H.* VI. *cap.* 1. confirmed 28 *H.* VI. *cap.* 1. prohibits Merchandize, growing or wrought within the Dominions of the Duke of *Burgundy*, and the like, 4 *E.* IV. *cap.* 5. till that Duke revoked his Proclamation concerning our cloths.

3 *E.* IV. *cap.* 4. Forbids importing woollen caps, cloths, laces, &c. and many other Statutes of like nature; whereof ſome in his preſent Majeſty's reign, as concerning *Iriſh* cattle, *French* goods, and concerning our Foreign Plantations: all which were vain and needleſs, if the King alone could have reſtrained the ſame.

26 *H.* VIII. *cap.* 10. Gives power to the King, during his life, to reſtrain or ſet at liberty traffick beyond Sea for certain Countries. Now *Henry* the VIIIth. as my Lord *Coke (Inſt. co.* 361.) obſerves, ſtood as high upon his prerogative, as ever any King had done; and would never have accepted his power from a Grant of Parliament, if he had had a prerogative of this nature before.

35 *Eliz. cap.* 7. It is enacted that the Queen may prohibit tranſporting of corn by proclamation; and ſo it is 1 *Jac. cap.* 25. which ſhews that a proclamation, which is an Act of Prerogative, was not ſufficient for the purpoſe, without the authority that was derived upon it from the Acts of Parliament.

My Lord, I ſhall now anſwer Mr. *Holt*'s Arguments and Allegations.

Firſt, He ſays, that, by the Law of the land, no ſubject can trade with Infidels without the King's licence.

But I ſay, this is *gratis dictum*, and I muſt deny the Law to be ſo. He cannot find any Statute, Judgment or Reſolution in all our Law-books to this purpoſe.

All the authority he has is a caſual ſaying of a ſingle Judge in *Michelborn*'s caſe.

For in *Darcy* and *Allen*'s caſe, there is not a word ſpoken by *Dodderidge*, or any other, concerning trade with Infidels.

Dodderidge says nothing of foreign trade; cites and affirms the Law of *Mag. Charta, cap.* 30.

Michelborn's case is in 2*d Brownlow* 296. and it is in these words: *Hill.* 7 *Jacobi*, in the Common Bench, upon a motion made for consultation, upon a prohibition awarded, it was said by the Lord *Coke*, that no subject of the King may trade with any Infidels without licence of the King; and the reason of that is, he may relinquish the Catholick Faith and adhere to Infidelism. And he said, he had seen a licence made in the time of *Edw.* III. where the King recited, that he having a special trust and confidence that his subjects will not decline from his Faith and Religion, licensed him *ut supra*; and this did arise upon a recital of a licence, made to a Merchant to trade to the *East-Indies*.

First, To this slender authority I answer,

If the Law had been according to this conceit, there would have been much said and done about it in divers cases; there would have been proceedings against persons that had traded to *Granada*, (of which the *Moors* lost the Dominion within these 200 years) to *Barbary*, to *Turky*, and other Infidel places in *Asia*, *Africa*, or *America*, but we never heard or read of any till now.

Secondly, 'Tis an apocryphal case; that Book, called *Brownlow*, is of little authority; it was printed without approbation of the Judges, or any legal licence.

And the conceipt is of less authority, it is reported as *dictum obiter*, upon a motion, a casual saying of the Judge; which the Clerk took, and likely mistook, for it is nowhere said in my Lord *Coke*'s own Books, though they are voluminous. And the ground of his saying (if he did say) it is, that he had seen a licence in *Edw.* III's time, but I cannot learn that it has been seen by any man else. Neither Mr. *Holt* nor I can find it, nor does my Lord *Coke* tell us where it was; perhaps it was taken upon trust, and mistaken, perhaps not authentick, and perhaps a sufficient answer to it would have been found in it; however, it was but one, and certainly, if the Law had required it, there would have been more than one licence from the beginning of our Records till that day.

Una Hirundo, &c.

Thirdly, The reason there given makes strongly against this Charter; the reason is, lest men should decline from the Faith; so that it seems there is a special trust in the King, that he should suffer none to go into Infidel parts, but such as are orthodox, sound and firm in Religion; such of whom the King is specially assured that they will not fall from the Faith, which is to be exercised by the King only; and he is to grant licence to particular and known persons of whom he has this confidence, the King cannot grant his royal care to the Company.

But now this Charter would have this trust deputed and transferred, for it contains a licence not only for the then Members of the Company (who were twenty-two or twenty-three years ago), but their unknown successors, and to their sons begotten, and to be begotten, and their Servants, Factors, Apprentices, and Licensees.

Mr. *Holt* also gives a reason for this trade being unlawful, namely, That the Law has judged Infidels to be perpetual enemies, for which he relies upon another singular saying of my Lord *Coke* in *Calvin*'s case, *fol.* 17. and recites two authorities cited there, namely, the *Register*, 282. and 12 *H.* VIII. 4.

And he takes notice that the children of *Israel* were perverted from the true Religion by converse with the Nations round about them. And he cites *Grotius de jure belli & pacis*, *lib.* 2. *cap.* 15. *par.* 11. where he says, *Cavendum est ne nimia commixtio contagium adferat Infirmis.*

As to this singular opinion of Infidels being perpetual enemies, it is not easy to understand what my Lord *Coke* means by it; his words are these:

All Infidels are in Law *perpetui inimici*, for between them, as with the Devil, whose subjects they are, and the Christian, there is perpetual hostility, and can be no peace; for as the Apostle says, 2*d Corinthians* 15. *What agreement is there of* Christ *with* Belial, *or what part has the Believer with the Infidel?*

It seems by these words, that it is to be understood of a spiritual discord in respect of Religion, and not a temporal between the Nations: for he says, 'tis because they are the Devil's subjects, and he relies upon the Texts of Scripture: and if this perpetual hostility be taken in a political and proper sense, and the Law be so, it destroys the licence and privilege of the Company, and their action brought, and all possibility of such a thing for them. There is not nor can be any peace, treaty or intercourse between the *English* and the *Indians*, but a constant never-ceasing state of war; and especially if it be founded upon a Divine Precept: for whatsoever prerogative the King may have, he cannot have a prerogative to dispense with the Canon of the Scripture.

But my Lord *Coke* himself does much clear this matter, *Jur. Co.* 155. where he says, that there may be peace and leagues of commerce with Infidels. All that the Register says, is that the Hospitallers were instituted for defence *contra Christi & Christianorum inimicos*; which is an expression of the enemies of Religion, not of the State. In the book of *Henry* the VIII. he said indeed *obiter*, that a person outlawed, a Traitor, or a Pagan being beaten, shall not have an action; it is true in case of an Out-law, or a Traitor, it may be pleaded in abatement: but no other Book says, nor can any man maintain that the Law is so in case of a Pagan.

A Pagan, Turk or Jew, may maintain an action of debt or battery, or other personal action here; were it otherwise, there could be no trading of the Jews here, nor of the Turks; the contrary whereof is implied and admitted in the Act of Navigation, 12 *Caroli* II. *cap.* 18. *paragr.* 18.

By the like reason that there should be no trading with Infidels, there ought to be no foreign trade at all, for there is no Country where the Religion does not differ in somewhat or other from the religion established in the Church of *England*.

And whatever he says of the Children of *Israel*, I think there are many instances in the Old Testament of commerce with the Heathen, though I, not foreseeing such use of Divinity here, am not so well furnished.

As to the citation out of *Grotius*, it is by way of caution only; but the whole drift of that chapter demonstrates, that commerce and leagues with Infidels are lawful, and he expounds that text of 2 *Cor.* which my Lord *Coke* bottoms upon, to refer only to joining with them in Idol-worship. And to shew clearly the mind of that Author, he has writ a whole Book, intituled, *Mare Liberum*, to manifest the right and lawfulness of trade to the *Indies*; and he says, that God in nature appointed all people to resort to, and trade with others, for that he hath given several commodities to some, which others stand in need of.

I must take leave to say, that this notion of Christians not to have commerce with Infidels is a conceit absurd, monkish, phantastical and phanatical.

'Tis a-kin to *Dominium fundatur in Gratia*.

The *Indians* have a right to trade here, and we there, and this is a right natural and human, which the Christian Faith doth not alter.

I agree with Mr. *Holt*, that an Act of Parliament made against the Christian Religion is void; but I think a Charter against natural and civil right is as certainly void.

Mr. *Holt* further says, that public safety and policy are concerned in this trade, and therefore it should be restrainable by the Common Law; and he cites *Courteen*'s case, *Hob* 270. where several Merchants were punished for buying and transporting great sums of money, because (the Book says) it was against the State-Policy and safety of the Kingdom; and so punishable, and not permitted by the Common Law: and Mr *Holt* says, that trading with Infidels is in like manner against the State-Policy too.

Answ. That was in the *Star-Chamber*, and perhaps it was one of the errors for which that Court was dissolved, 16 *Car.* I. *cap.* 10. in which Act it is said, that the Judges of that Court had undertaken to punish where no Law did warrant.

If transporting of money had been prohibited by Common Law, the Statutes 9 *E.* III. *cap.* 1. and 5 *R.* II. *cap.* 2, *&c.* had been needless; but before those Statutes every man might dispose of his own private money as he would. And in that case of *Courteen*'s the offence seems to have consisted in ingrossing great quantities; and so it more fully appears in a contemporary report of the same case, in the select cases added to *Popham*, 149 and 150. where it is said, that as one shall be punished for ingrossing commodities, so another for great quantities of money, all other commodities being thereby ingrossed. And this point of *Courteen*'s case is a good authority against the privilege claimed by the Company, which in truth is nothing else but to ingross to themselves all the commodities of *India*, &c.

But if the Common Law would have all the treasure kept within the Realm, it does not follow that we must keep all other commodities, and have no trade at all; at least without special licence, I know no State-Policy or Law for that.

In the next place, Mr. *Holt* considers foreign trade, and says, the subjects have not a right to trade abroad, *ad libitum*.

Answ. This is against the former argument and the ground of the Plaintiff's declaration, for that was, there should be no trade to those places, for a special cause, *(viz.)* because they were Infidels; but this argument imports, that there ought not to be any trade at all abroad, no not with Christian countries, without the King's licence.

The reason with which he would support this argument is, because trade depends upon treaties, and upon the accidents of peace and war, which the King has the power of.

But this too thwarts the former argument, for Infidels he says are perpetual enemies; and if so, there is no peace nor treaty with them, and therefore no trade to be (as not by the Company) with them.

Besides, allowing there may be peace and treaties with them, I cannot see how this consideration can conduce to the present question; for it cannot be pretended, that the King makes leagues with *Indian* Princes, that one part of his subjects should trade thither, and the rest should not, or that the King is or can be in amity with them, as to one part of his subjects (namely the Company), and in enmity with them, as to the other of his subjects.

The King has, and is to preserve, the highways, but it is to keep them for the passage of himself and his people; not to shut them up against any of his people at least, except in case of war.

He cites the Statute 12 *H.* VII. *cap.* 6. where the Merchant-Adventurers say, they had commerce with *Spain* and *Portugal*, and other places in league and amity with the King.

No doubt they had, and beyond this is truly said in the same Statute, that of right they ought to have it, which shews that it was not by the King's grant or licence. And in like manner the Defendant of right ought to have trade with the *Indians*, there being no war betwixt this Realm and them.

He cites out of *Roll*'s Abridgment, 2 *Pars*, 214. a note of *Rot. Parl.* 1 *H.* V. *nu.* 41. where the Commons pray that all Merchants may export and import to and from any place, any goods at their pleasure, paying the customs and other dues, any proclamation notwithstanding; the King answers, that he will be advised by his Council.

And Mr. *Holt* takes this to be an acknowledgment by them of the legality of the Proclamation.

Answ. It is not so, for it was the course then, to propose and pass declaratory and confirming (as well as other) Laws, by way of Petitions to the King; and though they thought the proclamation illegal, yet it was more proper for them to endeavour to obtain redress by prayer than contest. But their Petition was a Petition of Right, and the Proclamation (especially if there was no war a-foot) was void, being against the Common and Statute Law. And to cite and set up such a Proclamation, is to set up grievance to the Law: and yet I take it there was an extraordinary occasion at that time, *Hen.* V. having occasion to lay an embargo on ships, in order to his proceeding to his great war in *France*.

He says that foreign trade may be mischievous, it may be a nuisance, so the importing *Irish* cattle and *French* goods have been declared to be by the Parliament, and the King may restrain such evils.

Answ. These Acts of Parliament were enacting, and they enact it shall be adjudged a common nuisance. They did not find and declare it to have been one before.

If it had been so, there had been no need of these Acts, and we know the reason of that clause was to make the matter dispensable.

If the importing *East-India* commodities be a nuisance, it is not licenseable, and the Company cannot maintain their trade, much less their action; unless it should be thought that the bringing in of those commodities by the Defendant is a nuisance, but the bringing in the same by the Plaintiffs is not.

He inforces this with a reason, that there may be mischief from the abundance of the importation exceeding our exportation, and resembling it to what

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is said 10 *Rep.* 141. that by the Common Law the King ought to save and defend his Realm as well against the Sea as against enemies; that it should not be drowned nor wasted; and as the King may prevent inundation of water, so he says, he may as to trade.

Answ. This is a similitude in words, but not as to the nature of things, and if there be any force in it, it is against the Plaintiffs; for there is not in their Charter any limitation, the Company may bring in as much as they will, nay, it seems by their allegation, that this trade is to be managed most largely by means of the Company, and therefore thence is rather the danger of the glut.

Mr. *Holt* makes it a great argument to maintain the Charter, that it is a necessary regulation of the trade, and that the trade could not have been settled but by such a Company; and says, if it should be laid open, it would ruin the trade both of the Company and the Defendant.

And it is averred in the declaration, that this trade cannot be managed, but *per hujusmodi Corpus Corporatum.*

Answ. This contradicts *Michelborn*'s case, for that was upon a licence granted to a single Merchant to trade to the *East-Indies*; and it is known that this trade has been managed by private persons before, and since there was a Company.

And this is to set up convenience or pretence of convenience against Law; the Statute, which we have pleaded, says, that all trade shall be open; the Plaintiffs say, it shall be open to them only, because they can manage it best.

If other men should say that they could manage it better, the pretence were as fair for them to exclude the Company from the trade.

But I except against this averment, it is a frivolous and impossible averment, no issue can be taken upon it, unless issue should be taken upon a similitude, *(viz.) hujusmodi Corpus Corporatum.*

If a licence were granted (as it is said to be in *Michelborn*'s case) to one man to trade to the *East-Indies*, and he should bring such an action, and aver that the trade could not be managed but by such an one as he, it would not be good, and yet as good as this is. In an action for words, it is not allowable to alledge that the Defendant spoke such words, or *hujus similia.*

Moreover, the declaration, as it is penned, contradicts itself; for it says, that the trade cannot be managed but by the Company, and yet charges the Defendant that he did manage a trade there; which is not possible, and it is penal enough upon the Defendant that he attempts to manage trade where he cannot.

Mr. *Holt* objects, that the Statute we plead, ought not to be taken universally, that the Sea shall be open to all Merchants; for then it would extend to give liberty of trade to the King's enemies who are Merchants.

Answ. True it is, neither this, nor any such Law extends further than to Alien Armies and Subjects, there are *jura belli*, as well as *jura pacis*; and it is understood, that enemies who are foreigners may be taken and proceeded against according to Martial Law; but the Defendant is a subject, and cannot be an enemy.

He says further, that this Statute should not extend to this trade, because that in *Edw.* III's time, when it was made, trade was driven with Christians only, and not with Infidels.

If this be so, it destroys the only authority he has *(viz.) Michelborn*'s case, where the only ground of the opinion is, that there was a licence granted to trade with Infidels, in the time of the said *Ed.* III.

But this Statute must be taken as it is penned, universally, and not confined to those countries, places and parts which were then used; the Statute does not distinguish, *& ubi lex non distinguit, ne nos distinguimus*, otherwise no man must trade, but to those few places that he can prove were traded to before, 18 *E.* III.

He says (as *ff. n. b.* 85.) that the King may restrain men, by *Ne Exeat Regnum*, from going beyond Sea; and cites *Davis*, 9. *b.* that one reason of the King's being intitled by prescription to the great custom, was for his leave to Merchants to go and carry goods out of the Realm.

Answ. It is true, that Book of *Davis* does say so, but he cites to prove the opinion, *Dyer* 165. and this Statute, 18 *E.* III. which we have pleaded; so that that Book is of no further use, than the authorities upon which it is founded do warrant: which if we examine, we shall find that in *Dyer* it is, among other things, made a *quære*, in a case referred to the Judges concerning a new imposition set by Queen *Mary* on Merchandize, whether by Common Law Merchants were, or might be restrained from going out of the Kingdom, without leave of the King or Queen; to which the Judges give no resolution: which shews, they thought the Law was, that there was no such restraint or need of leave; for when Judges give no resolution, in the case of the King, it is a sign that in their opinion the Law is against him; and for the Statute, 18 *E.* III. which we plead, it is flat against it.

F. N. B. 85. *a.* is express, that by Common Law, every subject may go out of the Kingdom for Merchandize, or Travel, or other causes as he pleases, without leave, *V. Co. pl. Cor.* 180.

5 *R.* II. *cap.* 2. Restrains people passing out, but it excepts Merchants, and even that Statute is repealed. 4 *Jacobi*, *cap.* 1. 'tis clear that the King may restrain his subjects from going out of the Realm, by his Writ of *Ne Exeat Regnum.* But that Writ was originally for the Clergy only, and is properly granted for matter of State only; and the words of it are, *Quam plurima nobis & Coronæ nostræ prejudicialia ibidem prosequi intendis.* Of late indeed it has been extended to confine a person to abide the Justice of a Court here, but I think no further. It is always to restrain a man from something unlawful, and against the duty of a subject; never to restrain from a lawful Act, as trade is.

Neither is it general or universal, but always particular, and granted upon oath, made concerning a particular person; and since there needs such a special Writ to restrain an obnoxious person, it proves the Law to be, that all other persons are at liberty to go.

And there was no *Ne Exeat Regnum* against the Defendant, nor cause for any; and if there had been, and he had gone against it, though it were an offence to the King, it would not give cause of action to the Plaintiffs.

He cites *Co. Litt.* 5. *a.* That no subject can build a castle or a fortress without the King's licence, and 11 *Rep.* 87. *b.* and *Co. Magna Charta* 199. that no man can make a park without the King's licence; and 11 *H.* VII. 13. that the King may licence, where if one kill another, it is no felony.

Answ. These instances agree not to our case: a man may not build castles without the King's licence, any more than raise forces, or appropriate beasts, which are *feræ naturæ*, and the King's game; much less take away the lives of the King's subjects; but there is no parity of reason, that a man should not use an innocent trade.

It is more suitable thereto, to instance, that a man may without licence build a house, or make a hedge, and inclose a garden or field, and thereby preserve the lives of himself and his family.

In the next place, Mr. *Holt* says, there's a great deal of difference between trading in a Company, and trading out of a Company; that this Charter is good because it gives the trade to a Company, and being a Company, and Christians, they will take care that their Agents and Factors keep up to the Christian Religion; but other people will converse only with Infidels, and cannot have Divine Offices.

Answ. It is not required by the Charter, that the Members taken into the Company, should be Christians, and their sons, servants, and factors may be no Christians, nor are they bound to have Divine Offices. And the Defendant and others are likewise Christians, and may have Divine Offices as well as they; and in this trade, the Defendant and those with him converse with the same persons, as the Company and their Agents do; or if not, then there is no interfering, no cause of complaint.

He observes out of the Journal of the House of Commons, 43 *Eliz.* that the House of Commons fell vigorously upon Monopolies; and there was brought in a catalogue of them, but therein is nothing of the *East-India* trade, tho' there was such a Charter then in being.

Answ. I know not whether there was such a Charter then in being; but if there were, possibly it was not taken notice of, or possibly no grievance then appeared from it; and likely that Company was better advised, than to endeavour to restrain others from trade.

Besides, I have heard a Vote of the House of Commons cited sometimes, but never knew the silence of the House of Commons cited for authority before; doubtless in that Parliament, as in others, the Members complained of those grievances, which then affected the Boroughs and Places they served for: they undertake not to enumerate all the Monopolies, that were or might be, and it is most prudent, in order to obtain redress, to limit their complaints to the present occasion.

First, Mr. *Holt* mentions three Statutes, 3 *Jacobi*, *cap.* 6. there having been a Charter obtained by some Merchants for sole trade into the Dominions of *Spain* and *Portugal.* It is enacted, that it shall and may be lawful, for all subjects to trade thither, notwithstanding that Charter or any other; and thereupon he infers, that the Parliament takes the Charter to be good, and therefore enact that the trade shall be laid open.

Answ. There is no just ground for this inference.

First, It were a strain beyond the Plaintiff's own foundation, for that it related to a trade to *Spain* or *Portugal*, which are Christian Countries.

Secondly, The preamble of the Act sets forth reasons enough to destroy the Patent at Common Law, *(viz.)* that all subjects ought to enjoy equally the benefit of peace and free trade; that otherwise the subjects of *England* would be in a worse condition than those of *Scotland* and *Ireland:* that it was attended with the impoverishing of Merchants, Mariners and Manufacturers, lessening the price of their commodities, and enhancing foreign, *&c.*

Thirdly, The Act calls it a common traffick, and does not only say it shall be lawful, but that there shall be free liberty to trade there, in such sort and manner as was accustomed: so that the Act did not make the Charter illegal, but found it so, as being an innovation against what is used and ought to be.

Also he mentions the Statute of Monopolies, 21 *Jacobi*, *cap.* 3. wherein he observes, there is a proviso to save the Companies or Societies of Merchants. And the Statute 14 *Caroli* II. *cap.* 24. which in the preamble declares the putting in of Stock into the *East-India* Company to be for publick good.

Answ. That last Statute indeed in the preamble says, it is for publick good, but it is the publick good of the Company; and the same preamble says, that divers Noblemen, Gentlemen, and other persons of quality, not bred to trade or merchandize, did put in Stock there; and enacts, that they shall not in that respect be reckoned Traders, and so liable to a Commission of Bankrupt: whereupon I might observe, that this Company is not to be reckoned a Company of Merchants, and therefore not within the proviso, 21 *Jacobi*, above-mentioned.

But I give this further answer concerning that proviso: the words of it are, Provided also, and it is hereby further intended, declared and enacted, that this Act, or any thing therein contained, shall not in any wise extend, or be prejudicial to the City of *London*, *&c.* or to any Companies, or Societies of Merchants within this Realm, erected for the maintenance, enlargement or ordering of any trade, or merchandize, but that the same, and their liberties, privileges, powers and immunities shall be, and continue of such force and effect, as they were before the making of this Act, and of none other; any thing before in this Act to the contrary in any wise notwithstanding.

Now *first*, this is but a general saving; and supposing, as Mr. *Holt* does, that there was such an *East-India* Company then in being; if the Parliament had had as favourable an opinion of their Charter, as they had of *Mansell*'s or *Maxwell*'s, or the other there mentioned, they would have saved it by particular mention, as they did those, which would have been some countenance to such a Charter.

Secondly, Admitting it saved generally or particularly by the proviso, that does not make it better; the proviso only says, it shall continue of such force and effect, as it was before of the making the Act, and none other: *i. e.* If notwithstanding the body of the Act, if it were a Monopoly and void before, it shall remain so; and if it were good before, it shall remain so, notwithstanding the proviso.

If it be asked, to what purpose the proviso was made, it is answered clearly thus; the Statute giving an additional penalty of treble damages and double costs against any person, that should, after forty days, after the end of that Session of Parliament, hinder, grieve, disturb or disquiet any person, or any ways seize, attach, distrain, take, carry away or detain his goods, by occasion or pretext of any Monopoly, or of any such Commission, Grant, Licence, Power, Faculty, Letters Patents, *&c.*

Now the proviso appointed that nothing in the Act shall extend to any Society or Company of Merchants; it saves persons that shall hinder, grieve, disturb or disquiet others by occasion or pretext of such a Society or Company from that penalty; so that the Plaintiffs have this

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advantage from the proviſo (if they are at all within it), that they ſhall not be liable to the Defendant's treble Damages and double coſts for bringing this preſent Suit againſt him.

6 *Car. Jones* 231. *Mounſon verſus Liſter*, was a caſe concerning an office granted by Letters Patent, 4 *Jacobi*, for ſole making all Bills, Informations and Letters miſſive in the Council of *York*. Now the next proviſo in the Statute does ſave Officers in the ſame manner as this proviſo does Societies or Companies of Merchants. It was adjudged, that though this grant of this office were ſaved by the proviſo, yet it was ſtill a Monopoly, and void; it being unreaſonable that one perſon ſhould have the making of all bills, *&c.* which is proper work for Counſel or Attornies, and that (in caſe of croſs-bill) both parties ſhould be obliged to diſcloſe their evidence to that perſon; but by reaſon of this proviſo, this Grantee ſhould not be liable to the treble damages and double coſts; the proviſo ſaves us againſt that Statute, but does not eſtabliſh againſt the Common Law.

Beſides, this proviſo does not at all extend to this Charter; it only concerns ſuch as were then in being, and ſays, they ſhall continue in ſuch force, as they were before the making of that Statute. But this Company that is now Plaintiff was made not long ſince, *viz.* by Charter 13 of this King.

Mr. *Holt* cites ſeven precedents of Grants by Queen *Eliz.* of ſole trading to ſeveral Infidel parts.

To which I anſwer, That the more there are of this kind, the ſtronger the argument is for us; for the greater occaſion has been adminiſtered to bring actions or informations of this nature, but none was ever brought; and the reaſon why none has been brought is, becauſe none could be upon this ſcore.

The clauſes in this Charter, for forfeiting ſhip and goods, and impriſonment, *&c.* may as well be cited for precedents hereafter; and yet it will not be denied, that at leaſt ſome of theſe clauſes are void: it has been frequent to inſert clauſes in Charters, which will not hold water, they ſerve for a flouriſh, and *in terrorem*, like the penalty of 1000*l.* in a *Subpœna*.

Alſo theſe Charters were temporary, and they were bottomed upon ſome new diſcovery of a trade or a paſſage; and in truth that is the only good foundation upon which ſuch a Charter can be granted, *Godb.* 254. when a new invention or diſcovery has been made, or is making by any perſon, by his ſkill, charge, and perhaps peril of his life, the King may remunerate him with ſuch a Grant; but that muſt be only for a reaſonable number of years, and no further by the Common Law: and before the Statute of Monopolies, 21 *Jacobi*, adjuſted that reaſonable time to fourteen years. And I take it that the firſt Grant made in *England* to perſons for ſole trade to the *Eaſt-Indies*, was upon ſuggeſtion and conſideration of their being firſt traders there, and that was for fifteen years, which is long ſince expired. Though it ſeems, trade to the *Eaſt-Indies* was known to other *Europeans* many hundred years ago.

Impiger extremos currit Mercator ad Indos
Per Mare. Hor.

I ſhall mention two or three Act of Parliament, which do countenance and encourage free trade by any perſon to the *Eaſt-Indies*.

17 *Caroli* I. *cap.* 21. It is made a Premunire to hinder any perſons from importing Salt-Petre; the Defendant did import Salt-Petre in this Ship, and ſo do all Ships that come from the *Eaſt-Indies*; it is their uſual ballaſt.

12 *Caroli* II. *cap.* 18. *parag.* 3. (confirmed and re-enacted 13 *Car.* II. *cap.* 14.) forbids the bringing in of any goods of *Africa*, *Aſia*, or *America*, and in any Veſſel, but ſuch as belong to the people of *England*, *Ireland*, *Wales*, and *Berwick*, or of the King's foreign Plantations; and *paragr.* 13. mentions *Eaſt-India* commodities. Here was juſt occaſion for the Parliament to take notice of the Company (for this preſent charter was in being in 13, when the laſt Act paſſed, and a like former Charter in being in 12, when the firſt paſſed), and ſo they would, if they had thought the trade reſtrained to the Company. But they ſeem to allow, that theſe goods may be imported in any *Engliſh* or *Iriſh* Veſſels, whether of the Company or of other perſons.

22 and 23 *Car.* II. *cap.* 11. It is enacted, That all and every perſon or perſons, that ſhall build or cauſe to be built any ſhip or veſſel of three decks, with a fore-caſtle, and five foot between each deck, mounted with thirty pieces of ordnance, and other ammunition proportionable, ſhall, for the firſt two voyages, which the ſaid ſhip or ſhips make from his Majeſty's Dominions to any foreign port, have and receive to their own proper uſe and benefit one tenth part: and all perſons that ſhall build any ſhips of two decks, above three hundred tuns and thirty guns, ſhall have one twentieth part of the Cuſtoms, that ſhall be paid to his Majeſty for all ſuch goods or merchandize, as ſhall be exported or imported on the ſaid ſhip or ſhips, to and from this Kingdom.

'Tis known, that ſuch ſhips uſed to be built and employed for the *Eaſt-India* trade, and not for trade to any Chriſtian Country; but the Act takes no notice of this Company, or of a licence to be from the King; but allows and declares, that all and every perſon or perſons may build any ſhip of three decks, and make a voyage with her to any foreign part, and encourage people ſo to do, with a reward; to which reward (if the Defendant's ſhip be within the circumſtances) the Defendant might be entitled for this voyage for which he is now ſued. And certainly no Law appoints a reward and a puniſhment for the ſame thing.

I will eſtabliſh this point with two authorities, not of a private nature, like dormant Patents, but the judgment of Parliaments, and of the Court of *King's-Bench*.

1 & 2 *Ph. & Mar.* the *Muſcovy* Company was erected by Letters Patent, and therein a clauſe, to reſtrain all others from trading upon a like penalty, as here; but notwithſtanding that, other people did trade thither: and thereupon, 8 *Eliz.* an Act of Parliament was made, reciting the Charter, and that other perſons did trade thither notwithſtanding; and therefore enacts that the Charter ſhall ſtand, and no other perſon ſhall trade thither; which ſhews the judgment of the Parliament, that without this Act the reſtraint was not good.

The other concerned the late *Canary* Company.

It is *Mich.* 20 *Car.* II. *Rot.* 403. *Banco Regis*, *Horn.* 118, *&c. Ivy.*

They had a Charter with like reſtraint and penalties as in this; and in treſpaſs brought for ſeizing the ſhip, the Defendant juſtified by virtue of the Charter, and judgment was given for the Plaintiff againſt the Charter, by the uniform opinion of the whole Court.

That caſe indeed was not the ſame with this, as to the manner; but as to the matter and ſubſtance it is the ſame.

I ſhall conclude this point with an obſervation of my Lord *Cole*, *Jur. Co.* 31. that Acts of Parliament againſt the freedom of merchandize never hold long.

If that be the fate of Acts of Parliament, which are Laws, certainly a Charter made to ſuch purpoſe, ought not to be allowed.

The Second Point.

I take the Law to be clear with *F. N. B.* 85. *a.* that every ſubject may go out of the Kingdom for merchandize as he pleaſes, and whither he pleaſes, without aſking leave of the King, and ſhall not be puniſhed for it.

But now taking it by admiſſion, that perſons are reſtrained, and that the Defendant ought not to have traded to the *Eaſt-Indies* without licence; yet I conceive this action upon the caſe can never be maintained.

In maintenance of it, Mr. *Holt* ſays, that this privilege of trade granted to the Company is a franchiſe; and if another violates it, the Grantee may have an action of the caſe againſt that perſon, as 22 *H.* VI. 14. and 11 *H.* IV. 47. where the King has granted a Fair or Market; if a man ſet up another Fair or Market to the damage of the former, he that has the Grant ſhall have an action in the caſe.

I obſerve, that in the arguing of the firſt point, Mr. *Holt* all along called this a licence, which now (to ſupport this ſecond point) he would have a franchiſe; but theſe two things differ greatly. A franchiſe (underſtood properly) is an Hereditament, a thing of intereſt, and aſſignable and transferrable; but a Licence is only *Relaxatio Juris*, a diſpenſation with the Law, a privilege to certain perſons to do an Act with impunity. When the King grants a market, he creates or grants a real thing; but when he gives liberty to trade, he does not create or grant a real thing, but only diſcharges or prevents a penalty inflictable for trading without ſuch leave.

When the King creates or grants a Market to any perſon, if he makes a Grant of another Market to another perſon, to the damage of the firſt, it will be void, becauſe the Grantee has a franchiſe that is a real intereſt; and the Grantee may have an action of the caſe againſt him that ſets up a Market under pretence of ſuch a Grant, as well as he may againſt a man that ſets up a Market without any pretence of Grant.

But if the King licenſe any perſon to trade, he may notwithſtanding licenſe others too, although that be to the damage of the firſt; for he has not conveyed any intereſt to the firſt, that ſhould hinder him from diſpenſing with others.

There is no bottom for this action to ſtand upon; there are but two things in the Charter towards it; *firſt*, a licence to the Company to trade; *ſecondly*, a prohibition and reſtraint to others, whereby the Company is to have the ſole trade.

If the King had only granted a licence to the Company to trade to the *Eaſt-Indies*; the Company could not thereupon have an action againſt the Defendant for trading thither. Now when the King, in the ſame Charter, adds a reſtraint and prohibition to the Defendant and all other ſubjects; this Mr. *Holt* would have to be no more than the Law ſaid before; but if it be more, this does not add any real intereſt to the Company, or better entitle them to an action.

Suppoſe it to be an offence, and puniſhable for the Defendant to trade to the *Eaſt-Indies* without the King's licence; the King diſpenſes to the Plaintiffs, ſo that they may trade there freely; then the Defendant trades there without licence, this may (according to that ſuppoſition) ſubject him to penalty at the ſuit of the King, but this gives no title to levy money upon the Defendant for trading without licence, there is no privity, no cauſe of action.

The reſolution at the end of the Caſe of Monopolies, 11 *Rep.* 88. *b.* is a clear authority to this purpoſe: Cards were prohibited by Act of Parliament to be imported; and the Queen grants to *Darcy* that he ſhould have the ſole importation of Cards, *non obſtante* that Statute; and during that Grant, another man imported Cards, againſt whom *Darcy* brought an action on the Caſe for it, and therein alledged too that he had been at great charge to make and provide Cards ſufficient. But reſolved that the action would not lie; but for puniſhing the party, the remedy which the Statute appointed againſt importing muſt be followed.

It is inſiſted upon, that the Plaintiffs have been at great charge to carry on this trade, and by others interloping they ſhould loſe the fruits of it.

The Defendant has as much to ſay, that he has been at great charge, and by reſtraining and proſecuting him he ſhould be a loſer.

But I ſay, this is *damnum ſine injuria*. In the mentioned Books of 22 *H.* VI. 14. and 11 *H.* IV. 47. it is held, that the action on the caſe would not lie, which was brought by a Schoolmaſter (or two), for that he had an ancient ſchool in a town, and one ſet up another near, ſo that whereas before he had two ſhillings a quarter for a boy, now he could have but one ſhilling: ſo for erecting a mill, that withdraws cuſtom from a former mill, no action lies.

In every action on the caſe, there muſt be *damnum & injuria*, there muſt be a wrong to the party plaintiff: It is no wrong to the Plaintiffs here that another offends againſt that Law, which is diſpenſed with to them.

If the Defendant's trading without the King's leave be an offence againſt the King, it is puniſhable by the King ſtill, and that way of puniſhment muſt be followed, if there is to be any; beſides, all the foundation the Plaintiffs ſhould ſtand upon is the Charter, but they do not follow that; the Charter appoints the penalty to be forfeiture of ſhip and goods, whereof one half to the King; but no action on the caſe is given, or meant, wherein the carriage may be more or leſs, and wherein the King is excluded from any ſhare.

If an Act of Parliament prohibit under forfeiture of ſhip and goods, the one half to the King, the other to the party, that muſt be followed, there ſhall never be an action on the caſe; for the Common Law ſhuts it up with a ſtrong negative, and ſays, there ſhall be no other penalty. And in all caſes of Statutes, By-Laws and Charters, the method of puniſhment preſcribed muſt be obſerved.

To obviate this the Plaintiffs have been cautelous, and have miſrecited the Charter in their declaration; they, to let in a pretence for their action, re-

cite the prohibition or restraint, and stop there, as if the prohibition were absolute and general; whereas it is *sub modo*, under a special penalty of forfeiture.

And this appears upon *Oyer*, and therefore for this variance, judgment ought to be for the Defendant, if there were nothing else in the case.

But waving this concerning the form of the Suit, I insist upon the main matter.

There is a natural necessity that every man that will live must eat, and thence a necessity and obligation to labour; and there is a property in this means of livelihood as well as in life.

The King's power and prerogative is to establish and preserve this to all his Subjects.

Traffick is one of the honestest and justest sorts of industry, and is more especially proper for an Island.

The King cannot prohibit merchandize, nor lay a penny imposition upon it; therefore our Kings have received tunnage and poundage from the Grants of Parliaments: whereas if they had such a power (as the Plaintiffs Counsel speak of) over all trade, they might by the means of that, have made an undeniable title to such a revenue, without the consent of the Lords and Commons.

Restraining of trade (though but for a time or place) is one of the great things which has been always reserved to, and exercised by authority of Parliament, as we find almost in every Sessions.

This which is now before your Lordship, is the greatest Monopoly that has been attempted. It monopolizes *Africa*, *Asia*, and *America*, at least on the *South*; it devours above half the trade of the Nation, the trade of Linnens from *Hamburgh*, *Flanders*, and *Holland*; Silks from *Italy* and *Turky*, and when the prohibition expires, from *France*; and affects our Manufactures at home, upon all which the livelihood of many thousands depends.

It is against the Common Law and many expres Statutes.

No man was ever punished, in any Court, for using foreign trade; no, not in the *Star-Chamber*, which extends the prerogative most. It is *Casus primæ impressionis*, although there has been occasion to have had precedents, if any such accident could have lain.

But as this is the first that has been brought, I shall presume it will receive that just discouragement from your Lordships, that it will be the last. And

I pray your Judgment for the Defendant.

Mr. Sollicitor-General *Finch* (afterwards Earl of *Nottingham*) his Argument.

De Term. Pasch. Anno Regni Regis Caroli Secundi xxxvi. *Die Sabbati* xix *Aprilis, Anno Dom.* 1684. *Banco Regis.*

The *East-India* Company against *Thomas Sandys.*

MR. Justice *Withins.* Mr. Sollicitor-General, do you argue that case to-day?

Mr. *Sollicitor General.* Yes, Sir.

Mr. Justice *Withins.* Mr. *Pollexfen*, do you argue on the other side?

Mr. *Pollexfen.* I do, Sir.

Mr. Justice *Withins.* Then, Gentlemen, let him come down to the Bar.

Mr. *Sollicitor General.* My Lord, this is an Action upon the case, brought by the *East-India* Company against *Sandys*; wherein they do set forth that the King, reciting former Letters Patents granted to this Company to incorporate it, did grant a Charter to such particular men, and made them a Corporation by the name of the Governor, &c. and did grant to them the sole trade in all the parts upon the Coasts of *Asia*, *Africa*, and *America*, from the *Cape of Good-Hope* to the *Streights of Magellan*. And further, that he did likewise grant to this Company and successors the sole trade; and granted to them, that no other of the King's subjects should trade within those limits, and did expresly prohibit all his subjects, to trade thither, not being of the Company without a licence from them. Then they say, that Mr. *Sandys*, being one of the King's subjects, did take upon him to trade within the limits of those Letters Patents, to wit, at *Mesopotan*, not having a licence from their Company, or any other authority to do it. And this they lay to their damage of 1000*l.*

Mr. *Sandys* to this, after he prayed *Oyer* of the Letters Patents, which are set forth *in hæc verba*, pleads the Statute of 18 *E.* III. which says, that the Sea shall be open, and all Merchants shall go with their merchandize, where they please. To this Plea we have demurred.

Upon this Record, the Questions will be these two:

First, Whether or no the Patent to the *East-India* Company, with a prohibition to all others to trade within their limits, therein set forth, be a good Patent? The next is,

Secondly, Whether, admitting it to be a good Patent, this action will lie; that is, whether it be a bare licence to the Company, or whether it pass such an Interest to the Company with that licence, as will entitle them to an action against any that shall intrude or incroach upon their trade?

First, My Lord, I am to prove that this Grant is good; and here these considerations will fall in.

First, Whether the King had power at Common Law to have made such a Grant?

Secondly, Whether that power be any ways abridged by any Act of Parliament, as it is much insisted upon by the other side?

Answ. First, That the King had such a power at Common Law, I conceive is plain, for these reasons:

First, Because no subject at the Common Law had a right to trade with Infidels, no nor to go thither, without licence from the King first had and obtained.

Secondly, No such trade can be established without precedent treaties, and no such treaties can be made by subjects, without licence from the King to make them. If therefore this Patent does not restrain any natural liberty or right that the subject had, but is introductive of a new one, they had not before; it will not fall out to be within the definition of a Monopoly, in which it is one essential part that it restrains people from that liberty they had before.

Now that no subject had a right at Common Law to trade with Infidels, or go into an Infidel Country, without licence from the King, will be evident thus. And,

First, It will be very considerable, before we enter upon that Question particularly, to see how all right in general to trade stands circumstantiated; and there it is plain,

First, That there is no trade, but what depends upon the good-will and pleasure of the foreign Prince with whom it is, whether he will admit it or no; that is pretty clear.

Secondly, This may be restrained by a total prohibition of any commerce with that Prince or Nation, by the King here.

Thirdly, Tho' every man now, and Merchants always were at liberty to go abroad without licence, yet the King may restrain any man by the Writ *Ne Exeat Regnum*, from going out of the Kingdom; and that without shewing any particular cause why, or alledging any matter that is traversable and triable with the King. And,

Fourthly and *Lastly*, If any foreign Prince, upon concluding any league or treaty with the King, should restrain trade to any number of persons, or any particular qualification of manner of proceeding in it; I see not how any man can pretend to a right, to act contrary to that, in breach of such a league or treaty made with the King by such a foreign Prince.

Then we say further, by the Statute of 3 and 4 *Jacobi*, which opens the trade to *Spain* and *Portugal*, that does show plainly that that trade was before inclosed; and it does not show that the Inclosure of it was illegal, but gives a right that was restrained before: and yet I am far from affirming that the subject has no right to trade, tho' it has been objected that this clogs it, and makes it as none; and therefore, they held it absolutely necessary to disaffirm that power and prerogative, which the Law, for the public good, does repose in the King, and that upon reasons that will not hold, nor are so fit to be urged in decency: for I take it, the possibility of the abuse of power, is no objection against that power. For by this argument, tho' the King has a power and prerogative by Law to restrain subjects from going beyond Sea, by a *Ne Exeat Regnum*, no, say they, he cannot; for then he may restrain all his subjects from going out of the Kingdom, and so imprison and hinder every one from going out of the Nation. It is the same argument with this, that they urge the King claims a prerogative to restrain such trade upon occasion; they say this argument cannot hold, for by this rule he may restrain all commerce and trade whatsoever: so that this way of arguing does strike at all power, and I need give no other reason for it, for there can be no power at all, which is not accompanied with some trust; and there is no trust, but it possibly (morally speaking) may be broken. So that this is no argument against the right of the subject to trade on the one side, nor against the prerogative of the King on the other, in whom the Law has reposed a trust to regulate and qualify trade.

But, My Lord, in this case the question is not of so large an extent, nor so general as this is: but only here it is a question, how that right stands with respect to Infidels, and that is the question before your Lordship.

And I cannot but observe, in my entrance into the question, that unless the Law had once been held clear in this matter, this could not have come to be any subject of debate now, for no such trade as this, could ever have been gained to the Nation; for none could have ventured upon so hazardous an enterprize, or so chargeable a project as this was, if it had been any doubt whether those that run no such adventure should be admitted to reap the first fruits of it.

So that this question, as it tends to overthrow this trade, if the Law be taken to be as they would have it, so it overthrows the *Turky* trade too, which stands upon the same foundation, with respect to the prohibition by Letters Patents as this does: for the question is not, upon how easy terms the privileges are to be obtain'd, as it is confessed the terms are easier in the *Turky* Company, than in the *East-India* Company; but whether any terms at all are requisite: if any terms can be impos'd upon it, then those are good; if none, then that will overthrow the *Turky* trade, and all the trade of the Nation. And surely if they can prevail in this question, the subjects, for whose right they pretend so much to stand up, will have little cause to thank them for standing up for a right, as they call it, against the very Interest of the Nation. But to return to our argument:

The subject can have no such right to trade with Infidels without licence from the King; for they are looked upon as enemies, not only in a spiritual sense, as they are of a contrary Faith and Religion, but they are so treated in Law; and the resolutions of the Law are such as we may see in *Calvin*'s case, and the 12 *H.* VIII. which is a Book they cited, and was quoted here before, upon the first argument of this case; where it is held, that a Pagan, tho' he be beaten, cannot have or maintain any action at all, because he is *perpetuus inimicus*: so an Alien Enemy can neither maintain a real or personal Action, as it is said in the *1st Inst.* 129. *B.* so a Jewess, though born here, and marrying a converted Jew, shall not be endowed; and so is the same Book 32, so that they are look'd upon no more than common Aliens; for we see that tho' they are born here, yet they have not the capacities so much as of Denizens, for they shall not be endowed, as Denizens may. And tho' my Lord *Coke*, by the way, says, in that Book, no Alien can be endowed: yet I find in the Parliament Rolls a Petition of the Commons, it is in 8 *H.* V. *m.* 16. they pray that Female Aliens may be endowed; and the King's answer is, Let it be as it is desired. But I mention that only by the bye, for it is not at all relating to our question, but for that the other resolution goes to it, that an Infidel is always to be treated as an enemy.

But, my Lord, further, that all Infidels are likewise Aliens and Enemies, in respect of their properties which they gain here; it is to be gathered from what I find in *Rot. finium* 50 *H.* III. *m.* 5. the King releases a debt, that was owing to a Jew; and in the same *Roll*, 49 *H.* III. *Rot. finium*, there are divers pardons of debts owing to Jews, some in recompence for service done, and others in compassion of the poor, that they had drawn in to be engaged for great sums to them.

Rot. Parl. 13 *E.* I. *m.* 4. A Jew died, and the King granted away his goods, and his Widow redeem'd them for 1000*l.* and the King granted to the Jewess, that he would not discharge any debts, that were owing to her. This shews their properties were all at the King's mercy; and sometimes the King granted licence to them, and gave them leave to assign their debts, *Rot. Parl.* 3 *E.* I. *m.* 6. which recites that it was provided by King *H.* III. that no Jew should sell his goods without licence. The King grants a licence to *Judeo Nostro* to sell a debt of 20*l.* that was owing him from the Bishop

Biſhop of *Bath* and *Wells*; and doubtleſs the reaſon of that Law in *Hen.* IIId's time, was, that the King might prevent any miſchief, that might follow upon an unlicenſed commerce between his ſubjects and thoſe Infidels: and this appears plainly by conſidering, that by the ancient Law of the Land, no Jew could inhabit any where within the Kingdom, but where by cuſtom they were permitted to dwell; and ſo is *Rot. Clauſ.* 1 *E.* I. *m.* 7. *in dorſo*; they had gone and inhabited at *Winchester*; but they were removed thence, and the Record tells you the reaſon why, *Amoti*, &c.

They had particular Juſtices aſſigned over to them, to determine their cauſes, and that you ſee *Rot. Clauſ.* 49 *H.* III. *m.* 4. the King conſtitutes two Juſtices *ad Cuſtod. Judæorum*, and gives them power to determine their Pleas in the places where they were accuſtomed to inhabit.

And there is in *Rot. Parl.* 13 *E.* I. *m.* 7. a very remarkable Record to this purpoſe, *Rex dilecto*, &c.

My Lord, I find another Record like this in the Patent-Rolls of that year; for we ſee what care the Law took, that Chriſtians ſhould not be circumvented by the Jews; and the Government had an eye upon them, that they ſhould not have commerce one with another; that recognizances ſhou'd be enter'd in the preſence of Chriſtians. That Record is thus, *Rex omnibus*, &c.

We ſee a man here, that deals with a Jew, and buys things of him without Licence, and the King grants that he would not trouble him, or proceed againſt him by Law for that offence.

By the ancient Law it appears, that if a Chriſtian marry'd to a Jew, it was felony, and the party offending was to be burnt; ſo is the 3*d Inſt. fol.* 89. and there my Lord *Coke* cites *Fleta* for his authority in it.

From all this it appears, that Infidels have no right to trade and traffic here, and ſurely then no ſubject has a right to trade with them in their country; for the reſtraint certainly muſt be mutual. And, my Lord, for this, I muſt remember you of a caſe that has been before cited in this caſe, and that is *Michelborne*'s caſe in *Brownlow*, where my Lord *Coke* declares the Law to be as we ſay, and that he hath ſeen a Licence in *Edw.* III's time; and that he ſays was for the ſafety of Religion.

And ſurely, my Lord, it is upon ſome ſuch grounds as this, that the Law provides that no excommunicate perſon ſhall bring an action, no not *in auter droit*, becauſe no perſon muſt converſe with them; therefore, they cannot ſue as Executor to any perſon. Then if the Law be cautious for the ſafety of Religion, as to reſtrain converſe in our country; *à fortiori* it may reſtrain the Subjects liberty of trading in an Infidel country, where they muſt be under the Laws of the place; and the inconveniencies in the one caſe are ſure much greater than in the other.

For we ſee in *Calvin*'s caſe, if the King conquers an Infidel country, their Laws actually ceaſe till the King gives them new ones. But 'tis otherwiſe of a Chriſtian country, for there the Laws remain till the King is pleaſed to alter them.

Another reaſon, my Lord, is this, the King's prerogative in making leagues and truces, is ſure as large and unlimited as the ſubjects right to trade; and yet in the caſe of Infidels that is reſtrain'd, as to ſome ſort of leagues that a Chriſtian Prince cannot make with them, *&c.* For that you may ſee in the 4*th Inſt.* 155. where my Lord *Coke* ſays that the Law of *England* is ſo, that the King can't make *Fœdus mutui auxilii aut amicitiæ*, with an Infidel Prince. And there he reckons up four ſorts of leagues; three of which he ſays may be had with Infidels, that is, *Fœdus Pacis*, *Fœdus Congratulationis*, & *Fœdus Commercii*; but *Fœdus mutui Auxilii*, he ſays, by Law is not allowable: and herein theſe leagues are grounded upon the Law of God.

Therefore, my Lord, the Law ſurely does not give the ſubject an unlimited freedom to trade, but it muſt depend upon ſuch cautions and ſecurity, as nothing but ſuch leagues can provide for; which leagues I am ſure none but the King is capable of making.

This then, one would think, were enough to clear our Patent from that objection, that 'tis a Monopoly. But there are no other things, that make it yet more evident it is not ſo. As firſt, in all the complaints that have been of Monopolies, this Patent was never counted to be one among them, nor thought to be illegal; if it ever had been thought ſo, the Statute of 21 *Jacobi*, *cap.* 3. which is a Statute made for regulating of trade, would never have been made.

In the next place, I ſay either the firſt Patent for this trade was a Monopoly, or this is none: the firſt was none, not only for the reaſons I gave before, but becauſe it was a new trade. Patents for new Inventions are not made good by the Statute of 21 of King *James*, but left as they were before; only they are reſtrain'd to a number of years, and were always good, becauſe they were for the incouragement of trade, and of uſeful inventions to increaſe them.

A fortiori therefore in this caſe, what is of much greater conſequence to the Nation is a point of trade, than any little ſlight Invention of a particular thing, muſt be allowed to be good; then I ſay, ſure if the firſt Patent be not a Monopoly, then neither can this Patent be a Monopoly; for there is no Law that hath declared how long ſuch a trade as this is may be incloſed, as the Statute of 21 King *James* has ſet limits for, as new Inventions.

And again, this Company is for the advantage and benefit of the Nation, which a Monopoly can never be: and that it is for the benefit of the Nation, appears by the Statute of the 14th of this King, *cap.* 24. which recites it to be of great advantage to the Publick, and for the encouragement of the Publick Trade and Navigation. Here then, my Lord, is both the Judgment of the Parliament concerning Companies of this kind, and an incouragement of this particular Company by the whole Parliament.

And again, they are taken notice of in another Statute, made in the 29th of this King, *ch.* 1. where they are taxed 20*s.* for every 100*l.* capital Stock in the Company.

Another reaſon is this, becauſe of the abſolute neceſſity of a Company to manage this trade, not only in reſpect of the *Indians* themſelves, but alſo in reſpect of other foreign Nations, who are rivals to us in this trade, and are ready to take all advantages againſt us about it. But this part of the Caſe is much more fit to be diſcourſed of by Merchants and Stateſmen, than Lawyers.

Yet thus far the Law falls in to conſider this matter, as they are a Corporation under ſtipulations and leagues with other Countries for the carrying on of their trade; and ſo are in the nature almoſt of foreign Plantations, under a regulated and Chriſtian Government within themſelves, whereby thoſe miſchiefs are prevented, that would have fallen upon an unlimited and unregulated trade with Infidels, that are enemies to our Religion and Nation; which the Law, as I have already ſhewn, takes ſo much care to prevent.

For other conſiderations, whether this trade be driven to the full extent of it, or may be more advantageous to be enlarged, as it is proper here to be diſcourſed of in a Court of Law, ſo the Application for that muſt be made elſewhere; for I do not know any Law that hath made the Defendant a Reformer among us.

My Lord, in the next place, the next queſtion is, whether this prerogative of the King is abridged, or reſtrain'd by any Act of Parliament, as is inſiſted on by the Defendant's Counſel? I think not. For,

Firſt, In general, the chief trade of this Nation conſiſted anciently moſt in Wool, Wool-Fell and Leather, and with our neighbouring Nations only; and yet,

Secondly, Even that trade was reſtrain'd in the exerciſe of it; for none muſt buy and ſell, but he muſt do it at the Staple, as appears by 2 *Ed.* III. *chap.* 9. that abrogates the Staple, and afterwards it was erected again. And then in the

Third place, there was no ſuch trade as this or any other ever eſtabliſh'd with Infidels in thoſe days, and ſo there was no occaſion for ſuch a Law to reſtrain them.

The beſt rule therefore to interpret this Act of Parliament, will be to apply the remedy to the inconvenience and miſchief that was before it. If then there was no ſuch inconvenience as this complain'd of, the reſtriction of the trade with Infidels; then all may reaſonably conclude and inſiſt upon it, there was no ſuch remedy as the laying open of a trade, as they alledge, intended to be introduced. But if we conſider the Act itſelf, we ſhall ſee ſome particular reaſon for the making of it, either for the taking off ſome cloggs, that were upon the trade then in uſe, or the providing ſome remedies which were introduced to obviate the preſent inconveniences and miſchiefs.

Firſt then, for *Magna Charta*, which hath been cited *chap.* 30. that gives liberty to Merchants, *Quod niſi publicè antea prohibiti fuerint, habeant ſalvum & ſecurum conductum exire de Anglia & venire in Angliam, & morari & ire per Angliam, tam per terram quam per aquam, ad emendum & vendendum ſine omnibus malis tolnetis*, &c. *præterquam in tempore guerræ.*

This helped Merchant-Strangers in this particular, becauſe before that they could come but at four times in the year, and muſt ſtay here but forty days at a time; as my Lord *Coke* obſerves in his Comment upon that Statute, and cites the *Mirror of Juſtice* for it. And if this Law proves any thing relating to this queſtion, it is, that before that Act, Merchants could not go out of the Kingdom, and ſtill they may be prohibited publickly; which, tho' my Lord *Coke* ſays muſt be by Act of Parliament, yet he cites no Law for that opinion; and with ſubmiſſion, the word Publick doth not neceſſarily import that it ſhou'd be by Act of Parliament. My Lord, that Law that comes neareſt in words to this caſe here before you, is that of 1 *E.* III. which is pleaded by the Defendant, that is part of the Act, the latter clauſe of it, that the Sea be open to all manner of Merchants, to paſs with their merchandize whither they pleaſe.

This is part of that Law; but, my Lord, the meaning of this Law is quite and clear another thing, as I ſhall ſhew with ſubmiſſion moſt plainly: and I will beg leave, my Lord, a little to introduce it, by giving you a Hiſtory of this Law, how it comes to be made; for it is but a ſhort one, and 'tis only the laſt clauſe of it that is pleaded by the Defendant.

By the Statute of the 11th of *Edw.* III. it was made felony to tranſport Wool, and this my Lord *Coke* obſerves in his Comment upon *Magna Charta*, upon *chap.* 30. King *Edw.* III. took advantage of it, for exacting money of the Merchants, for diſpenſations with the Law, and for licences for tranſporting of Wool. Hereupon ſeveral complaints were made in the Parliament; and particularly, in the 17th year of *Edw.* III. *Rot. Par. nu.* 28. the Commons complain, that the Grant of 40*s.* upon a Sack of Wool made by the Merchants only, was not to bind the Commons, and therefore pray it may be revoked. The King anſwer'd, This cannot tend to charge the Commons; for that there was ſet a certain price upon Wool in every County, which the King willed ſhould ſtand; and that all Wool ſold under that price ſhould be forfeited in the hands of the buyer.

This was in 17 *E.* III. and this matter, my Lord, among other things, was repreſented to the ſame Parliament, by the ſame Merchants, by way of advice, as a thing fit, 17 *E.* III. *in dorſo nu.* 58. of the Parliament-Rolls of that year. And they ſet forth, Whereas they were ſummon'd to *Nottingham*, to inform the price of Wools, which they did not, regarding the times to come as they ſay, and that was abuſed; they pray liberty to buy Wools as freely as other merchandizes, as they can agree between buyer and ſeller; and that all Indictments and Proceedings contrary to that Law might be ſtayed; and further they add their advice, that the King would ordain the Staple in ſome place in *England*, rather than beyond the ſeas.

Then comes the 18 *E.* III. *Rot. Parl. nu.* 12. among other Petitions of the Commons, there are theſe which refer to the firſt part of the Act of Parliament: That the prices ſet upon the ſorts of Wools in every County, which run more to the damage than advantage of the people, might be ouſted, and that every one may buy freely, as he can agree with the ſeller, and none be accuſed for doing the contrary.

This, my Lord, explains the firſt part of that Act of Parliament; that the ordinances before this time made upon taking ſorts of Wool, which was imprinted in *Raſtall*, and all the Statute-Books; (for the Roll is, *ſur pris*,) and defeated, and that every man, as well Stranger as Denizen, may henceforth buy Wool as he can agree with the ſeller, as they were wont to do before the ſaid ordinances.

Now, my Lord, you ſhall ſee the latter part of the Act, which is that they plead: among the Petitions of the Commons in the ſaid Roll, there the 5th Petition is, reciting, *That whereas the King had granted to them of* Flanders, *that the Staple for Wool ſhould be held at* Bruges; at the time of which Grant, all manner of Merchants, that is, *Lombards*, *Genoeſe*, *Catalonians*, *Spaniards*, and others, who uſed to buy the greateſt part of the Wool, and carry them out of *Flanders* by land and ſea where they would, to the great profit and increaſe of the price of Wool, thither coming: yet the Towns of *Bruges*, *Gent*, and *Ipres*, have of late ordained,

That

That no wools coming to the Staple, be sold to strangers, nor carried out of the said Country of *Flanders*, as they used to be, to the damage of the merchants of *England*, and of all the commonalty; and therefore they pray remedy hereof.

This is granted by the King, that they may buy wool as they were wont to do; and that a Writ should be sent to the Sheriff to make Proclamation accordingly. Then they pray, that the effect of these answers may be put into writing, in the manner of a Patent under the Great Seal; and this is done, in which there is this very Statute of 18 *E.* III. *in terminis*, as it is printed. And this plainly shews, that the Sea being to be open, and Merchants to pass wherever they please, was only in answer to that petition and representation, and to redress the mischief; that they might buy here, and go where they would, and not be necessitated to go and buy at the staple; which was so abused by those of *Bruges:* And this is likewise pursuant to the advice and petitions of Merchants before the 17th *E.* III. That the King would establish a staple somewhere in *England*, and not in parts beyond the Seas.

My Lord, for the rest of the Acts of Parliament that have been cited on the other side, I shall not enter upon them particularly; but this every body at the first sight may see, they carry their own answer along with them, and the occasion of their making does appear in themselves, tho' this did not, and very few of them come up to this Question now before you, or any thing like it, as will appear plainly upon the bare reading of them.

The only Question then, my Lord, that remains, is, whether the action lies for the Company? For I think I have made it out, that the King had such a prerogative at Common Law, and no Act of Parliament hath taken it away. Then I say, the Question is, Whether an action lies for the Company; that is, whether it be a bare licence, or coupled with an Interest? And as to that point, I shall be very short, for to me it seems to be no Question at all. For,

First, They are at a great charge and expence to support this trade, and therefore surely they ought to profit by it.

Secondly, They are looked upon by the Parliament to have an interest in this trade, or else they had never been taxed so high as twenty Shillings for every 100 *l.* in their stock. Then if they have an interest in the trade, this trading of the defendant is an encroachment upon that interest, and then here is *damnum & injuria*; which will intitle them to an action.

For so it is in other things: A Fair, in some sense, is but a licence to hold a market at such a time, in such a place; but because of the profit that tends to that liberty, and the charge that the party is at in keeping of it, an action does lie against any Man that sets up another Fair, to the prejudice of him that had the first Grant.

In the common case of Patents for new inventions, an action lies for using the invention without licence, because of the interest conveyed by the Grant, and the charge that the party that invents, is at. So that I think, my Lord, with submission, we have here an interest in this trade; and an interest, I say, as well as a licence, well founded upon the King's Letters Patent; which the King had power to make by prerogative at the Common Law; and that power not restrained by any Act of Parliament. And therefore I humbly pray your judgment for the Plaintiffs.

Mr. Pollexfen, *(afterwards Lord Chief Justice) his Argument.*

De Term. Pasch. Anno Regni Regis Caroli Secundi xxxvi. *Die Lunæ* xxi. *Aprilis, Anno Dom.* 1684, *Banco Regis. The* East-India *Company against* Thomas Sandys.

Mr. *Pollexfen.*

MAY it please your Lordship, the Governor and Company of Merchants of *London*, trading to the *East-Indies*, they are plaintiffs, and *Thomas Sandys* is the defendant. If your Lordship please, I will open a little more of the Record than has yet been opened: And the Case upon the Record stands thus:

These plaintiffs bring their actions against the defendant, and do declare, That the King by his Letters Patent, in the 13th year of his reign, did grant to them the sole trade, between the Cape of *Good Hope* and the Streights of *Magellan*, in the *East-Indies:* And did also grant unto them, that they, and nobody else, should come thither, nor trade there; and they do say, the defendant did come thither, and did trade; and that this is to the plaintiffs damage.

This defendant has prayed *Oyer* of the Letters Patent; and there are some things that are not mentioned in the Declaration: but not being upon the Record, and appearing upon the *Oyer*, I crave leave to open them, that I may make use of them in the discourse I am to make; and I desire your Lordship would please to take notice of them.

In the Letters Patent, when they come to the Prohibition and Restraint, the Prohibition and Restraint is in this manner, which they have left out in their declaration. The Letters Patent do prohibit the trading without a licence, upon pain that every such person that shall trade to or from the *East-Indies*, shall incur the forfeiture of his merchandize, and also of the Ship; one moiety to the King, and the other moiety to the *East-India* Company.

And then there follows another clause, which is omitted also out of the Declaration; and that is a clause of Grant to the Company, that for any consideration of benefit to their own use, they may grant licence to strangers or others, to trade to and from the *East-Indies*.

And then there is another clause that is omitted also, and that is this, That the King grants to the Company, that the King will not, without consent of the Company, give licence to any persons besides the Company to trade thither.

And there is likewise another clause which I would take notice of, That nobody of the Company should have a vote in the Company, unless he have a stock of 500 *l.*

These clauses now being in the Letters Patent, and the Letters Patent being set forth upon the Record, they are become parts of the Cause.

The defendant has pleaded the Statute of 18 *E.* III. and thereupon there is a demurrer.

My Lord, the Questions that are in the Cause are only these two:

First, Whether or no this Grant of the sole trade to the plaintiffs, be a good grant or not? And next,

Secondly, Supposing it should be a good Grant, Whether or no the plaintiffs can maintain this action, as now it is brought?

My Lord, in the argument of this Case divers Things have been said in which I shall differ from the other side; but only take notice how far they may be of force in point of argument, to make the Questions that are in the Case to turn, as to the Law, one way or other.

My Lord, it is no Question but that the King, by Law, can restrain any of his subjects from going out of the Kingdom: For the King hath a particular interest in the services of his subjects; and therefore it is most reasonable and an undoubted Rule, I think, in the Law, that the King may restrain any particular subject *pro hic & nunc*, as the King takes it to be most necessary and convenient for his service to restrain.

Next, my Lord, I do not deny, but think it also to be a Law, That the King may restrain all his subjects from a trade to such a particular Country or City, upon some reasons or occasions; as in times of war, and times of plague, that I reckon by law may be done very well.

But, my Lord, that is not the Question in our Case; for the Question in our Case is a Question concerning a sole trade granted to a particular person, or body politick, (which is but one particular person in consideration of Law) with a restraint upon, and excluding all his other subjects. Now from what has been granted already, to argue that the King may grant such a sole trade, is no consequence at all from these positions that have been agreed, *i. e.* from the authority and power the King has to restrain his subjects from going out of the Kingdom, or to restrain them from trading in such a place. For,

First, As to the power the King has by Law to restrain his subjects from going out of the Kingdom; though by Law his power be such, yet first of all it is not a power universal to restrain all his people, but to restrain this or that man for his particular service, for this or that particular Time. But to make a universal restraint, that none shall go out but you *J. S.* or you such a body politick, will go a great deal further than ever it has been before, or can be conceived.

Next, my Lord, That because the King can restrain trade in time of war, or in time of plague, that therefore he can restrain all his people, and for ever; except such and such particular Men, or a Corporation: that must needs be further than ever any thing I have heard yet to be Law, or could find any footsteps of.

So that I think there are no inferences can be drawn from these things, that can conclude any thing as to its particular point that now we are upon, *i. e.* That the King can grant a sole trade to any particular person and body politick, and their successors for ever; and restrain and exclude all his other subjects from that trade. My Lord, that will not be, I think, a consequence that can be drawn from any of the positions that I have laid down.

And, My Lord, further I would observe this in the arguing of this Case, That when they lay down this as a general position, That the King can restrain his subjects; there is no distinction, nor is there any foundation in Law for it, betwixt going to an Infidel Country, or going to a Christian Country. For it is as undoubted, the King may restrain any of his subjects, as the King's pleasure shall be, or as there shall be war or plague, and such other occasions as may require it, from going into a Christian country, as well as he may from going into an infidel one; and therefore if the argument have weight in it in this point, it hath weight as well to affect Christian Countries, and the whole trade abroad with them, as Infidel Countries, and trading with them.

And there is no difference at all from this reason or foundation, that can be inferred, as I can make.

Next, my Lord, when they argue and make use of the Statute of 3 *Jac. Cap.* 6. which enacts, *That the King's subjects shall freely trade to* Spain *and* Portugal, *notwithstanding the Charters of incorporation granted to some Merchants, and the prohibitions in those Charters:* If they will say that those Charters of restraint were lawfully granted, then they do argue for a power in the King to restrain trade even to Christian Countries; which is a thing, under favour, that never was yet affirmed, as I remember, but rather the contrary admitted: And if they say, those Charters that were granted for restraint of trade to *Spain* and *Portugal* were not lawful, because they were Christian Countries, then the Statute makes nothing for them: for sure it is no argument, that because an unlawful Charter was granted, therefore another unlawful Charter may be granted; or because that was void, therefore the other should not be void; no, rather the contrary.

My Lord, these things I have taken notice of, because they are matters that have been insisted on in the argument on the other side; and I would lay what is not necessary out of the Case. And I now come to the great point of this Case, and which indeed is a great point in the consequence of it.

First, Whether the Grant of sole trade to the Plaintiffs, be a good Grant or not?

And I humbly conceive, such a Grant of a sole trade to any particular person, or body politick, with a restraint to all others, is against the Law of the land, and by the Common Law void; and this I shall endeavour to prove from good authorities.

1. By the Common Law, trade is free and open for the King's subjects; and for that the Books that I shall cite are these, 3 *Inst.* 181. *Commercium Jure Gentium commune esse debet, & non in Monopolium & privatum pauculorum Quæstum convertendum; iniquum est alios permittere, alios inhibere Mercaturam.*

The next Book, my Lord, is *Fitzh. Nat. Br. fo.* 85. that says thus; *Note, That by the course of Common Law, every Man may at his pleasure go out of the Realm for merchandize, or to travel, or other cause, as shall please him, without demanding licence of the King; and shall not be punished for it.* And the *Stat.* of 5 *R.* II. *c.* 2. which prohibited all but the great Men and Merchants, to pass out of the Realm without licence, has therein declared the Law, when it excepted Merchants, that they had a right to go without licence: But this Statute is repealed afterwards by the Statute of 4 *Jac. cap.* 1.

Then,

Then, my Lord, there is *Rolls*, 1 *Rep. fol.* 4. the Taylor of *Ipswich*'s Case against *Sherring*. The words and sense of the Books are, *That no Trade, Mechanick, or Merchant, can be hindered by the King's Patent.* A Patent to hinder trade at sea, is a void Patent; a Patent that only a hundred persons shall use such a trade, is not good.

Dyer 165. *That every one may at his pleasure go with his Goods*; and cites *F. N. B.* for it. And *F. N. B.* 85. saith thus, *Note, That by the Common Law, every Man may at his pleasure go out of the Realm for merchandize, or to travel, without demanding licence of the King.*

These, my Lord, are the Books; and thus they speak generally at the Common Law: and I offer it to your Lordship as a further reason, That the Common Law is such, notwithstanding all their arguments, in regard that the Common Law, as far as it is against ingrossing, is also against all sole trade. For, my Lord, all sole trade is ingrossing, as I take it, with submission; appropriating trade and merchandize to a particular person or persons, or body politick, excluding others, is ingrossing such trade. Now that ingrossing is against the Common Law, and against the very fundamentals and principles of the Common Law; that, I think I need not labour much to prove, nor shall I go about to cite many Books to prove that.

That ingrossing any sort of merchandize is an offence at Common Law, *vide* 3 *Inst.* 196. And in the Case *Dominus Rex vers. Crispe & al.* here was lately an agreement betwixt copperas makers and copperas-merchants, for the buying of all copperas: These copperas-makers should for three years make at so much a Ton; and restraining them from selling to any others. It was here adjudged an ingrossing, upon an information.

And if a Company of Merchants shall buy up here, in like manner, all the merchandize of *Spain*, or *Portugal*, or the *Canaries*, or other town or place, for three years to come; this, I think, would be an ingrossing, and the contract against law.

But then, my Lord, to prove that sole trade is ingrossing, that the nature of the thing must speak; for whosoever has the sole trade of buying and selling of such a sort of commodity, or whosoever has the sole trade to any particular Country or Place, has thereby the sole ingrossing, and sole having of all the commodities of that place; so likewise has he the sole buying: and all the people that have to deal about the commodities that are to be vended and vented in that Country or Place, are at his will and pleasure; and thereby he makes all those his own, and he makes what price he pleases, and orders and disposes of them, both as to value and every thing else, as his own. And thereby, my Lord, I take it, it must be ingrossing; and every monopolizing of buying and selling, or of trade, is ingrossing. But that only ingrossing is by particular agreement and contracts between particular men, among one another, without the King's authority, or help of his Letters Patent; but monopolizing is ingrossing under colour of authority, by help of those Letters Patent that create them: for the consequence of it must be, that they would sell at their own prices, and thereby exact upon the King's Subjects: And their Patent for the sole trade to the *East-Indies*, invests them in all the merchandizes of these Countries, and ingrosseth all in their hands. Then if ingrossing by the Common Law be forbidden, and it is unlawful to do it, all Letters Patent to authorize and help Men to ingross, must needs be as void as that, which is the end of ingrossing; and that is monopolizing.

My Lord, in the 3d *Inst.* 181. the Case of *John Peachy*, in 50 *E.* III. who was severely punished for procuring a Grant or Licence under the Great Seal, that he only might sell sweet Wines in *London*, is a strong case for us. For, my Lord, this was ingrossing by colour of the King's Grant, and punished as a great offence: And the case of Monopolies, that are reported 11 *Co.* 84. *Moor* 673. and in *Noy*, do prove that monopolizing is ingrossing, and the same law that is against ingrossing is against monopolizing; and the same law that makes the one void, makes the other void.

In *Darcy*'s case, where a Grant by Patent was made to him for the sole importing from beyond sea, and the selling of cards under a rent, and prohibiting all others to sell; there it was adjudged a void Grant.

And the *Stat.* of 21 *Jac. cap.* 3. does declare all Monopolies to be void at Common Law; so then if this Grant be a Grant to you, to ingross or monopolize, I think it will be easily concluded to be against the Common Law, and made void thereby.

Next, my Lord, that this Grant of the sole trade to the *East-Indies* is against the ancient Statute-Laws of this Land, I think is plain also. As for the Statute of Monopolies, I shall crave leave to speak of it by itself, by-and-bye: But I say it is against the ancient Statutes of this Kingdom. *Magna Charta*, 9 *H.* III. *cap.* 30. all Merchants, if they were not prohibited before, should have their sure and safe conduct to depart out of *England*, and come into *England*, and stay, and go thro' *England*, as well by land as by water, to buy and sell without any evil tolls, by the ancient and just custom, except in time of war. And my Lord *Coke* says, That in this Act, *Nisi publicè prohibiti fuerint*, is intended of a prohibition by the publick Council of the Kingdom, by Act of Parliament. So that this Act does in these words make our case: It says, *They shall, if not openly prohibited, have safe and sure conduct:* And if that open or public prohibition must be by Act of Parliament, so it is probably a declaration of the Common Law. Then here is no such in this case, no prohibition by Act of Parliament to restrain from going to the *East-Indies*, but the Defendant may go thither if he please. The *Stat.* of 2 *Ed.* III. *cap.* 9. *That all Merchants, Strangers,* &c. *may go and come with their Merchandize into* England, *after the tenor of the* Great Charter.

The Statute that is pleaded 18 *E.* III. *cap.* 3. *That all Merchants, Strangers, and Denizens, and all other and every of them, of what estate and condition soever they be, shall sell their merchandizes from whencesoever they come, freely, without interruption; and shall have the Sea open to them, to pass with their merchandize where they shall please, without interruption, excepting to the King's enemies; and that this Act shall be observed and performed notwithstanding any Charter to the contrary; and that Charters to the contrary are of no force, but are to the King's damage, and to the oppression of the Commons.*

Stat. 14 *E.* III. *cap.* 2. recites *Magna Charta*, and enacts, *That all Merchants, Aliens, and Denizens, may without Lett, safely come with their merchandize, safely tarry, and safely return.*

Now, if so be, all Merchants, Strangers, &c. shall sell their merchandiz wherever they come, without interruption, and that enacting clause be large enough, as sure it is; then it has an express clause, That all Charters and Patents to the contrary are void, as being to the King's damage, and the oppression of the people; and therefore they are all by the Parliament declared to be void.

The *Stat.* of 25 *E.* III. *cap.* 2 confirms the former *Stat.* of 9 *E.* III. and has the same clause in effect; *If any Proclamation or Commission be to the contrary, it shall be void.* The Statutes of 2 *R.* II. *cap.* 1. and 11 *R.* II. *cap.* 7. confirms the two former Acts, and enact, *That all Charters, Letters Patent, and Commands to the contrary, shall be void.* So that, my Lord, those many Statutes, as most of the old ones, being penned in general (but short) words, and being in favour of trade, have been taken to extend generally, for the general and most large advantage of trade; tho', perhaps some particular trades were by construction mostly concerned; as the Statutes of the Staple might be the occasion of making some part of them. But they do enact, as your Lordship sees, in general words, *That all Grants and Letters Patent to the contrary shall be void*; and surely this woul dhave never been put in, but that in all times Grants have been made, which the King has been received in, and found them contrary to his real advantage, though they have been otherwise pretended, and were to the oppression of the people, and therefore void.

In the 2 *Inst.* 63. my Lord *Coke*, in his observation upon the consideration of *Magna Charta*, and the several Statutes that were after that made in reference to trade, says, That upon this *Chap.* of *Mag. Chart.* (to wit) the 30th, this conclusion is necessarily gathered, *That all Monopolies concerning trade and traffick are against the liberty and freedom granted and declared by his Great Charter, and against divers other Acts of Parliament, which are good Commentaries upon it.* So that, my Lord, I do not offer it only as my present thoughts, but what has been taken for Law heretofore; that those Acts are of general extent, and all Charters made to the contrary, are *ipso facto* void, and of no force.

Obj. My Lord, they say it is true, if we are a Monopoly, then the Law is against us; but we are no Monopoly.

Resp. My Lord, to prove they are a Monopoly, that is the next thing, which, with your Lordship's favour, I shall go about.

And for that I shall first take the description that is of a Monopoly, made by my Lord *Coke*, in his *chap.* of Monopolies, in the 3d *Inst.* 181. and if it is possible to exempt them out of that description, I confess then they have a stronger Case than I do hope they have.

A Monopoly (says he) is an institution, or an allowance by the King, by his Grant, Commission, or otherwise, to any person or persons, bodies politic or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politick or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade.

First, My Lord, I think by their Patent, they have the sole trade granted to them; that is, the sole buying and selling (for merchandizing consists in buying and selling), and therefore they have the sole buying and selling in the *East-Indies*; and they have consequently the sole selling of the commodities when they come home; for none else can bring them home but them, if their Charter be good.

The sole using of any thing is a general word; and another part of this description, sole trading, is sole using of merchandizes, in a particular place to which they trade; and so they are within all the words sole selling, sole buying, sole using.

Secondly, They are also within the latter part; whereby any person is hindered or restrained from any freedom or liberty they had before, or in their lawful trade: For that it is lawful for them, as I hope I shall make it appear, as I think, upon the Patent granted to seize the Ships and Goods of those that trade thither; and the bringing of this action is a sufficient proof that you were hinderers of this trade, and people's going thither to traffick. So I think, my Lord, they come within every part of the description that's given in that Book of a Monopoly.

Next, my Lord, I think that all the evils and mischiefs that are in the Books taken notice of to be in Monopolies, are also in this case; and whatsoever hath the evils and mischiefs attending Monopolies, it is a great and shrewd argument, that that which hath the effect, hath also the cause.

The evils and mischiefs that attend Monopolies, are, *first*, That the price of the commodities they sell shall be kept up, and raised higher than otherwise it would be: He that hath the sole sale will keep up the price as high as he pleases; this is one of the evils mentioned in the case of Monopolies, reported by my Lord *Coke*, *lib.* 11. *fo.* 86. *b.* the truth whereof I think is evident enough in that Company; for the price and value of things they bring from thence, are of their own setting, and at their own disposal. Nothing among men is more evident than that; and indeed it must be a most wonderful virtue, and a mighty contempt of riches, that a Man, who hath the sole commodity in his hands, will not sell it for the most he can; or not keep up the price, and make the most of it; and in things that he buys, to be sure he will buy as cheap as he can; and in things that he sells, he will sell as dear as he can; and I think that he that has such a power must be a man of an extraordinary virtue, if he do not execute it.

Secondly, Another evil of Monopoly is, that it is *pro private pauculorum quæstu*, which is likewise mentioned in the margin of the Book cited before, 3 *Inst.* 181. Now whether this trade be for particular private gain of a few or no, I think any man that knows any thing will be satisfied about it in his own mind, who considers the present state and condition of this Company. It is not upon Record indeed, but sure it is easily gathered as a consequence; and it will appear plainly by this reason to be *pro private pauculorum quæstu:* for trade is not in its own nature fixed and stable, but varying and altering, sometimes better, sometimes worse, sometimes beneficial, sometimes detrimental, according as the times of war and peace, sickness, scarcity of this or that commodity in this or that Country; or the modes and customs of the Country, or the manners and habits of men do occasion it: And the Merchants by their education and observation, are those that govern and manage this trade for the maintenance of themselves and their families, and the general good of Men; and direct and employ

their Estates and Traffick into this or that part of the World, as time and occasion shall give them best encouragement.

But a sole trade granted into this or that part of the World to one Company, and of another part to another, sets up particular men that head that Company, but destroys all other Merchants and inferior people; all shipping must be subject to the prices these Impropriators of trade will allow them, or else lie still and be destroy'd, for none else must employ them, nor can do it; and so must all Masters of Ships, for it is necessary to them, in order for their livelihood, that they go such Voyages, and these cannot go, except upon the terms that the Company will allow of. So all Mariners, Artificers, Factors, and all other persons, whose employments depend upon this trade, must be subject to their will and pleasure: and of how great consequence that may be to the Kingdom, my Lord, does deserve consideration.

Thirdly, A third evil and mischief in Monopolies is, that they are to the oppression of the King's people; and any body, I think, that has known any thing of late years about this Company, that is, that knows their dealings with, and handling of their factors and servants, that get any thing in their service; and other people that they employ, will find instances enough of their oppression; and that will be enough to satisfy any man, what kind of people they are: for what a work is there, when they have any factor or servant, or any body else that has got any thing in their service? Those things indeed are not upon the Record, but they are consequences that are visible to every body: and the truth of it is, in all Patents for sole trade, so it will be. So that if the evils and mischiefs, which the Common Law forbids, and endeavours to prevent, by judging all Monopolies, Ingrossings and sole Trade unlawful, be to be avoided, the evils and mischefs attending their Patent and sole Trade are perhaps the greater, because their Trade is the greatest that ever *England* knew.

My Lord, in *Fitzherbert*'s *Natura Brevium*, 222. there is this said, and I urge it for this reason; because if so be these are consequences of a sole trade, it cannot be denied but these are oppressions of all the King's people. Now there it is said, that every Grant of the King has a condition implied in it, *Quod Patria per Donationem non magis solito oneretur seu gravetur*; so the Book of 13 *H.* IV. 14. Grant *le Roy*, to the charge or prejudice of the subjects, is void: and therefore the King is deceived in this Grant; and the Grant is as well by the Common Law, as all these ancient Statutes, void.

Obj. Ay, but say they, this is not a Patent granted to the advantage of a few, or for the raising of the prizes and monopolizing of commodities, but for good government and order, and the preservation of this trade, that otherwise would be destroyed: and say they, there have been such Grants heretofore to *Turky*, *Barbary*, and other places.

Rep. It is true, my Lord, this is said; and that Patent does say, that it is for good order and government, and the advantage of trade. But I pray, my Lord will also remember what our Books say concerning such Grants and Monopolies, in 2 *Inst.* 540. that new Corporations trading into foreign parts and at home, tho' under the fair pretence of order and government, yet in conclusion tend to the hindrance of trade and traffick, and in the end produce Monopolies. This is an old observation, for in the 11*th Rep.* 88. *b.* in the end of the case of Monopolies, there are these words: *Privilegia quæ re vera sunt in Præjudicium, Reip. magis tamen speciosa habent Frontispicia, & boni publici prætextum, quam bonæ & legales Concessiones, sed prætextu licito non debent admitti illicitum.* Those are the words of that Book; and there it is also taken notice of, that *Darcy*'s Patent had a most glorious and specious preamble; for there it is mention'd, that the subjects might exercise themselves in husbandry and lawful employments, and that Cards-making had made Cards-playing more frequent, and principally among Servants and Apprentices; and therefore the sole making, and trade of Cards-selling, was granted to *Darcy*. Observe, says the Book, what a glorious pretext and preamble this odious Monopoly had.

There is the case of *Horn* and *Ivy*, *Mich.* 20. *Car.* II. *Rot.* 403. A Patent made three years after the Patent given to the Company, and in imitation thereof, the Patent is to the *Canary* Company; and recites, that the trade to the *Canaries* was of great advantage to the King's subjects at that time; and by reason of too much excess in trading of subjects there, our merchandizes were decreased in their value; so that the King's subjects were forced to carry Silver there to get Wines; and all this happened for want of regulation and good government, and thereupon the Patent did constitute Sir *Arthur Ingram*, and about sixty persons more by name. And all those, that had been traders there within seven years, for the value of 1000*l.* a-year, should be a Company and Body politick and corporate by such a name; that there should be a Governor, a Deputy-Governor, and twelve Assistants, and names them, but to be continued by election, and should have the sole trade to these Islands; that no other shou'd haunt or visit these Islands, and prohibits all others under pain of forfeiture and imprisonment, and indeed follows very much the frame of this Patent, with a *non-obstante* to the Statute of Monopolies. But notwithstanding this glorious preamble, this Patent was soon afterwards condemn'd, both in this Court, and afterwards in the Parliament for the abuse of trade, and the regulation of it for the general good, which is the thing that is pretended; but few men can doubt what is really intended by that; and no one I think can doubt, what is the real intention of this Patent under the name of regulation and government: to ingross all into the hands of ten or twelve men is most excellent regulation and government.

My Lord, as to the other Companies and Charters that have been granted, supposing that all these Grants were such as this, and used and practised as this is, it is no argument that they are legal, or that this was good. For, my Lord, it is well known, both by the ancient Statutes that I have cited, and by common experience, that there have been in all ages and times Patents granted, that were not by Law grantable, but the King was deceived in them, and those Patents were void and of no force; and therefore it is no argument, because there have been many such Grants and Patents in former times, that this should be good.

I agree, my Lord, if ever this Grant, or any Grant like this, had come in question, and had receiv'd any judicial allowance to be good, it had been something; but otherwise it can be no inference at all, because there are others this is a good one.

But, my Lord, to keep myself close to the point of Monopolies; Monopolies have been granted in the best of times; in Queen *Elizabeth*'s time, there was *Darcy*'s Patent granted then; and it appears there had been grants to divers others of the sole making and selling of Cards, but when it was question'd, it was condemn'd. Statute 9 *E.* III. *cap.* 1. and the other Statutes before-cited, the clauses that say, all Patents granted or to be granted contrary to the freedom of trade in these Statutes mentioned, prove,

First, That such Patents have been.

Secondly, That they did foresee, and provided against, those that would be.

The Proviso in the Statute of 43 *Eliz. cap.* 1. *sect.* 9. shews also that Monopolies were granted; but so far were they from receiving any allowance, or approbation, that that Statute that was made in the end of her reign, for confirmation of the Queen's Grants by a special Proviso, does except and provide that it should not extend to make good any Letters Patent that did concern any licences, powers or privileges, commonly called Monopolies.

The Statute of Monopolies and this Statute sufficiently shew, that there were such Grants, and that they were not allowed; so that even in Queen *Elizabeth*'s time, and during her reign, divers such Grants it seems had been made. But, my Lord, if so be there had never been any judicial allowance in times past for any sole trade, or sole buying or selling, tho' there have been in all times such Grants made, yet that will be no argument that they were good, but on the contrary; and further the practices of these Companies have been to the contrary, till within late years; no sole trade practised among them.

But, my Lord, on the contrary, since that Patents have been so granted, since that there is no judicial allowance of such; I would appeal to them to shew whether there has been any practice of these things. I do not suppose, but that in *Turky* and *Barbary*, persons have traded that have not been licensed by the Companies, and that continually in all times; but yet I think no-body will find any judicial opinion that has been given against them for it, or that ever any such Patent was of force to restrain the subjects freedom of trade in those places.

My Lord, I am apt to think, that the Grants to those Companies, that is, the *Turky*-Company, the *Barbary*-Company, and the *Russia*-Company, are like to this of sole trade; but yet if it never has been practised to restrain others in this manner, it is rather an argument against them of the other side; but they have never dealt thus, nor used the clause of prohibition as these men do. For, my Lord, whoever thinks to make any conclusion for the preservation of such a sole trade by a Company, with a restraint of others, because such Patents and Charters have been granted to other Companies, will have but little reason so to do, if he consider what a difference there is between this Company and them: for, my Lord, these Companies did never set up for a sole trade, tho' there be such words in the Patents, they never used them, but have always used their trade quite contrary, and in another method in a commendable way, and I think in a legal way; but not so as to warrant any thing of this, that is here pretended. Therefore if your Lordship please to give me leave, I would observe the difference betwixt the way of trading, that those other Companies have, and the trade of the *East-India* Company. The Companies of *Turky*, *Barbary*, *Russia*, *Muscovy* and *Hamburgh*, nor any other, till of late years, did ever trade with a Joint-Stock; but the Members of the said Company, every man used his own trade, bought and sold his own commodity, used and employed his own factors and servants; and the Company took some care to send out a Consul, or some one to be their Agent, to preserve the trade, and by small imposts upon the commodities traded for, to provide for such Officers: which Imposts or Assessments were made by By-Laws and Regulations among themselves. They take care the Markets shall not be over-clogged by the Commodities they send out, which they do also by their own Orders and By-Laws that are made among themselves; they only order what Ships shall go, but leave the particular Members of the Company, every man to send what he will upon his own account, and appoint who he will to be his factor, and to bring over what commodity he pleases: they trade not upon any Joint-Stock, or the Stock of the Body-Politick. If you deal with any of them, you know the particular person you have to deal with: no man is refused to be of their Company, that has a mind, paying some small sum of money for his freedom; and whoever is of the Company, has a Vote in ordering the affairs of the Company. But now you of the *East-India* Company ingross the sole trade into the Body-Politick; you have a Joint-Stock, every man whether Merchant or not, if he can buy such a share in their Stock, is of their Company. The Committee manage, and the rest must submit to their pleasures and distribution: those few of them which have the most shares, have the disposal of the whole Stock; no Member trades, buys or sells, or has any thing that he calls his own, but only such a share in the Stock: you suffer not the Members to trade with their own money, at their own discretion, or to employ whom they please, this you do not do; you suffer no man to have a Vote among you (and your Letters Patent have such a clause that none shall) but he who has 500*l.* stock; which 500*l.* no man can acquire, unless he pays 14*l.* or 15*l.* for it, two and a half *per Cent.* or some great sum. So that by the very foundation, they can have no more persons in their Company, than they that have 500*l.* shares; and these shares being ingrossed into few hands, they have all, and call themselves the Company. So that man that will not be deceived by words, but distinguish things different one from another, will distinguish between one Company and Society, and another; who are Ingrossers, Monopolizers, and who not.

The *Turky* Company, and the rest like it, may be truly said to be Managers, Regulators and Improvers of Trade. They have no Joint-Stock that they trade upon, they ingross not, they admit every man that will to be free of their Company, to trade with his own money, his own credit, and buy and sell his own, and to employ whom he pleaseth; and none among them, under pretence of government, regulation and preservation of trade, makes unreasonable advantages.

But this invisible *East-India* Merchant, the Body-Politick, covers and countenances some few men among them to ingross, buy and sell at their own rates, and that exclude all others for the great and excessive advantages of the few.

The

The other Companies, as the *Turky* Company, *&c.* have not any sole buying or selling, nor exercising any sole trade or ingrossing.

Every Member of these Companies, which are a multitude, and every one that is not, may, if he will, be a Member, and no man is excluded.

But this Company is quite contrary, and therefore (if ever any was) are great Ingrossers and Monopolizers of trade. I do not argue nor speak against Companies, nor regulating, nor managing trade, which was the true intent of the Patent; such as I have mentioned, and is virtuously and commendably practised in the great Companies of *Turky*, *Muscovy*, *Hamburgh*, and others; where the Members of the Companies trade upon their own particular Stock and Estates, and no Merchant hindered or denied to be a Member, that desires it, paying its ordinary fees of admission: but against the invisible Merchant, this politick capacity trading in Joint-Stock.

Suppose a like Patent to any one, or two, or three men, Farmers or Partners in their private capacity of this sole trade; and they had the management of it, and hereby possessors of such vast wealth and merchandize:

What would this Politick Body (I mean the principal Members, for the Body cannot think or have sense) judge of this?

Perhaps yours is much worse; there a man should know with whom he dealt, who were his debtors, and how to come at them; but dealing with you is a kind of dealing with spirits, an invisible body, only subsisting *in Intelligentia Legis*.

Therefore being so unlike the other Companies, and so contrary to them, you have no countenance from them; but though they are good and commendable, you are Ingrossers and Monopolizers.

This shews the great and vast difference between the one and the other; this shews that you, that are the *East-India* Company, have the sole trade as a Company; and whoever buys in many Stocks, has as many votes as he has 500 *l.* in the Stock.

There is no such thing in any other Company, but quite otherwise in all these respects; but hereby it comes to pass, that he that has so many shares in the Stock, has an absolute power, by having so many votes.

The invisible Body or Corporation perhaps trade for 1,000,000 *l. per Ann.* they get into their hands to sell 7 or 800,000*l.* worth of merchandize at a time; thethree last sales they made came to 1,8000,000 *l.* nobody hath these commodities but they. Is this trading, and no ingrossing or monopolizing? It is their wonderful virtue then, hatred and contempt of riches, that makes them not to raise and increase values and prices, and be as rich as they please, if they do not do it. Never was there such an instance of so great trade in *England*, but none of your Members buys or trades at all; any man among you, whether he be Merchant or not Merchant, Citizen or Gentleman, or what he will, if he has a Stock, his Stock goes on by this joint-trade, but it is a few men that manage the whole as they see best; no man employs ships or workmen as he thinks most convenient; but you are one great trader in this vast trade, which is indeed one quarter part of the trade of the whole World.

My Lord, this being then the great difference between this trade by a Joint-Stock, and in the Company as a Body Politick, which is but as one entire person, having the trade entire to himself, and the trade of particular Members, under orderly regulations:

It is quite a different and distinct thing from any thing, in any of the other Companies, that they would be likened unto to obtain their own ends: nor is there any reason to make them like one another, for the whole matter is carried on distinct in both; the one is a sole trade by a Body Politick, the other dispersed through the Members, according to their own discretion and occasion, under regulation. No man, if he comes into the *East-India* Company, can trade among you, or vote among you, unless he have 500*l.* Stock; and if he do not come in, (since it is according to your constitution, that every man should have as many votes as he has 500*l.*) his vote is like to do him little good, if some few men in the Company agree against it.

And besides this, my Lord, in the *Turky* Company, where they trade as distinct Members, every man knows his creditor and his debtor, because they deal in their natural capacities; but you trading in capacity of a Body Politick, every man that trades with you has a creditor or a debtor, he knows not whom.

And it is a great mischief, when persons know not how to sue or how to deal with them; for take them all a-part, they are as just and as good people to deal with, as can be; but take them together as a body, what more hard to deal with than a Corporation?

My Lord, we have seen the instance of these things in this Company, in a few days they having so great power, that none could contend with them, and soon after so invisible, as well as low that no Dun can find them. This we all know very well, my Lord; and I instance in this to shew, that whereas they would be likened to other Companies, which were created for the preservation and benefit of trade; and the Members of it are under the regulation and government of the Company, but not as you are; they are traders, your Members are none, you are only the Body Politick, the invisible Merchant, that no one knows where to find; and a Body Politick, in judgment of Law, has neither Soul nor Conscience, and yet forsooth are traders.

I only instance in these things, to shew that signifies nothing which you did insist upon, that there are other Companies for trade; for I say, that they are good and regular, and not Monopolizers, for they do not trade in such a manner by sole buying and selling, but every one trades as a particular Merchant; but you are otherwise, your Body Politick is the sole Merchant, and none of your Members can trade, unless a particular servant, perhaps to save charges, you give him leave to buy or deal in some little things; but all others are quite excluded.

My Lord, having thus shewed you the way of their trade in sole buying and sole selling, I shall now, in the next place, come to the Statute of Monopolies, which is the Statute of 21 King *James*, *chap.* 3. and I hope I shall plainly shew you, that they are within the words and meaning of that Statute.

By that Statute, my Lord, it is enacted, that all Monopolies, Commissions, Grants, Licences, Charters and Letters Patent granted, or to be granted to any particular persons, Bodies Politick or Corporate, of, or for the sole buying, selling, making, working, or using of any thing within this Realm; and all Proclamations, Inhibitions, Restraints, Warrants of Assistance; and all other matters and things whatsoever, tending to the instituting, erecting, strengthening, furthering, or countenancing the same contrary to the Laws of this Realm, are and shall be utterly void and of none effect.

And that all Persons, Bodies Politick and Corporate, which now are, or hereafter shall be, shall stand and be disabled to have use, exercise, or put in use any Monopoly, or such Commission, Grant, Licence, Charter, Letters Patent, Proclamations, Inhibitions, Restraint or other matter, or thing tending as aforesaid; or any liberty, power or faculty, grounded or pretended to be grounded upon them.

Then, my Lord, there follows the clauses of forfeiture of treble damages to the party grieved, by the using of any such Monopoly; then there is the clause about new Inventions and some other things; then comes the *Proviso* concerning Corporations, of which some use being made in this case, I shall crave leave to consider it distinctly.

Provided also, and it is hereby enacted, That this Act, or any thing therein contained, shall not in any wise extend or be prejudicial to the City of *London*, *&c.* or any Corporation, Company or Fellowship of any Art, Trade, Occupation or Mystery, or to any Companies or Societies of Merchants, within the Realm, erected for the maintenance, enlarging, or ordering of any trade or merchandize; but that the same Charters, Corporations, Companies, Fellowships and Societies, and their Liberties, Privileges, Powers and Immunities shall be and continue of like force and effect, as they were before the making of this Act, and no other, any thing in this Act to the contrary notwithstanding.

The next Proviso extends to Patents granted, or to be granted for Printing, making of Salt-Petre, and Offices, which do not concern the case in question.

By the description of a Monopoly, which I have before, out of my Lord *Coke*, stated and expressed, this sole trade granted to you, and the exclusion of all others, is a Monopoly within that description, as I have before shewn that their Charter is directly contrary to this Act. My Lord, *first*, That they are within the enacting clause of this Act; this, I think, by comparing what they claim with the enacting clause, will plainly appear. I need not now stand so much upon the word Monopoly, whether by what I have said, I have proved them a Monopoly or no; but by the other words of the Statute, supposing that word Monopoly was out of the Act, yet they are within it: for the Act of Parliament having the words of sole selling, or sole buying, or sole using of any thing; if they have the sole buying or sole selling, or sole using of this trade, then they are most plainly, I think, within the enacting words of this Act of Parliament.

Now, my Lord, that their Charter is directly contraty to the enacting words, I must also therein refer myself to the words of the Charter, which has sole buying; for all others are prohibited so much as to come and go from and to the *East-Indies* without their licence. It has also sole selling; for all others are prohibited to import any commodity from thence into the Realm; and they cannot sell them, except they import them. They have likewise the sole using; for they have granted to them the sole trade, which includes all buying, selling, sole using, that appropriates all to themselves, and excludes all others.

How then, my Lord, can any man read this Act of Parliament and their Charter, and compare them togeher, but he must at the same time conclude, that their Charter is contrary to what is enacted there? For the Act of Parliament does say, That all Letters Patent granted to any Person, or Body Politick, for the sole buying, sole selling, or sole using any thing, and all Proclamations, Restraints and Inhibitions to the contrary, and all other matters and things touching thereunto, are contrary to law, and utterly void, and of none effect; why then they have by their Grant, the sole buying, sole selling, and sole using of this trade; therefore they are quite contrary to what is in the enacting words of this Act of Parliament. Then, my Lord, if they are contrary to the enacting clause of the Act, then their hopes must be, that they are saved by the *Proviso*.

My Lord *Coke*, in his Comment upon this Act, in 3 *Inst.* 182. does say this Act is forcibly and vehemently penned for the suppression of all Monopolies; and the word sole *using*, is there said to be so general, as no Monopoly can be raised but *will* be within the reach of this Statute.

The word, *any-thing*, shews also the general scope and intent, that nothing should be excluded that was a Monopoly: For Monopolies, in times past, were ever without Law, but never without friends. And if it be so penned for the suppression of all, it ought to have a large and general construction.

Obj. But then let us see whether they are in the saving of this *Proviso*.

The *Proviso* excepts Charters to Companies or Societies of Merchants within this Realm, erected for the maintenance, inlargement, or ordering of trade or merchandize.

Resp. This *Proviso* extends not to this Charter, or any Letters Patent that were not at the time of the making of this Act; and that is the first thing that I offer, why they are not within the reach of the *Proviso*. Because this *Proviso* does not extend to any Letters Patent after the Act of Parliament made, but only the Letters Patent before. For the *Proviso* says, *It shall not extend, or be prejudicial to any Town Corporate*, concerning any Charter granted to them, *&c.* or Customs used by them, or to Societies erected for the maintenance, inlargement or ordering any trade or merchandize. This does extend to those that were granted or erected at the time of the making of the Act; and there are no words of saving, for any that should hereafter be erected. And the word hereafter would as well have been in the clause of saving, as in the enacting clause, if it had been intended. But the following words, concluding this *Proviso*, shew it further; for the *Proviso* goes on, and says, That the same Charters, Customs, Corporations, Fellowships and Societies, and their Liberties, *&c.* shall be and continue of such force and effect, as they were before the making of this Act, and no other. This shews, that that which is within the *Proviso*, was that which was before the making of the Act only; and this governs and concludes the whole *Proviso*. Now that only extending to those that then were, and to leave them as they were, to leave their Charters and Companies, their Powers and Privileges, in the same state and condition as they werebefore the Act, can never have any reference to what should be after.

The Beginning of the *Proviſo* ſays, this Act ſhall not prejudice them: The Concluſion ſays, they ſhall be as they were before the Act was made; therefore they muſt have had a Being before the Act, but no Words herein extend to thoſe that then had not a Being.

And, my Lord, the next *Proviſo* for Printing, Salt-petre, Offices, *&c.* that is to this, further ſhews this to be the Meaning of this *Proviſo*; for that expreſly provides, That this Act, or any thing therein contained, ſhall not extend to any Grant or Privilege heretofore made, or hereafter to be made, of, for, or concerning Printing. If then the former Clauſe had intended to include any Letters Patent that were after to be granted, it would have had theſe Words, *To be granted as well here as in the Clauſe that comes afterwards.*

But, my Lord, ſuppoſe this not to be a ſufficient Anſwer to this *Proviſo*, but that this *Proviſo* ſhall be conſtrued to extend to Companies, Charters, Privileges, and Immunities, granted after this Act; yet the Plaintiffs are not within this *Proviſo*, nor the ſaving of it: For it extends only to Companies that are for the Maintenance, Inlargement, or ordering of any Trade or Merchandize, and to their Powers, *&c.* that they have to that End not two Companies, that are erected to have a ſole Trade by a joint Stock, or Stock of the Corporation, to exclude all others from having any thing to do in that Trade. It does, and reaſonably may be intended to extend to all Companies that are for the Maintenance, increaſe, and well-ordering of Trade; as the *Turky* Company, the *Muſcovy* Company, the *Ruſſia* Company, and *Hamborough* Company; and thoſe that I have been ſpeaking of, that trade not as Bodies Politic, or a joint Stock, but every Merchant that will, may be thereof a Member, and every Member thereof trades upon his own private Stock and Account as a Merchant; but not to this Company, who, inſtead of ordering the Trade, endeavour to bring the ſole Trade unto themſelves.

Therefore, my Lord, theſe are the Companies that are within the Exception ſaved from the Penalties of this Act; but we muſt be as ſilly as the Infidels they deal with in theſe Matters, not to diſtinguiſh betwixt theſe Corporations, and their Management and yours; they exclude none from Trade, they trade not in a politick Capacity in a ſole Stock, but every Man is a Trader upon his own peculiar; but you take upon you in your politick Capacity, as you have expreſſed it in your Declaration, *totum, integrum & ſolum Commercium & Negotiationem habere, uti & gaudere*; and to exclude not only all Strangers, but all your own Members, to have any diſtinct or ſeparate Trade upon his own Account, except a little to pay and excuſe you of Charges, and thereby ingroſs all that vaſt Quantity of Merchandizes, the many hundred thouſand Pounds worth you bring in or carry out. In whom is the Property? In the Corporation. Who buys and ſells all? The Corporation. Who are the Debtors for the Money that buys and provides theſe Merchandizes? The Body Politick, the Corporation, the inviſible Body. Who ſhall be ſued for all theſe Debts? The Body Politick; ſue them as you can, they will either be too great and too rich to contend with, or elſe in that Condition as you know not how or where to have them.

An inviſible Body, ſubſiſting only in *Intelligentiâ legis*, a Body Politick without Soul or Conſcience, as the Law ſays it to be.

We have ſeen them in a Year's Time, in both theſe Qualifications, ſo great as ſcarce any Man would contend with them, ſo inviſible at another time, as a Dun would ſcarce find them; this ſurely cannot be for the Maintenance or Inlargement of Trade, to deal with I know not whom, where no Security or Perſon ſubſiſts.

It is indeed for the Maintenance of the Company's Trade, to enable ſome of them to get 10 or 20,000 *l. per Annum* by it, and to keep this vaſt Trade in a few Hands.

But ſure that is not of the Trade the *Proviſo* intends; reſtraining to the Body Politick, which is but one Perſon, or many in Partnerſhip, is quite contrary to the Enlargement of the *Proviſo* mentioned.

And therefore to ſay you are within the ſaving by this *Proviſo*, a Company erected for the Maintenance and Inlargement of Trade, when you reſtrain all but yourſelves to trade, ſeems to be a Contradiction.

And for the following Words in the *Proviſo*, *Or ordering of any Trade or Merchandize*; if you ſay you are ſaved within the Extent of theſe Words, then you muſt make a Conſtruction of theſe Words in this Senſe:

That ordering Trade or Merchandize, is excluding all others, and taking the whole to ourſelves. A moſt excellent *Ordering* that is.

But the Senſe of theſe Words in the *Proviſo* is, to ſave to the Corporations and Fellowſhips of Arts, Trades, Occupations and Myſteries, and to Companies of Merchants, the Powers and Authorities that they had for the Maintenance, Inlargement, or ordering of Trade;

By taking care that Commodities were honeſtly and rightly made, without Fraud or Deceit, as to the Goodneſs or Excellency of the Commodity, or Deceit in their Meaſures or Quantity;

That the Servants and younger Sort were honeſtly and induſtriouſly educated in their Trades and Myſteries, by the Maſters and elder Sort;

To place and keep good Order and Decorum amongſt thoſe of the ſame Myſtery and Trade;

For aſſembling and conſulting for the common Good and Management of their reſpective Trades and Employments.

This is that which the *Proviſo* excepts and provides for, not for a ſole Trade in a Company, in a joint Stock, excluding all others, as this is.

For the ſame Exception is alſo for the Manufactures that are mentioned juſt before, as new Inventions, and the Society of any Craft or Myſtery; theſe alſo are under the Exception, which does ſtill expound them to be meant of that regular, due Order and Government in Companies, for the due regulating of Trades and Myſteries, that is, by making By-laws to take care that their Wares be well and ſubſtantially made, that the younger Sort be obedient to the elder, and the elder inſtruct the younger, and not oppreſs them. Theſe are the Laws that they have Power (and 'tis fit they ſhould have) to make for the Management and Increaſe of Trade. But to have a ſole Power over Trade, and an Intereſt in it by a joint Stock, to ingroſs it into one Man's Hands, or into the Hands of a Body Politick, which is but as one Perſon in Law, and in this Manner to trade under the Pretence of Order or good Government; this, under Favour, was never meant or intended by this Exception in this Act. Therefore that which I have before expreſſed, is the Senſe and Meaning of this *Proviſo*, and not the having the ſole Trade, excluding all others, as here is endeavoured and deſigned to have.

My Lord, in the Taylor of *Ipſwich*'s Caſe, 11 *Co.* 54. that Company of Taylors made a By-law, to exclude Taylors from exerciſing or uſing their Trade within the Town of *Ipſwich*, unleſs they preſent themſelves to the Maſter and Wardens of the Company, and three of them admit them to be ſufficient Workmen, and proved they have ſerved ſeven Years at leaſt as Apprentices, and then admitted by the Maſter, and Wardens, and Company; and if any did offend in any Part, they ſhould forfeit ſo much to the Company. In this Caſe there ſeemed to be a good End and Meaning to exclude inſufficient Workmen, and to encourage good ones; a good Order one might think. Yet ſo zealous and careful were the Judges then, leſt under any Pretence they ſhould exclude Men from their lawful Trades, that they adjudged this a void By-law, as tending in the Purview of it, to reſtrain Men of their Freedom in uſing their Trades, and introducing Oppreſſion of the young Tradeſmen by the old and rich Tradeſmen, and to ſubvert the Liberty the Law gives. And in that very Caſe it was adjudged, *ſo.* 54. That Ordinances for the good Order and Government of Men, of Trades and Myſteries, are good; but not to reſtrain any in their lawful Myſtery. *Norris* and *Stap*'s Caſe, *Hob.* 211. to the ſame Purpoſe.

Therefore, my Lord, this is the Senſe and Meaning of that Exception that is in the Statute of Monopolies, That it ſaves ſuch as were for the ordering of Men in their Trades and good Government, but not to enable a Corporation to have a ſole Trade, to hinder or exclude others from uſing it. That is the true Senſe of the *Proviſo:* But for the other Senſe that they would have, 'tis the way to make it the moſt repugnant and contradictory Act that can be: For, my Lord, to ſhew that it is ſo, give me Leave to compare them.

The Senſe they would have is, That it ſhould ſave to Bodies Politick, the having the ſole buying, ſelling, and uſing any Merchandize or Trade, as a Corporation, that ſuch ſhould be excepted out of this Act.

Now let us compare the *Proviſo* with the enacting Clauſe, and taking the *Proviſo* in that Senſe they would have it, that a Body Politick may have the ſole buying and ſelling, or uſing any Merchandize or Trade, as a Corporation; then the enacting Part, with the *Proviſo*, will run thus, enacted, *That Letters Patent to any Perſon or Body Politick, for the ſole buying, ſole making or uſing of any thing within this Realm, or contrary to Law, and void; and no Body Politick ſhall be capable of having, uſing, or exerciſing of any ſuch Letters Patent, Inhibition or Reſtraint, provided that Bodies Politick may have the ſole buying, ſelling, and uſing of any Trade or Merchandize.*

Is there any thing can be put in Words and Terms more contradictory than this is? And yet thus it muſt be if their Senſe prevail: So that, my Lord, there is not a more repugnant and contradictory thing can be made, than this *Proviſo* to the Body of the Act, if you take it in the Senſe they would have it.

Suppoſe the Statute of that enacts, That no Man ſhall uſe a Trade that he has not ſerved an Apprenticeſhip to by the Space of ſeven Years, had a *Proviſo*, that a Man may chuſe a Trade that he had not ſerved an Apprenticeſhip to by the Space of ſeven Years; this had been a void repugnant *Proviſo*. This is as plainly repugnant, that no Body Politick ſhall be capable of having a ſole Trade. Repugnant *Proviſos* are in Law void.

My Lord, If ſo be a *Proviſo* be repugnant and contradictory, then it will be void; and ſo are all our Books, 1 *Co.* 46. *Plowd. Com.* 563. A Statute gives the Lands of *J. S.* to the King; and then a *Proviſo* comes to ſave the Right of all Perſons: This ſhall be conſtrued, all Perſons beſides *J. S.* not to deſtroy the Premiſes.

Therefore when this Act ſays, That all Patents granted to a Body Politick, of the ſole buying, ſelling, and uſing of any thing within the Realm, ſhall be void; and a *Proviſo* ſays, that it ſhall not extend or be prejudicial to any Company of Merchants erected for the ordering, maintenance, and Increaſe of any Trade or Merchandize, if conſtrued in their Senſe, to give the Company ſole buying, ſelling, and uſing of any thing, is directly contradictory and void; then that cannot be the Senſe. But taking it in the other, which I apprehend to be the true Senſe, that order and Government is provided for; that is the meaning of the *Proviſo*, and nothing elſe: and this is the general Practice of the Societies and Companies allowed in all times. But a ſole Trade, under the Pretence and Colour of Order and Management, never, as I believe, had any judicial Allowance: And then you are within the enacting Clauſe of this Act of Parliament, and are a Monopoly; or becauſe, it may be, you do not like that Word, you have the ſole buying, and ſole ſelling, and ſole uſing of this Trade, which is contrary to the expreſs Words of this Act of Parliament, and ſo your Patent and Charter is void.

But, my Lord, they endeavour to anſwer this Objection with another Sort of Anſwer: They ſay the *Proviſo* is, That the Act ſhall not extend to Companies of Merchants erected for Government and Order of Trade, but that their Charters, Privileges, and Immunities, ſhall be of like Force and Effect as they were before the making this Act; and therefore, ſay they, Patents to Companies of Merchants for ordering of Trade, if good before this Act, ſhall be good ſtill; and therefore, ſay they, this Act cannot hurt us.

My Lord, the Objection is nice, as I apprehend, but ſo it is, if I take them right; this, under favour, is but the ſame thing again in other Words; for the Concluſion of this *Proviſo* extends no further than the Charter mentioned in the Beginning of it; it extends but to the ſame Charters (ſo are the very Words) ſhall be of as good Force, *&c.* Why then what Charter or Patent is it that ſhall remain as they were before the Act? Why thoſe that are excepted. What are excepted? Thoſe that are for Order and Management, as I have before ſhewn; not thoſe that are for a Body Politick, to uſe a ſole Trade, that is repugnant to the enacting Clauſe; therefore theſe, as I have ſaid, are not excepted, or within the *Proviſo*, and ſo we come back again where we were. Are you excepted out of the Act? If you are, I agree the Act hurts you not; if you are not excepted, then you cannot be in the ſame Condition as you were before, or as ſuch Charters were before the making the Act; for the Concluſion and latter Part of the *Proviſo* is to be taken in no larger Senſe than the Words that went before in the Beginning; nor can extend further than theſe Words extend; ſo that I ſay it retorts juſt back again where it was. If they be excepted, they be not within the Act; but then the *Proviſo* will be repugnant, as I have ſaid before, and contradictory; if they are not excepted, they have no Benefit by the *Proviſo*.

So, my Lord, taking it upon what I have said, I do hope that the words of the Act of Parliament plainly do extend to bodies politick, and to inhibit the ingrossing sole trade by bodies politick. They say themselves, and it appears they are a body politick, and they have this sole trade; and so the enacting clause extends to them.

Next, I say, the *Proviso* extends to Charters granted before, not to Charters to be granted after the Act of Parliament: and as to those Charters that are excepted, it leaves them just as they were before; but if their sense takes place, then it is, as I conceive, with submission, most palpably contradictory and repugnant to the Act; and then it is as lawful at this day to grant to any Corporation any sole trade or manufacture, yea, downright to grant them a Monopoly, as it is to make any other Grant; and so this would be rather a countenance, than an Act made against them.

But then, my Lord, they come to another thing; this is an Infidel Country, this is a sole trade with Infidels, and such a trade the subjects never had any right to have without the King's licence; and now being so, that differences the cause: and to prove it, they cite *Michelborn*'s Case, in 2 *Brownl.* 296. wherein Mr. *Brownlow* being Prothonotary, recites what my Lord *Coke* said in that Case, That no subject might trade into Infidel Countries without the King's licence; and his reason was, because he might relinquish the Catholic faith, and adhere to Infidelism: and that he had seen a licence in the time of *Ed.* III. wherein the King recites the confidence that he had in his subject, that he would not decline his Religion, and licensed him; and that this did arise upon the recital of a licence made to trade to the *East-Indies*.

And they do cite *Calvin*'s Case, in *Co.* 7. *Rep. fo.* 17. wherein 'tis said, That Infidels are, in law, *perpetui inimici*, and between them and Christians there is perpetual hostility, there can be no peace; and 12 *H.* VIII. *fol.* 4. where it is holden, that a Pagan cannot have or maintain any action at all, nor have any thing within this Realm; and to prove this, *Register* 282. and 12 *H.* VIII. *fo.* 4. are there cited.

My Lord, I have the more fully recited what this is, because I hope I shall give very full answers to all: But, my Lord, before I do answer those Books;

First, Let us see what the consequence of it will be: Supposing the Law to be as these Books say, and as these Gentlemen would have it; and the consequence will be, that the plaintiffs cannot maintain their action, but the Charters granted to them will be void.

First, Upon the reasons given in these Books; for if the Books are of authority, the reasons there given must be of authority (says that Book of *Brownlow*'s). The King has the care and preservation of Religion, by the Law vested and reposed in him, that the subject should not trade with Infidels without licence, that they may not renounce their faith; and the King will take care to give licence to traffick, to such only as he can have confidence will never waver from their profession.

Supposing this to be true, then their Patent must be nought; for then it is only grantable to persons in whom such confidence may be. My Lord, then see how this will stand with their Charter. Their corporation and body politick is indefinite, as to persons, and the members changed continually; some sell their stocks, and go out, or die; others buy their stocks, and come in that way to be members of the company, or as executors to those that die, and many new members are every year. I doubt they do not much examine, or take care to be satisfied, how fixed those are in their Religion they daily take in; and how then can there be confidence in a body politick, which the law says has neither soul nor conscience? What confidence can be reposed in such a person about Religion?

Secondly, Besides, it is not only the members of the Company, that at the time of the incorporation were incorporated, and their successors, that are thus privileged; but their sons and apprentices, their factors and servants, have licence by this Patent to trade there: and what security can there be, that such may not (by conversing with Infidels) change their Religion? If this Licence be a trust and prerogative in the King, to be given to such persons in whom the King can have confidence, that they will not, by converse with Infidels, change or prejudice their religion, *&c.* this cannot be granted to a body politick and their successors, which may have continuance for ever; and to their sons, factors, apprentices and servants, persons altogether unknown, not born, nor *in rerum natura* when these Letters Patent were made.

Suppose such a licence to you, to trade with enemies, and supposing that the Law has established such a power and prerogative in the King, in the preservation of religion, to license; the King cannot grant this prerogative to you of the *East-India* Company, that you should have a power to grant licences to whom you will: yet all this is done by your Patent; for you have thereby power granted you for your sons, apprentices, factors and servants, which are persons that you yourselves nominate and appoint at your discretions, and undoubtedly very religious, and others that you bring into your Company.

Next, besides this power that you have expressed for those that are your apprentices, *&c.* which are at your discretion, to make whom you please; there is another express clause, That the Company for any consideration, or benefit to themselves, may grant licence to any servant, stranger or other, to use this trade. So the Patent expresses what the meaning was of the word Consideration, by adding the Words, *or benefit to themselves*; and that the King, without consent of the Company, will not grant licence to any other to trade there.

Can this then be a good Grant? Can the King grant from himself his kingly care, and the trust in him reposed for the care of Religion to you, to manage it as you will, and that he will not use it himself without your consent? Surely, you cannot say so. So that supposing by law there is such a trust reposed in the King for preservation of religion, as you would have, to give licence to his subjects to trade with Infidels; and that none without his licence can do it: yet this grant to you will be void in itself, and then you have no more right than we, and can maintain no action against us.

But then a little to consider the authorities upon which this great matter relies, to prove this religious point or piece of law.

First, That Book of *Brownl.* is a Book that was printed in the late times, and not licensed by any Judge or Person whatsoever; but truly I have got a copy, and a note of the Roll of the Case there reported; and it is this, *Mich.* 7 *Jac. B. C. Rot.* 3107. *Michelborn* against *Bathurst*; it is in a prohibition, setting forth, That the King had granted to the plaintiff his commission to go with the ship *Tyger* to the *Indies*, to spoil and suppress the Infidels, and to take from them what he could; that the plaintiff, in the Prohibition, having this commission from the King, did enter into Articles with the defendant, to give him a share of what he should get in the adventure: and thereupon there was a suit in the Admiralty by the defendant, against the plaintiff, and he comes and moves for a Prohibition, suggesting that the articles were made upon the land, and not upon the high sea, and so the Court had no jurisdiction. Now upon the debate of this Case, it did appear, there was a kind of Letters of mart, a commission from the King, in a warlike manner to spoil the Infidels, and get what he could from them. But now, how this would come in debate to make a resolution about the business of trade, I do not know; probably it might be as is there related; but what is in the Book is only an occasional saying of my Lord *Coke*'s, upon the motion for this prohibition. So that a man that will lay any great stress upon such an authority, must be mighty willing; for it is only an occasional saying, and nothing relating to what was there brought in judgment, which was about a commission to take away goods, perhaps from enemies, by Letters of mart, not about trade; and so I hope there is no great matter in that Report.

The next Case, my Lord, is that of *Calvin*, where it is said, that an Infidel is *perpetuus inimicus*, can maintain no action, or have any thing; and that there is perpetual hostilities between Christians and such, and no peace can be made with them.

My Lord, 'tis true, that this is said in *Calvin*'s case, but I must also say, as there was no occasion in the former Report for saying of that, no more is there in *Calvin*'s case for saying of this; for it made nothing to the matter in question about the *Post-nati*, or were they any wise led to it, in the debate of that case; there was nothing there in judgment that gave occasion for it, so that I cannot think it was much considered of before it was spoken.

The Books that are there cited, I have looked upon, to see if they would prove any such thing as they are there cited for, and I think they do it not by any means.

There is first the Register 282. and all that I find there is, that in a writ of protection granted to the Prior and Brethren of the Hospital of St. *John* at *Jerusalem*, and their agents, it is said, That that Hospital was founded in defence of Holy Church, against the enemies of Christ and Christians: but truly, how to conclude out of that Book this, that Infidels should not have any property in trade, or be *perpetui inimici*, with whom no peace can be had, I know not, or that can maintain no action.

Then *fo.* 12 *H.* VIII. 4. they also cited, that is only this, The original case in an action of trespass for beating his servant, taking away his dog, called a blood-hound: And there it is said, If a Lord beat his villein, or an husband beat his wife, or a man beat one out-law'd, or a traitor, or a Pagan; they shall have no action, because they are not able to sue an action. I must confess, my Lord, this comes in very oddly, from a dog to a Pagan, and there is nothing to lead to it in all that case, that I can see; and yet this is all the authority that is cited in *Calvin*'s case, to prove that they can have no action. So that all that a man can make of this is only discourse, and sudden thoughts and opinions, and sayings of Counsel; nothing of debate or judgment in the case.

It is true, my Lord, the Christian Religion and Paganism are so contrary to one another, that it is impossible they should be reconciled any more than contradictions can be reconciled; but because the religions cannot be reconciled, that therefore there should be a partition-wall between us, as to property and commerce, perhaps is a doctrine as irreligious as can be, and does destroy all means of coming to convince and reduce them to the faith. But now, besides these extrajudicial and occasional sayings in these Books cited, which are of little authority, I cannot find any Books or Cases, much less judgment or authority, for such opinions in so great a point as this is: but on the other side, if a man considers the general cause and practice of trade and commerce, and legal proceedings in all times and ages, one would think my Lord *Coke* could not be in earnest in what he has said in *Calvin*'s case about Infidels. Let a man consider what a great part of the world we have commerce with are Infidels, at this day, as the *Turks*, the *Persians*, the *Moors*; and other places in *Spain* and *Portugal* were possessed by the *Moors*, who were Infidels, till about 200 years since: for till the year 1474, the *Moors* had possession of both these Countries for the space of near 700 years before, and have we not always had trading with all those? Have we not leagues and treaties with the Princes of Infidel Countries? Do we not receive Ambassadors from them, and send Ambassadors to them, and Ministers residing with them? Have we not, from time to time, and this in all times and ages, and that in Q. *Elizabeth*'s time, in the best and most religious time, for many hundred years? Have we not likewise war and peace with them, in like manner as with Christian Kings and Countries?

And let a man consider the consequences of this doctrine. If they are *perpetui inimici*, then we may justify killing of them, as those we are in hostility with, wheresoever we meet them, and justify the taking away what they have from them, as 17 *E.* IV. *fo.* 13, 14. it is adjudged, that a man may seize and take to his own use the goods of an alien enemy, wherever he can find them; for it is the price of his adventure to take them, and of his victory over his enemy, if he have taken him. And 2 *H.* VII. 15. if an Infidel be an alien enemy, then any man may take away the goods of an Infidel, and have them to his own use; and this would be a good trade, if this be so; any man may kill and beat him, if this be so.

Mr. Sollicitor, in his argument, was pleased to use many ancient Rolls and Records out of *H.* III. and *Ed.* I. and about those times, concerning these Princes dealing with and handling of the *Jews*; and I believe he might have cited many more.

Mr. *Prynne*, in his Book which he calls *The second Part of a short Demurrer to the* Jews, *discontinued and barred Remitter into* England, printed in the year 1656, has a long treatise, in which I believe an hundred Records and Histories are cited to this purpose, That the *Jews* did exact and enrich themselves by usury, to the great impoverishing of the people; and that the Princes of those times polled them, taxed them,

and took away the eſtates of the *Jews* from time to time; and thereby a man might think that theſe Kings uſed them but as ſpunges, to make them gripe what they could from others, and then ſqueezed it from them into their own treaſury: and it muſt in all probability be ſo. The Story is true, my Lord, as he relates it, and in the Rolls there are a multitude of them cited to that purpoſe.

But beſides Mr. *Prynne*, there is a Statute of *Morton*, *ch.* 5. made 20 *H.* III. my Lord *Coke* in the 2d *Inſt.* 89. ſays, was principally deſigned againſt the uſurious *Jews*. The Statute de *Judaiſmo*, 18 *E.* I. relates, that the King's people had been diſinherited, much injured and impoveriſhed by the uſury of the *Jews*, and enacts, *That no* Jew *thereafter ſhould take uſury upon Lands, Rents, or other Things.* And in the 2d *Inſt.* 507. my Lord *Coke*, in his Comment upon that Statute, ſays, That 15,060 *Jews* thereupon went out of the Realm.

So that, my Lord, we do not diſpute but that the fact alledged may be true; that the *Jews* were extorſive, and the King took away their eſtates: But the matter is the uſe and application of that fact.

For, *firſt*, I think if it be known aw, and taken to be according to any known law which we have, that they were as alien enemies, then as the King might take away their eſtates ſo the ſubjects may take them away too; ſo there is no ſuch uſe to be made of it as the other ſide would have, as I perceive. They ſay as Infidels the King would take away their eſtates, becauſe they are *perpetui inimici*; and I ſay, if they were alien enemies, then the ſubjects might take them away too; for ſo the Book ſays.

But next, my Lord, I do uſe it another way; That all theſe dealings with the *Jews* ſhew, that they were not alien enemies, but treated as alien amies, ſo long as the King pleaſed. For, my Lord, if they were alien enemies, and the Books they cite are true, as *Calvin*'s caſe mentions them, all their contracts and dealings were all abſolutely void, they could never have any property. How could they then be guilty of uſury? How could any man living be extorted upon by them, to pay any money due to them upon contracts or bargains, unleſs theſe men were treated as alien amies? How could they have the benefit of their contracts, as other alien amies have? So that I take it, that is a ſtrong evidence that they were treated as alien amies; otherwiſe it is impoſſible that which you ſay could be true, That they could hurt the King's people by extortion and uſurious contracts; when, according to your law, they were not able to make any contracts, or have any property at all: Is it poſſible the King could take away their eſtates that had none? And they had none, if your doctrine be true. If any man owed them money, they could not recover it, becauſe they could not bring any action; and the King could not have it, becauſe it was a void contract made with one not capable of making a contract. So that, my Lord, the inſtances they make uſe of, are, I hope, inſtruments and ſtrong arguments againſt them, not for them. They were taken notice of as alien amies, capable of making contracts, which the King's ſubjects were never bound to perform, unleſs they were legal, and they obliged by them by law. As for theſe ancient Records in general, time had hidden the knowledge of the laws, and tranſactions of thoſe times. It is not poſſible to know what the laws and tranſactions of thoſe times were, or rightly to diſtinguiſh between legal and violent acts.

And ſo being references from thence to conclude in judgment now, is *notum per ignotius*; or like dependencies, which unleſs latter times have concurred or agreed with, are only fit to make diſorder and confuſion.

Secondly, But that which is deducible from hence, is not, as I conceive, what has been endeavoured;

That they had no property, becauſe the Princes of thoſe times took from them their eſtates when they pleaſed, and taxed them how or in what manner they pleaſed.

But perhaps the reaſon was, that theſe people being under the curſe, and being a vagrant people, without Head, Prince, Governor or Country, it was no difficulty to tax or take from them at pleaſure, being hated of the people where they lived.

But it could not be as they would have it, that they ſhould be amongſt us alien enemies; for an alien enemy can neither make bargain nor contract, nor be capable of property;

But the ſubject may, at will and pleaſure, fall upon and take all that he has to his own uſe, as upon the King's enemy; and what he can take from him is his own acquiſition, as the price of his adventure, and conqueſt over his enemy.

The Books cited 17 *E.* IV. 2, & 7. prove this.

But by what is admitted by them, that they were great uſurers, and had great eſtates, it is evident, that they were here treated as alien amies: How could they elſe in ſuch multitudes live amongſt us? How could they be uſurers, and get eſtates, if they could not make contracts? How is it poſſible they could preſerve their bodies or eſtates againſt the King's ſubjects, unleſs they had the King's protection, and were treated as alien amies? And of latter times, how many of them have lived amongſt us, driven great trades, have had, and have at this time, conſiderable eſtates?

Let it now be adjudged, that any man that will, may take away their eſtates: that they can have no remedy or action for their debts owing to them, but inſtead thereof may be beaten or impriſoned as enemies to the King;

And we ſhall probably ſee, what the ſucceſs of ſuch a judgment will be.

My Lord, that they are taken notice of and handled as other aliens, without any diſtinction between alien enemy and alien Infidel, I would offer this as an argument. The queſtion, I confeſs, is new, and ſo there is not much that I can find in our Books about it; but the Act of *Navigation* made in the 12th year of this King, a year before this Charter now in judgment before you, concerning trade, ſhews, that Infidels have the ſame liberty of trade as Chriſtians; that Act being made for increaſe of ſhipping and navigation (it is *ch.* 18.) prohibiting goods to be imported by any foreign ſhips, except ſhips of that ſame Country where the goods do grow; and diſtinguiſhes not between Infidel and Chriſtian Countries, but expreſly ſays, *That no currants, nor commodities of the growth, product, or manufacture of any of the Countries, Iſlands, Dominions or Territories, in the* Ottoman *or* Turkiſh *Empire:* And does enact, *That no goods ſhall be imported from that Country, but in our Ships, or Ships of the Country of which the Goods are; and thoſe Ships to be ſailed by a Maſter, and three-urths of the ſame Country.* This muſt be an admittance and an allowance, that the maſters and mariners of that Country have the ſame freedom and privilege of trade that other foreign aliens have; and ſhews plainly, that the Infidels of the *Turkiſh* Empire have liberty of trade here.

My Lord, the Act for tonnage and poundage has general rates and impoſitions ſet upon the commodities of all Infidel Countries, without ſaying, brought in by, or with any manner of diſtinction. So that I think, that this opinion of a difference between alien Infidels and alien Chriſtians, was not taken notice of, nor known, nor thought of, till now: For, my Lord, if it had, it is unlikely the Act of *Navigation* ſhould provide and give allowance, for the maſters and mariners of Infidel Countries to come hither with Goods, when by Law they could never come in, but were enemies, and to be knocked on the head if they did.

My Lord, pray let us conſider of late times what a number of *Jews* have lived among us; ſhould we declare this for Law at this day, that the people ought to uſe them as alien enemies, ſtrip them, plunder them, knock them on the head, kill them and ſlay them, what would be the conſequence! What work would this make! For if this be true, what they aſſert that they are perpetual enemies, then we can have no peace with them; whoever owes a *Jew* any thing may play the *Jew* with him, never pay him; whoever has a mind to any thing he has, may take it away from him; if he has a mind to beat him, and knock him on the head, he may, there is no protection for him, nor peace with him.

My Lord, I do believe that 'tis true, that the *Jews* being under the curſe, and having been a vagrant people for ſo long a time, and having no Prince to defend them, it is probable, they have been made havock of, and our Kings and Princes have made bold to do with them according to their own pleaſures; though what is recorded of it, is ſo long ago, that it is hard to know the whole truth: But I think they are no precedents to be followed now, unleſs they had been followed by a ſucceſſion of practice and authority in our Books of Law: for otherwiſe many times a man might argue of old Books from dark things to darker, as long as he will, and never make any thing clear. In the caſe of *Southern* and *How*, there was occaſion for this to be taken notice of, if this opinion had been true Law. It is reported in 2 *Cro. fo.* 469. A man employed another to ſell Jewels in *Barbary* for him, and the other perſon did ſell them as true Jewels, when indeed they were counterfeit, and not above 100*l.* value, to the King of *Barbary* for 800*l.* and thereupon the King finding himſelf cheated, impriſoned the plaintiff that ſold them to him, til he repayed him his money; and he brought an action againſt the perſon that employed him to ſell them. It would have been of uſe in this caſe, if the contract and ſale, and the lawfulneſs of converſing in trade by Chriſtians with Infidels had been queſtionable, for the Defendant in that action to have urged againſt the Plaintiff, What reaſon had he to ſue him? For what had he to do to go amongſt the King's enemies? and he ought not to recover damages for any ſuch thing. I ſay, it would have been of uſe, if any ſuch point of Law had at that time been thought of.

In that caſe, it was of all ſides admitted, and not ſo much as objected, that this contract was void, becauſe the King of *Barbary* was an Infidel.

So that this opinion, that Infidels are perpetual enemies, and in perpetual hoſtility, can maintain no action, nor have any property amongſt us, has no authority for its foundation, but only ſome extrajudicial ſayings, without debate or conſideration; and it is againſt the continual practices of Princes and People at all times.

Perhaps it is no ſmall part of religion, that men ſhould ſpeak, and deal plainly and uprightly one with another.

We know that religion too often has been made a cloak and veil for other ends and purpoſes. It ſhould not be ſo, and I hope will not be ſo uſed in this caſe.

My Lord, the Statutes that I have cited, they have made no manner of diſtinction between Infidels and Chriſtians in matter of trade; and it is hardly to be thought, eſpecially as to ſome of the latter ones, but that there was trade with Infidels then: For it is ſcarce to be thought that our Princes ſhould go thither only with ſwords in their hands, to make war upon them, and afterwards to make peace with them, and no notice be taken of the law about trade concerning Infidels.

The Statutes I have cited of *Magna Charta*, *cap.* 9 *E.* III. 25 *E.* III. 2 and 11 *R.* II. all declare and enact the freedom of trade, in all general words, except only ſuch as are in war with the King: In none of them is there any exception of trade with Infidels.

Can it be imagined that in thoſe days we had no trade with *Turky* or *Barbary?* Our Kings went with armies to the *Holy Land*, and *Richard* had made war and peace with the *Turks:* Had we no trade there but with our ſwords?

But to look nearer home, *Spain* and *Portugal* were Infidels, and in the hands of the *Moors*, in the year 1494, which was 14 *E.* IV. Can it be thought that in all theſe times between *Magna Charta*, *H.* III. and *E.* IV. we had no trade with *Spain* and *Portugal?*

Stat. 12. *H.* VII. *cap.* 6. was made in the year 1497, which was but 23 years after the *Moors* were driven out; and in that Statute 'tis recited, that the Merchant adventurers, dwelling in divers parts of *England*, out of *London*, did ſhew, *That whereas they had their free paſſage, courſe and recourſe, with their Goods, Wares and Merchandizes, in divers coaſts and parts beyond the Seas, as well into* Spain, Portugal, Venice, Dantzick, Lapland, *and* Frieſland, *and divers and many other Regions and Countries, in league and amity with the King; that they were impoſed upon by a Company of Merchants in* London, *and forced to pay duties.*

I only make uſe of the recital, to prove the free paſſage there mentioned to *Spain* and *Portugal*, and to other Regions and Countries.

There is no diſtinction of Infidel Countries from Chriſtian Countries, though *Spain* and *Portugal* had been ſo lately Infidels.

'Tis moſt probable the trade they had then was with *Turky* and *Barbary*, as well as with *Venice:* The words *other Regions and Countries* ſeem to imply as much, and the freedom equal.

So that, I think, as to this objection, That Infidels are perpetual enemies, that we can have no peace with them, nor they maintain any action, or have any property by our law; I think the authority to maintain it none at all. The conſtant practice, as well by Princes as People, is conſtantly againſt it.

The

The Charters that they have cited to *Barbary* and other places, ſome of them are before the laſt of theſe Statutes, that is the Statute of K. *James*; and yet there is no difference taken notice of there between Chriſtian and Infidel Countries: So that, my Lord, taking all together the light, or at leaſt the weak authority of theſe ſayings and occaſional diſcourſes, for this diſtinction of Infidel or Chriſtian, in point of trade, will ſignify but little; and the conſtant practice of all our time, wherein we have any ſort of trade; and the arguments drawn from the Records that have been cited of the *Jews* having property and allowance to live amongſt us, and our dealings with foreign nations taken notice of in our Acts of Parliament, without ſuch diſtinction, ſeems to be a practice ſo quite contrary to thoſe ſayings, that are perhaps taken out of ſome zealous Catholick Authors of thoſe ſuperſtitious times, rather than conſonant to the rules of Law, that they can be no foundation for this diſtinction; eſpecially conſidering that *Spain* and *Portugal*, as I ſaid, 'till the middle of *Edward* IVth's time, were poſſeſſed by Infidels: and yet I cannot but think they muſt be traded with, and no man can find any thing of the diſtinction but only out of theſe occaſional ſayings in *Calvin*'s caſe.

But be that point of trading with or without licence (which I mentioned before) how it will, yet I conceive that point will never be ſufficient to ground this ſame ſole trade, or to found a Monopoly upon; that cannot warrant a Grant of a ſole trade, ſole buying and ſole ſelling, to be granted to you and your ſucceſſors, your ſons, ſervants, apprentices, factors, and ſuch as you ſhall licenſe for ever: There is a licence and grant in perpetuity, not only to thoſe that then were, but to their ſons and ſucceſſors, and thoſe whom they ſhall licenſe; and this into a very great part of the World.

And by the ſame reaſon all *Turky* and *Barbary*, a great part of the *Weſt-Indies*, and other places of the World, may be monopolized; and perhaps all Chriſtian Countries.

The Statute of Monopolies has no allowance or exception for Monopolies to Infidel Countries; that is, againſt all ſole buying, ſole ſelling, or ſole uſing of any thing.

And the *Turky* trade was uſed long before that time, as by Charter, granted 23 *Eliz.* So was the *Bourbon* trade, as by the Charter thereof; and I believe to the *Eaſt-Indies* alſo.

And the Statute of Monopolies being ſo general (the *Proviſo* not reaſonably conſtruable to except this Company out of the extent of that Statute, unleſs all Patents that may be granted to Companies of Monopolies, are by that exception or *Proviſo* out of the Statute) and deſerving for the ſuppreſſing ſo great evils as Monopolies are, and always have been accounted:

I hope it will not be avoided upon any imaginary difference in Law, betwixt Infidel and Chriſtian Countries to monopolize thereby the trade, perhaps of the greater part of the World, as *Turky*, *Perſia*, *Barbary*, *Eaſt* and *Weſt-Indies*; for the *Weſt-Indies*, I think, the greater part are Pagans.

My Lord, I have looked over the caſes that were here, and the debates that have been printed in 3d and 4th of King *Charles* I. about the King's Power of impoſing rates and ſubſidies, and impoſitions upon merchandizes, in *Bates*'s caſe in the *Exchequer*, 4 *Car.* I. 2 *Inſt.* 63. and Mr. *Ruſhworth*'s account of the debates in Parliament at that time about that matter: many things are there ſaid concerning the King's Power of reſtraining and prohibiting of trade, and the Writ *Ne Exeat Regnum*. And from theſe reaſons, they that argued for the King, urge reaſonableneſs of impoſitions upon merchandize. That caſe aroſe from an impoſition upon Currants, and methinks if there had been known any ſuch diſtinction, as they would here inſinuate, it had been of great uſe in that caſe as well as this; but throughout the Arguments and Reaſons there debated, they did never make any diſtinction between Infidel and Chriſtian, but native and foreign commodities; and did endeavour to have a prerogative to impoſe rates upon them: and the reaſons were theſe, and all the Arguments run thus: The King can prohibit and reſtrain any Merchant to go out of the country by Writ, *Ne Exeat Regnum*; the King can prohibit any foreign commodities to be imported; then none can go out without licence, nor import without licence, and conſequently it is a legal thing, when this licence is granted upon the payment of ſuch a duty or impoſition, or under ſuch a rate as can be agreed on between the King and the Merchant; and therefore ſuch an impoſition or farm is lawful.

Theſe were the arguments in that caſe, and in theſe arguments it appears that a reſtraint in conſequence does import a tax, rate or farm, for a diſpenſation with that reſtraint.

For if licences be requiſite, it is worth conſideration, whether that will not introduce the impoſing of rates without Parliament, or otherwiſe than in a parliamentary way. This, I ſay, is worthy conſideration. Suppoſe it true; there have been licences to go into Infidel Countries to trade; ſo there have been to go beyond the Seas, and have been to other trade beſides this: yet it does not follow as a true conſequence, that it is unlawful to go or trade without licences; much leſs does it follow from thence, that ſuch a Patent as this to any one or few Subjects, or to ſuch a Corporation, to have the whole and ſole trade into any place, and power of licenſing others, can be warranted by it.

I do not queſtion but the King may reſtrain the paſſage of Merchants and Merchandize in ſome caſes, and to embargo Ships in ſome caſes.

But theſe are upon ſpecial reaſons; as,

Firſt, In the caſe of War.

Secondly, In the caſe of ſuch Merchandizes as are neceſſary for the defence or ſafety of the Kingdom, to reſtrain their Exportation.

Thirdly, In caſe of a plague from particular places to import.

But then theſe prohibitions are general, and their particular reaſons and grounds are apparent.

But if under any pretence any ſole trade to ſome one perſon, Body Politick or Natural, be granted, excluding all others; that Grant, I conceive, is in deceit of the King, and to the prejudice of his Subjects, and void.

Never has ſuch a Grant hitherto had any judicial allowance; nay, ſo far from that, that as far as I could obſerve, no opinion has been till within four or five years, that ſuch Grants were good to exclude others, nor any action or ſuit ever adventured before now, to be brought upon any ſuch ground.

So that, my Lord, as to this great point, both the old Common Law, and the old Statute Law, and the Statute of Monopolies, with ſubmiſſion, are againſt this Grant of the ſole trade; and the diſtinction between Infidel Countries and Chriſtian, is ſo thin, and upon ſo weak a bottom, that I hope it will never be ſtrong enough to bear the weight of ſo great a conſequence as this is. For though at preſent Infidels be diſtinguiſhed from Chriſtians; yet from their arguments and kind of reaſoning about reſtraint of going beyond Sea and trading, *Spain* and *Portugal* may be brought in, and *France* too; and ſo the argument will run from Infidel to Chriſtian at length, and I know not where it will ſtop.

So I humbly leave that point to your Lordſhip's judgment, whether ſuch a Grant of a ſole trade, appears to be ſuch a Grant, as is good according to Law; and whether or no, notwithſtanding what they have ſaid, it does not appear by the old Common Law, and the old Statute Law, and by all our late Acts of Parliament, to be in Law a void Grant?

The next thing, my Lord, I come unto, is the ſecond point, which I ſhall be but ſhort in: about the firſt, I have taken up moſt of your time, and I beg your Lordſhip's pardon for it; becauſe, if I miſtake not, it is a moſt weighty point in the conſequence of it. But then ſuppoſing and admitting their Grant to be a good Grant, whether or no, can you maintain this action? If the Law ſhould be ſo, that the Defendant ought not to have traded there without licence, then he may be puniſhable at the King's ſuit, by fine and impriſonment; but that you ſhould maintain an action againſt him, what cauſe of action, what damage or loſs to you, have you laid in your declaration? You ſay in your declaration, that the Defendant *Sandys*, not being a Member of your Company, nor a Son, Factor or Servant, nor Aſſign of your Company, traded into the *Eaſt-Indies* in the places within the limits of your Charter; and has there bought wares, and bargained and ſold merchandizes, and imported and ſold them in *England*, againſt the will of the Company, and to their prejudice and impoveriſhment, againſt the form of their Charter, and to the Company's damage 1000 *l.*

Firſt, You have not alledged in all your declaration, whether or no he had a licence from the King, and that is nught: for I think, tho' the King is pleaſed to ſay in his Letters Patent, he will not grant licences without leave of the Company, yet he may do ſo, if he pleaſe, notwithſtanding that Grant.

Secondly, Then you have not ſhewn any loſs or damage you have had by his trading thither: did he buy ſo much of the merchandize of the country, as not to leave there ſufficient for you to furniſh your Ships withal, ſo that they came home empty? No ſuch thing is alledged. Did he hence export to ſell there ſo much merchandize, as not ſufficient left for you here to buy? Or, did he bring home here ſo much, as that there were not buyers ſufficient for his Goods and yours alſo? There are no ſuch things alledged; or is the truth ſo, as that hereby your impoſing your prices upon your commodities, ſelling at your own prices, and exacting what you thought fit, was hindered; and for this you would maintain an action.

I think it will be the firſt time, that ever a man recovered damages for being hindered from impoſing and exacting his own prices, or having the advantage of his Monopoly, or for another's having an earlier or a quicker trade, and under-ſelling his own commodities and merchandizes lower than the Plaintiffs can afford them.

You agree by your own declaration, that there are many others that are concerned as well as you: you ſay, you have the ſole trade to yourſelves; your Factors, your Servants and your Sons, as ſoon as they come to twenty-one; all that are of your Company, all that you grant licences to, all that you ſhall aſſign your trade to; all thoſe have an intereſt, if you can maintain an action. Other people have trade there as well as you, can they maintain an action?

A Commoner may bring an action upon the caſe againſt a ſtranger, for putting his Cattle into the Common, provided that the Common thereby be impaired, and the Commoner have not ſufficient Common as before, and have a damage, otherwiſe he can maintain no action.

In *Robert Mary*'s caſe, 9 *Co.* 113. it is there reſolved, That for every feeding of the beaſts of a ſtranger in a Common, the Commoner ſhall not have an aſſize or action upon the caſe; but an action does lie, if the feeding be ſuch, that the Commoner cannot have common paſture for his own beaſts; and then it is the conſequence, the loſs of his Common, that gives him cauſe of action.

It is not alledged in the declaration, that your trade was any thing the worſe. No damage appears to you by it: What reaſon, that you ſhould recover damages, where you have not ſuſtained any loſs? And you have alledged none in your declaration; how can your declaration be good? It then contains no cauſe of action.

You ſhould now, if you would have made a declaration, that ſhould have intitled you to a cauſe of action, have ſhewn how you ſuffered by *Sandys*, a ſtranger trading to the *Eaſt-Indies*; that he bought up all, and you could have nothing; for if he left enough for you, what hurt have you? What reaſon is there you ſhould recover damage, if you have not ſuſtained any loſs? And if you alledge none in your declaration: Howis your declaration, that ſhews no cauſe of action, maintainable?

In the caſe of Monopolies, 11 *Co.* 88. *b. Rolls Abr. 1ſt part. fol.* 106. The laſt point in that caſe is a full authority in this point: That admitting the Patent to be good, for the ſole making and ſelling of Cards, that was granted to *Darcy* for 12 years, yet no action would lie in that caſe, though the Defendant did, contrary to this Patent, ſell Cards. Adjudged that it was a Monopoly, and Patent void: that if the Patent had been good, yet no action would have lain againſt the Defendant upon it.

My Lord, If that be ſo as it is declared to be in that caſe, in the laſt point reſolved by the Judges, if that action would not lie there, this will not lie; ſuppoſing his Charter to be never ſo good, and the Defendant has done contrary to it.

My Lord, there is only one other reaſon for which the action will not lie; and that is grounded upon the Letters Patent, as they are granted to you. For by the Letters Patent, it is not abſolutely, but *ſub modo* granted, that you ſhall have the ſole trade; and that no other perſon ſhall trade there, under pain of forfeiting ſhip and goods; one half to the King, another half to the Company. So that, my Lord, the words of reſtraint are not abſolute, but only under ſuch a penalty and forfeiture.

Now, my Lord, if I ſhould ſuppoſe this Patent to have all the force and ſtrength that they can deſire; ſuppoſing that this Patent were in an Act of Parliament, penned in this manner, that did reſtrain all perſons from trading to the *Eaſt-Indies*, except the Company, under pain of forfeiture of ſhip and goods; under favour, you that will have advan-

advantage of this reſtraint, muſt take it in that manner as the Act does give it; you ſhall not have any other penalty or puniſhment, but what the Act gives. For when any new Law is made, you muſt take it as it is, and no otherwiſe, till another new Law be made. And ſo is the Rule in 7 *Co.* 37. 11. *Co.* 56, & 59. *Plowd. Com.* 206. It cannot be altered without a new Law.

And I would but only ſuppoſe upon the Statute of *Edw.* VI. that gives the owner of tithes treble damages againſt him that ſets them not forth; a man brings an action upon the caſe, would that be well? No, he muſt take the Law as it is; ſuch an action never was brought, nor if brought, could be maintain'd; yet here the damages are given to the party.

The like of all other penal Statutes, a man muſt only forfeit the Penalty the Statute inflicts; ſo that this action cannot, as I conceive, be maintain'd. So that, my Lord, taking all together, admitting (tho' I hope it is not ſo) that this Patent is a good Patent; yet you are not the ſole perſons intereſted, there are others beſides you, your Grantees, Factors and Servants, and Sons are to trade there. You have not laid any particular damage; therefore you cannot, by the reaſon of the caſe of Monopolies, maintain any ſuch action as this.

And if you will take advantage of this Grant, it is reaſonable you ſhould take it as the Grant gives it, proceed for the forfeiture of ſhip and goods; but for the action of the caſe, your Charter does not give it; nor, if an Act of Parliament had been penned after this manner, would ſuch an action have lain.

So that to conclude,

Firſt, That that which this Company claims in this caſe by this Patent, to have the ſole trade to the *Eaſt-Indies* in their politick capacity, excluding others, is a Monopoly, and ingroſſing, againſt the Common Law, and the antient Statutes, and the Statute of Monopolies, 21 *Jacobi*, and therefore they have no right to have what they claim.

Secondly, That what the Defendant has done in this caſe, he has lawfully done, and therefore not to be puniſh'd.

Thirdly, That tho' the Company had a lawful claim to the trade in ſuch manner, as in their declaration is ſet forth, and the Defendant done what he ought not, yet they cannot maintain this action.

And upon the whole matter, whether beſt for the Company to have judgment for them or againſt them, may deſerve their thoughts.

But this being ſo great in the conſequence, as the whole trade of the Kingdom depending upon it, I have laboured the more.

The antient Laws, the antient ways, is what I endeavour, and againſt new ways upon any pretence whatſoever.

And therefore, my Lord, I humbly beg your judgment for the Defendant.

Lord Chief-Juſtice. Do you intend to have another Argument in it, Gentlemen?

Mr. Sollicitor-General. What your Lordſhip pleaſes.

Lord Chief-Juſtice. It is a caſe of great weight and conſequence, perhaps, as ever any caſe, that has come into *Weſtminſter-hall*. I muſt needs ſay, it has been extraordinarily well argued on both ſides; and it muſt be neceſſarily taken notice of as a point of great conſequence, wherein the King's prerogative, and the privileges of the *Eaſt-India* Company, and this joint trade, are concern'd on the one ſide: and the benefit of particular perſons, and the liberty of free, uncontroulable trading is concern'd on the other: and it is fit there ſhould be all the conſideration, and all the deliberation upon a matter of this great moment, that poſſibly can be. I cannot be ſo wonderfully captivated with the differences, that have been made between the Charter to the *Eaſt-India* Company, and thoſe to the *Turky* Company and the others; and tho' I have heard much in the defence of Charters and Corporations, I am of opinion there is no ſuch great matter of commendation due to them: but I take the Common Law to be the beſt Law in the World. For that Charter, that you Mr. *Pollexfen* defended here ſo ſtrongly after judgment given againſt it; the Corporation became as inviſible within a few days, as you ſay this was, no duns could ſee it; tho' there were duns that went to wait upon that Corporation, but came away as empty as they went: and I wiſh the duns were like to be as well ſatisfied from the one, as they are from the other; and therefore there can be no great matter in that. But there is another thing that very much deſerves conſideration, it is a queſtion wherein trade is mightily concern'd: we know we have a potent Neighbour, who has both experience and induſtry, and are our rival in this trade; I wiſh we had as much induſtry, and were as diligent as they; they have found by long experience, that a Joint-Stock is the only way to carry on their trade, I mean *Holland*. And it is very well known, if it had not been for a Joint-Stock, the trade had never been ſo beneficial as it is. And Mr. *Sandys* would not have had ſuch a deſire to the trade, for it would not have been ſo well ſettled and fixed; and therefore, I take it to be a wonderful thing, and to carry a great conſequence in it upon that account, that we ſhould conſider how this trade comes to be ſo great, and ſo deſirable. Now that by the Joint-Stock, and Induſtry, and expence of the Company, the thing is become facile and valuable; for particular perſons to come and ſweep away the advantage of it, that ought to be well conſider'd. Mr. *Sandys* and his partners are very zealous now to reap the fruits of the Company's labours. But ſuppoſe this queſtion ſhould be aſked, Will you be contented to come in and pay your proportion of all the charge theſe people have been at, to put the trade into this capacity it is in? But is it fair, after they have reduced it into ſo good a condition, at a vaſt expence and trouble, for other particular perſons to come and ſay, Let us have the benefit of it, that have had nothing of the burthen and charge? And then there is another conſequence of great concern; peace and war, no one doubts, are actually in the power of that Prince and People with whom the trade is. I would deſire to know, ſuppoſing an injury ſhould be committed by any particular perſon to the Infidels, and the Ship get away; will not all the reſt of the Company's ſtock, being of the ſame Nation, be in danger of ſuffering by it? Certainly it would; and therefore ſince they are likely to anſwer for the wrong, is it not fit they ſhould have the management of it? So we may, if we come to argue by conſequences, eaſily find out a great many inconveniencies on both ſides; but they are not to over-rule the Law one way or the other; they are ſpecious pretences by way of argument, but the Law is a certain rule, and conſequences are not one way or other to over-rule it. The main point truly is a point of great conſideration and weight; perhaps as conſiderable as ever any that has come in debate here; and therefore it is fit, that all due deliberation be taken to have it debated.

Mr. Juſtice *Withins*. Mr. *Pollexfen*, you ſeem to argue that the King's Grant to them is a void Grant, and againſt Common Law, as being a Monopoly in granting them the ſole trade; then that does not come to the point in *Michelborne*'s caſe, about trading without Licence with Infidels; and therefore you go upon another ground, than what *Mr. Sollicitor* did.

Mr. *Pollexfen*. I go upon the particular caſe here before you.

Mr. Juſtice *Withins*. And you have not given any anſwer to the Petition of the Commons, cited by *Mr. Sollicitor*.

Mr. *Pollexfen*. Truly, Sir, I think, it does not need any anſwer; for I go chiefly againſt this Grant, which is againſt Law, and void.

Lord-Chief-Juſtice. Truly, Mr. *Pollexfen*, I am not much in love neither with your other point about the action; for what became, pray, of all the actions that have been brought upon that Statute of Monopolies, by the Patentees of new inventions, as there has been multitudes in my Lord *Hales*'s time, and at all times?

Mr. *Pollexfen*. In that caſe there's no-body but the particular Grantee, that has that invention; and he brings the action. But here, of your own ſhewing, you have intitled others to the trade, as the ſervants, and factors, and children; and therefore you can never have ſuch an action.

Lord-Chief-Juſtice. When will you have it argued again?

Mr. *Pollexfen*. We ſhall be ready for the Defendant next Term.

Lord-Chief-Juſtice. That is a little too ſoon, there's but a very ſhort Vacation, and that is but a ſhort Term; I think you had beſt have another argument in *Michaelmas*-Term.

Mr. Sollicitor-General. Yes, if your Lordſhip pleaſe.

Mr. *Pollexfen*. What your Lordſhip pleaſes; we ſhall be ready, if your Lordſhip pleaſes to hear us next Term.

Lord-Chief-Juſtice. I know Mr. *Sandys* is in very great haſte; but the zeal and tranſport of any particular perſon muſt not think to oblige us to go hand over head in a caſe of this great weight and moment; there is great conſideration to be had of the length of time that this Company has continued; there has been an *Eaſt-India* Company in King *James*'s time, in the late King's time, and in this King's time.

Mr. Juſtice *Holloway*. And here is a great trade ſettled, we muſt not deſtroy it preſently.

Lord-Chief-Juſtice. We muſt not gratify the zeal and tranſport of Mr. *Sandys*, by being over-haſty in this matter.

Mr. *Pollexfen*. My Lord, we ſhall be well content to ſtay till *Michaelmas*-Term.

Lord-Chief-Juſtice. Ay, I know the Counſel will; but whether your Client will or no, I cannot well tell, nor do not much care. Well, we will conſider of it, and hear another argument in *Michaelmas*-Term.

Mr. Attorney-General (Sir *Robert Sawyer*) his Argument.

The Governor and Company of Merchants of *London*, trading to the *Eaſt-Indies*, Plaintiffs. *Thomas Sandys*, Defendant.

De termino S. Michaelis, *Anno Regni Regis* 36 Car. II. xxxi. *Anno Domini* 1684.

IN an action upon the caſe brought by the Company againſt the Defendant, for trading into the *Eaſt-Indies* contrary to their Grant, in prejudice of their trade, and to their damage of 1000 *l.*

It comes before the Court upon the Plaintiffs demurrer to the Defendant's Plea of the Statute of 15 *E.* III.

The Record having been ſo often opened at large, I ſhall only put it as a Caſe upon the Record.

The King by his Letters Patent, *3tio Aprilis*, 13 *Car.* II. reciting that the Company had long been a Company, and enjoyed divers liberties and privileges under the Charters of Queen *Elizabeth* and King *James*, grants the Company the ſole trade and traffick to the *Eaſt-Indies*, being an Infidel country; with a prohibition to all others of his ſubjects to trade thither, without the leave and licence of the Company.

The Defendant not qualified as the Charter directs, without the leave of the Company, and againſt their wills, trades to the *Eaſt-Indies*, to the prejudice and damage of the Company's trade.

Upon this caſe, the points which have been moved and argued, are two.

Firſt, Whether the Letters Patent giving licence to the Company to trade into the *Eaſt-Indies*, and to exerciſe the ſole trade there, with prohibition to other ſubjects to trade there, be good in Law?

Secondly, Whether admitting the Patent good, this action will lie for the Company?

In debating of the firſt point, I ſhall not go about to maintain the validity of theſe Letters Patent, or any ſuch of like nature, to bind up the King from granting licence to other of his ſubjects as he ſhall pleaſe; but ſhall content myſelf, to ſhew that all the ſubjects not licenſed by the King, nor authorized by the Company (as the Defendant is not) are bound by theſe Letters Patent.

Where the queſtion will be between the King's prerogative (and that in one of the higheſt points thereof, which concerns the defence and protection of his Kingdom), and the intercourſe with foreign Nations, on the one ſide; and the general liberty of trade, which is a tender point, and meerly concerns the intereſt of his ſubjects, on the other ſide.

It therefore being a queſtion of great conſequence, and of greater conſequence than difficulty, as I hope to ſhew; I ſhall, in examining into the point, uſe the utmoſt caution, by aſſerting the King's juſt prerogative in this matter, and not to depreſs the ſubjects true liberty of trade.

The ſubject matter of this queſtion, only relating to a foreign trade with Infidels, not in amity with the King of *England*, doth not neceſſarily oblige me to enter into the conſideration of any other

trade, or of the King's prerogative, or the ſubjects liberty in relation thereto.

Which would much ſhorten my taſk in ſupporting theſe Letters Patent, and the trouble the Court is like to receive thereby.

But becauſe the great force of the arguments, made uſe of on the other ſide againſt theſe Letters Patent, have been drawn from principles and precedents of Law, which concern as well the inland trade and traffick of this Kingdom, as with other Chriſtian Nations in amity with the King of *England*, with whom leagues of commerce have been made by our Kings; or to whom a common trade hath been laid open by ſeveral particular laws:

It is made neceſſary for me, from the other ſide, a little to conſider theſe trades, and how far the ſubjects liberty or the King's prerogative be concern'd in them.

Whereby it will appear, that the arguments and authorities produced by the defendant's Counſel, will be of no great force to impeach theſe Letters Patent for the management of a foreign trade with Infidels.

I ſhall therefore briefly conſider the inland or native trade within the Kingdom, and then the foreign trade with other Nations.

The inland trade is either for manufactures or merchandize.

Under the trade of manufactures falls in the huſbandman, and all ſorts of artificers; who have full right by the Common Law, to exerciſe what, and as many trades as they pleaſe; ſo as no annoyance happen to the neighbourhood: And with theſe the King's prerogative is little concerned, it cannot reſtrain them, it being their livelihood.

Nor is the public weal otherwiſe concerned therein, than that all its members ſhould live by their honeſt labour and induſtry. As to the trade of merchandize, or inland commerce, every man (generally ſpeaking) might buy of any man, whether native or foreign, and as many kinds or ſorts of merchandize as he pleaſeth, which I take to have been the Common Law before 37 *Ed.* III. *cap.* 5. whereby all trading Merchants were reſtrained to one ſort of merchandize.

But that Act continued not long, being repealed 38 *Ed.* III. *cap.* 2.

Yet this trade of inland merchandize lay under ſeveral reſtrictions at Common Law. 1. Notwithſtanding ſuch general liberty of buying and ſelling, no man could ingroſs any one commodity. 2. The ancient Common Law confined this ſort of trade to certain places, as Towns, Cities, or other public places appointed by the King, *Co.* 3 *Inſt. fo.* 196. *in the Chap. Foreſtalling.*

It was puniſhable to buy above the value of twenty-pence elſewhere, or to anticipate merchandizes before they arrived at theſe places.

3. No aſſemblies could be held for the traffick of buying or ſelling, without the King's licence; for tho' ſome Markets and Fairs are held by preſcription, (the original Grants not appearing) yet theſe were derived from the Crown, by ſome royal licence before time of memory: they all depend upon the ſame Crown, and may be forfeited to the Crown.

This is ſo frequent in our Books, I need not cite the authorities.

And here the prerogative of the Crown had a great ſtroke.

The inland traders, in buying and ſelling, might buy and ſell in private places, and could not be reſtrained: But they could not hold aſſemblies for trade without the King's leave and licence; Marts, Fairs and Markets, in their true notion, being no other than royal licences to aſſemble for trade and traffick.

And theſe, when granted, cannot be reſumed without cauſe of forfeiture: For I do admit, that a licence to trade or traffick carries an intereſt with it, being a matter of profit.

And I take the Law to be the ſame, whether the Fair or Market be erected only, and not granted to any one; and where it is granted to a ſubject, all the King's ſubjects have a liberty and right of trafficking there, and cannot be prohibited by the Lord of the Fair or Market.

The reaſon of theſe reſtrictions of the inland trade of merchandize, and the King's prerogative therein, is from the concern the public peace and juſtice of the Kingdom hath in this ſort of trade, more than in the former of the manufactures, *viz.* to prevent all manner of cheats by falſe weights and meaſures, corrupt merchandizes, and too great enhancing of the prices, and breaches of the peace, occaſioned by public concourſes, tho' under colour of trade and traffick.

And upon this ground the Common Law provides, That to all ſuch licences for public Marts, which the King may grant when and where he pleaſes, being not to the damage of others before granted, a Court of Juſtice is incident of common right, for preſervation of the public peace and correction of ſuch deceits which generally attend the trade of merchandizing.

Fourthly, There was another reſtriction upon the inland merchandize taken notice of in our Books, which was more particular, and to certain places, *viz.*

The claim of foreign bought and foreign ſold, by ſeveral Cities, Towns and Ports, ſome by cuſtom, and others by Charters; and there is no great queſtion to be made, but before 9 *E.* III. *cap.* 1. the Charters as well as Cuſtoms did prevail for that Liberty, but both were taken away by the Statute, and divers ſubſequent laws taken notice of in the caſe of the City of *London*, *Co.* 8. *fo.* 128.

And between that and 9 *H.* IV. there were great ſtrugglings in Parliament between the foreign Merchants and the City of *London*, and other Towns, about that Cuſtom.

'Till at length, *London* prevailed for a private Act of Parliament for eſtabliſhing of the Cuſtoms, which they have enjoyed ever ſince 9 *H.* IV. 30.

By an ancient Record of *Henry* III. it appears, that the abbots, and others the religious of the County of *Lincoln*, under colour of ſelling their wool, which aroſe upon their demeſne lands, turned Merchants, and bought up wools, and ſold them with their own wools: They were prohibited to do it by a Writ out of the Chancery.

And upon the complaint of the Merchants of *Lincoln*, in the time of *Edward* I. the like Writ of Prohibition iſſued, *Pla. Parl.* in the Appendix, 609. By all which it appears, that the inland traffick of the Kingdom, which was within the care and cognizance of the Common Law, was not unlimited, nor the ſubjects liberty therein never ſo large as it is now inſiſted upon, to all foreign parts whatſoever.

And that the managery of the principal part of the home traffick, which conſiſts in the Marts, Fairs, and Markets of the Kingdom, depends upon the King's prerogative, and is managed under it, the Law having entruſted the King with that power for the benefit of his people, and the peace of the Kingdom.

In the next place, I will take a view of the foreign trade.

The Common Law, and our Law-books, take notice of but two ſorts of Foreigners, alien friends, and alien enemies; *Calvin*'s Caſe, *Co.* 7. 17.

Neither can there be any other ſort of Foreigners, generally ſpeaking: for if the queſtion ariſe, whether alien Friend, or alien Enemy, it muſt be tried by the leagues with the Prince, whoſe ſubject he is; which is, or ought to be enrolled in *Chancery*. And tho' there be not actual war or fighting between the two Princes and their Subjects, yet they are *in ſtatu belli*, and may aſſume arms when they pleaſe, and ſeize the goods and perſons of each other's Subjects.

I ſhall firſt conſider what the Common Law determined as to the Subjects trade and traffick with alien Friends beyond the ſeas, and upon what foot that trade ſtands; and then particularly conſider how it determines in caſe of Commerce with alien Enemies, and incidentally of Infidels.

I conceive the Common Law hath made no expreſs proviſion, nor given any abſolute right for the Subjects to trade with any Foreigners beyond the Seas.

It will be of little uſe to diſcourſe how far the Law of Nations interpoſes in this matter: whether every Nation be obliged to entertain Trade and Commerce with another Nation.

And antecedent to all leagues and treaties for Commerce, little will be found beſides the laws of hoſpitality, which do not give any demandable right.

Bodinus, in his Book *de Repub. lib.* 1. *cap.* 6, 7. ſays, *Quæ tametſi jure gentium eſſe videantur prohiberi, tamen ſæpe a Principibus videmus.*

And in his Book *de Repub. lib.* 1. *cap.* 6. holds, *That it is lawful to forbid Foreigners from entering the borders, not only if a war be on foot, but in time of peace, that the manners of the Inhabitants may not be corrupted by converſe with Strangers.*

And in his Book *de Repub. lib.* 1. *cap.* 6, 7. *That the Laws of Commerce are contained in the particular compacts and agreements of people and Princes.*

What *Bodinus* declares to be the Law of Nations, exactly agrees with the Laws of this Kingdom; for all Strangers came hither under ſafe-conducts, which contained both the King's licence and protection of them.

The King might inhibit Foreigners from coming into the Realm, and might remand them when here.

Magna Charta, *cap.* 30. which is a general ſafe-conduct to Merchants-ſtrangers, reſerves this prerogative to the King, *niſi publice prohibiti.*

My Lord *Coke*, in his Comment upon this Chapter, 2 *Inſt.* 5. 7. admits they might have been prohibited before this Statute, but conſtrues the ſaving of this Prohibition by Act of Parliament.

Which Conſtruction, as it is without any former Precedent or Authority, ſo it is againſt the conſtant ſtream of Precedents and Practice ever ſince.

Rot. Clauſ. 24 *H.* III. *dorſo*, which was after this Statute, the King ſent his writs to ſeveral Mayors, commanding that all the Merchants, *ultra montem*, ſhould depart the Kingdom within a month.

And in the ſame Roll, *dorſo*, there is another Writ to the Mayor of *London*, giving leave to *Roman*, *Florentine*, and ſome other Merchants, to ſtay till the feaſt of St. *Martin* in the year following.

And the conſtant practice in every King's reign ſince, hath been both by proclamation and orders of Council, to command foreigners to depart the Realm.

Beſides, the conſtruction my Lord *Coke* puts upon it, makes the clauſe idle and eluſory.

That one Act of Parliament ſhould provide for a ſaving by a ſubſequent Act, which of itſelf would be repealed by the former.

So where an Act of Parliament prohibited foreigners to come in, the King by his ſafe-conducts might licenſe them.

The Commons, in the Parliament 1 *H.* V. pray, That the Statute made by *Henry* IV. for avoiding of ſtrangers out of the Realm, might be put in execution. The King grants it, ſaving his prerogative to licenſe whom he pleaſes. The Commons replied, *Their intention was no otherwiſe, nor ever ſhould be by the Grace of God*, 1 *H.* V. *No.* 15. *Rolls Prerogative*, 180.

This might further appear by the ſeveral Statutes made for the inviolable obſervation of the King's ſafe-conducts, which are in expreſs words mentioned to extend to alien enemies, as well as alien friends; 2 *H.* V. *cap.* 6. and 20 *H.* VI. *cap.* 1.

It is held in *Horn* and *Ivy*'s Caſe, *Hill.* 21 and 22 *Car. Secundi*, *Banco Regis*, *Syderfin.* That at Common Law the King might prohibit the importation of foreign commodities, before the Statutes therefore made.

So then as the caſe ſtood at Common Law, foreign Princes and Nations might prohibit the ſubjects of *England* to trade with them, as the King might prohibit foreigners to trade here.

The King might inhibit any of his ſubjects from going beyond ſea: And this might have been by particular Writ or general Proclamation.

Our Books and Precedents are ſo full in this point, that it was admitted on the other ſide; for there could not be produced any authority that renders it the leaſt queſtionable, but multitudes are for it.

Rot. Clauſ. 7 *Ed.* II. *mem.* 10. A Writ to the Sheriff of *York*, to ſeize the bodies and lands of ſuch as had gone beyond ſea, contrary to the King's Inhibition.

Rot. Clauſ. 41 *Ed.* III. *mem.* 24. *dorſo*, Writs to all the maritime towns to take care that a Proclamation prohibiting all his ſubjects (except noted Merchants, and thoſe unarmed) be put in execution.

Hereby it is evident, that it was penal to go beyond ſea, contrary to the King's Inhibition, before the Statute of 5 *R.* II. *cap.* 2.

All that that Statute adds to ſtrengthen the King's Inhibition, is only a point of further penalty, *viz.* A forfeiture of the Goods of the paſſenger, and of the Veſſel of the Maſter exporting: And tho' there be three ſorts of perſons excepted out of that Statute, *viz.* Lords and other great Men, true and notable Merchants, and the King's ſoldiers; yet that Law gave thoſe perſons no other liberty than they had before, only leaves them out of the Penalty provided by that Statute.

That before this Statute, Noblemen and other great Men might be prohibited, appears by my Lord *Coke*'s opinion, 3 *Inſt.* 179. in the caſe of fugitives; and the Records there mentioned, eſpecially that of the 25th of *Ed* III. *Rot. clauſ. memb.* 15. *dorſo*, where the King, by his proclamation, prohibits, that *Nequis Comes, Baro, Miles religioſus, ſagittarius aut operarius, extra Regnum ſe transferret, ſub pœna Arreſtationis, et Incarcerationis.*

And for the King's ſoldiers, it is plain they could not depart the Realm without the King's leave: but his raiſing of them for his foreign ſervice, was a ſufficient licence for them to depart the Realm with their ſeveral Captains.

And for the true and notable Merchants excepted in the Statute, they are the ſame with the noted Merchants excepted in the Proclamation of 41 *E.* III. who were the Merchants of the Staple, who were admitted and ſworn to obſerve the laws of the Staple; and were bound to repair thither, and not elſewhere, without the King's ſpecial licence, as I ſhall afterwards ſhew.

By the Statute of 27 *Ed.* III. which ſettled the laws of the Staple, *cap.* 23. all Merchants, as well aliens as denizens, repairing to the Staple, are required to be ſworn before the Mayor and Conſtable of the Staple. After the Staple was at *Calais*, as it was 41 *E.* III. & 5 *R.* II. the ſame laws of the Staple continued; and theſe Merchants are in many Records taken notice of.

37 *H.* VIII. *cap.* 15. All perſons are prohibited to buy wool in *Kent*, and ſome other Counties, except the Merchants of the Staple.

And 1 *Eliz. cap.* 13. provides, It ſhall be lawful for the Merchants, called *Merchant-Adventurers*, and *Merchants of the Staple*, out of the River of *Thames* only, and twice in the year at moſt, to ſhip out and in foreign bottoms.

Now 41 *E.* III. & 5 *R.* II. the Staple was at *Calais*, and all the Merchants of the Staple were bound to repair thither only, and had a general licence ſo to do, without taking of Paſſports, as the form of the Statute of 5 *R.* II. directed.

But theſe notable Merchants were reſtrained to trade to any other place than the Staple, as I ſhall after ſhew.

As the King may inhibit any of his ſubjects going beyond ſea, ſo he may at any time recall any of his ſubjects, under penalty of forfeiture of Goods and Lands, during life, *Dyer* 12. 8. *parag.* 10. & 276. & 375. 3 *Inſt.* 179. in the chapter of fugitives, & 25 & 26 *Eliz. Cater*'s caſe in the *Exchequer Chamber*, *Leon. fo.* 9.

Upon theſe grounds it is evident, that the Common Law did not give any abſolute right to the ſubjects to trade beyond ſea with foreigners; for no man can have a full right by law to any thing which others have a right by the ſame law to hinder him of, or to obſtruct him in the uſing or enjoyment of it.

And Mr. *Pollexfen* did rightly obſerve, that this fundamental right of the King, of prohibiting his ſubjects from going beyond ſea, equally reſpects the trade with Chriſtian Nations as with Infidels; for both have a right to debar the *Engliſh* from trading with them, as the King of *England* had a right, at Common Law, to reſtrain his ſubjects within the Realm from paſſing over the ſea to trade with them.

Which is founded upon the King's right of protecting his Kingdom, which could not be diſcharged if the ſubjects had ſuch general right as is pretended, of withdrawing their perſons and eſtates as well to Infidel as Chriſtian Countries.

And if ſuch general right were by the Common Law, it is marvelous; and that no Record or Book-caſe can be found, where it was ever ſo reſolved.

Notwithſtanding great occaſion has been given in all times, by prohibition, for the ſubject to have aſſerted ſuch right;

The only authority produced is the opinion of *Fitzherbert* in *Nat. Brev. fo.* 85. where the words of *Fitzherbert* are, *That by the courſe of the Common Law, every man may go out of the Realm for merchandize, or travel, or any other cauſe, as he pleaſes, without demanding licence of the King, and ſhall not be puniſhed for it.*

By this opinion, the liberty the ſubject had to travel, or to go for any other cauſe beyond ſea, is the ſame as to trade.

And this opinion imports no more than a bare impunity, that the Common Law made no expreſs proviſion againſt it, ſo as to puniſh it as an offence at Common Law, but left it to the diſcretion of the King to prohibit, or permit, as he ſhould ſee cauſe.

That this was the meaning of *Fitzherbert*, and that he did not intend any right the Common Law gave the ſubjects to go beyond ſea, but only that the Common Law was ſilent therein, and left it as a thing indifferent, antecedent to the King's Inhibition; is evident both by *Fitzherbert*, in the ſame place, and the co-temporary opinions of the Sages of that time.

For immediately *Fitzherbert* explains his opinion, That becauſe every ſubject is bound to defend the King and the Realm, the King at his pleaſure may command the ſubject not to go out of the Realm without his licence; and if they do contrary thereto, they ſhall be fined for their diſobedience.

Here, by *Fitzherbert*, that liberty which he had aſſerted for the ſubject to trade or travel, as it was equal, ſo it might be equally reſtrained by the King, at his pleaſure.

All the Judges at that time were of the ſame opinion.

Mich. 1 *Eliz. Dyer* 165. in an aſſembly of the Judges and others, the queſtion is fully ſtated, Whether a ſubject generally might withdraw his perſon out of the Kingdom, for merchandize, travel, or other cauſe, by the ſole licence or permiſſion of the Common Law?

The queſtion is not put upon any right the ſubject had to go, but upon a bare permiſſion at Common Law.

For all the Judges agreed with *Fitzherbert*, that the King might prohibit them.

And *Fitzherbert*'s opinion for ſuch permiſſion only is urged; and at that time left with a *Quære* upon it, without any allowance of ſuch permiſſion from the Judges, but ſeemingly to the contrary.

But afterwards *Mich.* 12 & 13. *Eliz. Dyer* 296. a particular caſe of a Merchant that went beyond ſea to live, and not for merchandize, without the King's licence, came before the Judges; and 'twas debated before the Judges of both Benches, and the Chief Baron, upon this point,

Whether it were an offence puniſhable at Common Law?

Two of the Judges held it to be an offence, and that the Common Law did prohibit it.

The reſt of the Judges concurred with *Fitzherbert*, and held, that before an expreſs prohibition by the King, by Proclamation or Writ, it was not an offence of contempt, but left by the Common Law as a thing indifferent, which imports no right, but a bare impunity.

But all the Judges, after a Prohibition, held it an offence and contempt puniſhable at Common Law; whereby that point is ſettled by the opinion of *Fitzherbert* and the Judges of that time, That at the Common Law licence was but a bare permiſſion, importing only impunity, in that the Law was ſilent before an expreſs Prohibition of the King, which is the loweſt degree of permiſſion taken notice of in Books of Law.

Grotius, in his Book *De Jure Belli & Pacis*, *lib. fo.* 3. *No.* 9. defines permiſſion, properly ſo called, *Permiſſio autem propriè, non actio eſt Legis, ſed actionis negatio, niſi quatenus aliud ab eo, cui permittitur obligat, ne Impedimentum ponat.*

But this permiſſion of the Common Law goes not ſo far as to oblige or debar others from obſtructing the action, which may be impeded both by the King and other Nations, as I have ſhewn.

It carries only impunity with it, and this liberty of haunting or viſiting ſtrangers in amity, ſomething reſembles that liberty which the Common Law allows one ſubject towards another, *viz.* a free paſſage to his houſe, to ſpeak or treat with him, which ſounds only in excuſe of treſpaſs, and may be prohibited by the owner.

9 *Ed.* IV. *fo.* 4. *par.* 15. In treſpaſs for breaking his houſe, the defendant pleaded a licence from the Plaintiff; who replied, That after the Licence he prohibited the defendant to come.

For be the licence expreſs from the party, or implied by the Law, the owner might determine it by an expreſs Prohibition.

But tho' the Common Law did not expreſsly prohibit the going beyond ſea without licence, ſo as to puniſh it as an offence criminally, yet it did diſcountenance all going beyond ſea without the King's licence, in adjudging their iſſue born there, after ſuch a departure, aliens, and not inheritable to the *Engliſh* Laws; as was reſolved *inter Hide & Hill. Hillar.* 25 *Eliz. B. Rs.*

3 *Cro.* 3. That if Baron and Feme go beyond ſea with licence, and tarry there after the time limited by the licence, and have iſſue born, they ſhall be aliens, and not inheritable.

Beſides thoſe Powers or Prerogatives wherewith the Common Law entruſts the King for the defence of the Realm, *viz.* to prohibit and remove aliens, to reſtrain them from going, and to recall his own ſubjects when gone beyond ſea;

The Law reſts the ſole power of making leagues with foreigners in the King alone,

Which is the firſt ſtep towards a foreign trade,

The Common Law admitting of no trade with and enemies, enemies are made friends only by publick leagues to be made capable of being traded with.

And as the making of all leagues, ſo the modelling and limiting of ſuch leagues, are by the King alone.

As it is to be obſerved, that no leagues were ever yet made for an unlimited and univerſal trade, but in all leagues the particular, municipal laws of each Country are excepted; as for example, ſalt cannot be imported into *France*; and moſt *French* commodities are reſtrained from being imported hither:

So it was reſolved, *Paſch.* 36. *Eliz.* (4 *Inſt.* 5.) 3 *Inſt. Henry de Vale* and *Tomlinſon*, upon a ſeizure of *French* Goods, and a complaint to the Council upon it, That the Laws of either Kingdom were excepted in the league.

Much leſs doth the King in any league conclude or build up his own prerogative towards his own ſubjects, in granting them licences to trade, or in reſtraining of them from going beyond ſea, tho' in order to trade.

Moreover, the rules of the Common Law are not adapted to determine matters of foreign trade, neither can foreigners be preſumed to have cognizance of the municipal laws of this Kingdom.

The principal part of foreign trade is tranſacted beyond ſea, where the Common Law can have no cognizance, but is confined within the compaſs of the four ſeas.

The Law was ſo ſtrict, that an obligation bearing date at a certain place beyond ſea, could not be tried in *England*, 21 *E.* IV. *fol.* 74.

Service of a Privy Seal upon a ſubject beyond ſea, commanding him to return, when certified, into *Chancery*, and ſent by *Mittimus* into the *Exchequer* for ſeizing of Goods and Lands, is not traverſable, becauſe not triable in *England*, 2 *Eliz. Dyer* 176.

In the Caſe of the King and *Cuſack*, 17 *Jacobi*, *Rolls Rep.* 2 *part. fol.* 112. Serjeant *Davies* argues, that the municipal Laws of any Realm are not ſufficient for ordering the affairs and traffick of Merchants.

And upon this ground, when the Staple was removed from beyond ſea to ſeveral Towns in *England*, by the Statute of 27 *E.* III. it is provided, That the trade ſhould be governed by the ſame laws it was before.

And by 7 *Chap.* it is enacted, *That all Merchants coming to the Staple, ſhall be ruled by the Law-Merchant of all things touching the Staple, and not by the Common Law of the Land.*

Whereby, in negative words, the Common Law was excluded from intermeddling in the affairs of Merchants; as not proper to decide thoſe controverſies, and whereof foreigners could have no cognizance.

By all which it appears, that the Common Law made no proviſion for foreign trade.

The Common Law therefore having given no right to the ſubjects to trade beyond the ſeas with foreigners, nor preſcribed any rules for the managing of that trade, but left that matter ſolely to the King, for the beſt profit of his people:

It may be proper to conſider upon what foundations the foreign trade ſtands.

The foundations are two.

1. Leagues made by the Kings of *England* with foreign Princes and States.

2. Royal licences, which are either ſolely by Grant, or by Act of Parliament.

For all Acts of Parliament in matters of prerogative, and which move only from the King, are by the King's Grants in Parliament ratified into Law.

By leagues, foreigners are bound by publick compact to admit the King's ſubjects to a freedom to trade with foreigners beyond ſea.

I have already ſpoken of leagues, as the neceſſary preparatory to all foreign trade, and without which no foreign trade could be enterprized by the ſubject.

What I ſhall add, is only concerning the neceſſary dependance of that trade upon leagues, in its continuance and regulation; if the league be broken, let the ſubjects right be what it will, to trade either ſingly by Grant, or by Act of Parliament, it is ſuſpended, and after Proclamation made, becomes unlawful and puniſhable, as trading with enemies.

The leagues and treaties with foreign Princes for trade and commerce, whereof the ſole power is in the King, to bind the ſubjects of *England*.

They are the only Laws betwixt Nation and Nation to direct their trade and commerce by.

And by the ſaid leagues, trade may be limited to certain places and commodities, or other reſtrictions, as the two Princes ſhall agree upon, who are the only maſters of their leagues.

A clear and full inſtance of this, is in the leagues for trade with *Flanders* and the *Low-Countries*, between the Kings of *England* and the Dukes of *Burgundy*; whereby the Staple was ſettled at *Bruges*; and that no Wools ſhould be ſold in *Flanders*, but what came out of *England*; and that no *Engliſh* Cloth ſhould be ſold in *Flanders*, on pain of forfeiture.

21 *E.* III. Complaint was made in Parliament by the Merchants of ſeveral abuſes committed by the men of *Bruges*, in reſtraining our Merchants from ſelling their Wools to whom they pleas'd at *Bruges*; and pray'd remedy.

The King's anſwer was, that the ordinance of the Staple ſhould be view'd, and that *Thomas Michelborne*, with whom the Patent touching that ordinance was, be call'd to bring the ſame with him, and ſome of the Merchants of the country, who beſt underſtood this matter: and the King by advice of his Council would provide remedy; *Rot. Parl.* 21 *E.* III. *nu.* 10.

22 *E.* III. Another complaint is made in Parliament againſt the men of *Bruges*, for prohibiting the Merchants to buy ſtaple Wares here, and pray redreſs.

The King anſwers that he will ſpeak with the *Flemiſh* Ambaſſador about it, 22 *E.* III. *nu.* 13.

8 *H.* V. A grievous complaint made in Parliament againſt the men of *Flanders*; that tho' *Engliſh* Merchants obſerved the ancient league, that no Wools but *Engliſh* ſhould be ſold in *Flanders*, and no *Engliſh* Cloth ſold there; yet they permitted the Wools of *Scotland*, *Catalonia*, *Arragon* and *Spain*, to be ſold there, and pray remedy.

The King anſwers, that ſearch ſhall be made for the alliance.

And upon the like complaint, 9 *H.* V. the Commons pray, the King would pleaſe to treat with the Duke of *Burgundy*, that no other than *Engliſh* Wools ſhould be manufactur'd there, or that the *Engliſh* might ſell their Cloth there.

The King anſwers, he would treat that the *Engliſh* Cloths might be there ſold. *Rolls Prerogative*, 1 *fo.* 14. *title*, *League*.

But this treaty came to little purpoſe, till after the Acts of Parliament were made, 27 *H.* VI. *cap.* 1. (20 *H.* VI. *cap.* 4.) 4 *E.* IV. *cap.* 5. for excluding all the commodities of *Flanders*, until the Duke of *Burgundy* recall'd his proclamation for baniſhing Cloths out of his Dominions.

Thoſe Statutes produced a firm league between the Kings and the Duke of *Burgundy*; who in the Record is call'd the Duke of *Hans*, or of the Still-yard, from the Merchants his ſubjects, who had long in *England* obtain'd thoſe names.

By that league a free trade for Cloth was agreed upon for the *Engliſh* Merchants in *Flanders*, to continue for ever; and the King confirm'd to the ſubjects of the Duke, as well the liberties granted by *Edw.* I. to Merchants-Strangers in general, by his *Charta Mercatoria*; as thoſe granted by *Edw.* II. to the Merchants of the Still-yard in particular: which league was confirm'd in Parliament, 13 *E.* IV. *nu.* 2.

Theſe leagues may ſuffice to ſhew the dependance foreign trade hath upon leagues, as to its continuance and regulation.

By this league the Staple at *Bruges* was taken off, and liberty granted to the *Engliſh* Merchants to ſell their Cloths in any part of the Duke's Dominions.

Who theſe *Engliſh* Merchants were, I ſhall in this place only make a ſhort remark; That they were the Company of Merchant-Adventurers, erected and licenſed for the better regulation of trade for Wool and Cloth, beyond the Seas, by Letters Patent, 1 *Feb.* 8 *H.* IV. and confirm'd by other Letters Patent, 1 *Oct.* 1 *H.* V. which I ſhall ſpeak more largely to, when I come to ſhew the conſtant poſſeſſion the Crown hath had of licenſing Corporations for foreign trade, excluſive to others.

The other foundation, upon which all foreign trade ſtands, are royal licences.

I before ſhew'd that the licence, which the Common Law gave to trade with foreigners, was no ſure foundation of trade; becauſe it might by Law be interrupted by the King, and did in its nature import no more than a bare impunity.

But where the King grants licences to his ſubjects to trade with foreigners, they gain a right or intereſt to trade according to ſuch licences;

Which are either by Grant only, or by Act of Parliament. I will firſt conſider thoſe, that are ſingly by the King's Grants.

That as the King may at Common Law prohibit any of his ſubjects to go beyond ſea, ſo that he may licence them to go for trade or otherwiſe, is unqueſtionable.

The Writ of *Ne Exeat Regnum*, and ſeveral forms of licences in the *Regiſter*, *fol.* 190. and multitudes of other authorities make it out.

The King may grant ſuch licences, not only where himſelf may prohibit, but where the Common Law, and Acts of Parliament do prohibit.

Alien Enemies are prohibited by the Common Law to come within the Realm; yet the King may licenſe them to come by his ſafe-conduct, as fully appears by the Statutes made for the obſervation of ſafe-conducts.

And it is obſervable, that ſuch ſafe-conducts put the Alien Enemy into the condition of an Alien Amy, as fully under the King's protection, during the continuance of his ſafe-conducts.

No ſubject could ſeize his goods or injure his perſon, but he was puniſhable for it, both at the ſuit of the King, and of the party.

For before the Statutes made, conſervators for truces and ſafe-conducts were appointed, appears by a Record of this Court, *Paſch.* 13 *E.* III. *Banco Regis*, *Rot.* 12. which I ſhall have occaſion to make uſe of to another purpoſe.

And that ſuch an Alien Enemy may bring his perſonal action for debt, or any injury, appears by the caſe of *John Douglas*, a *Scotchman*, 20 *E.* IV. *fol.* 6. *Pl.* 6. and *Moore* 431.

The King may licenſe his ſubjects to trade with enemies prohibited by Common Law.

And for licences to come, go and trade both within and without the Realm, againſt expreſs Acts of Parliaments, the inſtances are infinite.

But for the better methodizing of theſe, I ſhall make uſe of precedents and authorities, to make out the exerciſe of the King's prerogative in all times, as to matters relating to Foreign Trade.

I ſhall reduce what I have to offer under theſe heads;

Firſt, That the Staples, which were the publick Marts for all Merchants to reſort to, were at firſt ſettled only by the Kings of this Realm, antecedent to any Act of Parliament.

Secondly, That after the Staple was eſtabliſhed at *Calais* by Act of Parliament; the King gave licence to trade to other places, which no ſubject could do without ſuch licence.

Thirdly, That the regulation and managery of Foreign Trade in all caſes, where Acts of Parliament have not particularly interpos'd, have been guided and governed by the King's prerogative, both in point of licence and inhibition.

Firſt Head; As to ſettling the Staple in the Dominions of foreign Princes, as in the inſtance of *Bruges*; that muſt be done by leagues, nor can it otherwiſe be.

But the appointing of the Staples in *England*, or in the Foreign Dominions of the King, was at firſt by the King alone.

This is expreſsly ſo declared in the recital of the Statute, 2 *E.* III. *cap.* 9. whereby Merchants-Strangers, *&c.* have liberty granted them to trade in *England*, according to the form of the Great Charter.

By Merchants-Privy, diſtinguiſhed from Merchants-Strangers, in this Law, are plainly intended the Merchants of the King's foreign Dominions.

The *Iriſh*, who by *Ordinatio pro Statu Hiberniæ*, 17 *E.* I. had liberty granted them to traffick into *England*, ſo as they gave ſecurity not to go unto, nor commerce with *Scotland*, nor other the King's Enemies.

And the *Gaſcoigners*, and other the King's ſubjects in *France*, who had divers liberties of trade granted them by the King; as appears by a difference between them and the *Londoners*, decided judicially in Parliament, 20 *E.* I. *Parl. fol.* 180, and 130.

That by Merchants-Privy is to be underſtood of the King's foreign ſubjects, I collect from the reference this Law hath to *Magna Charta*, which concern'd only foreign Merchants; whereby the King's power to reſtrain them was reſerv'd, and conſequently was reſerv'd by this Law; as is taken notice of by an Act not printed, 8 *E.* III. *num.* 20. that the Staple was during the King's pleaſure, and the King revoked the Staple, giving Merchant-ſtrangers liberty to buy any Staple-wares, 1 *E.* III. *Parl. Rot. pars* 2 and 3. *Mem.* 24.

A Commiſſion iſſues to the Mayor of *London* to put in execution the orders made by *E.* II. for eſtabliſhing the Staple in ſeveral Counties of *England*, and for the rule and government of Merchants.

By 27 *E.* III. *cap.* 1. the Staple was ſettled in ſeveral Towns in *England*.

But that Law had no words to bind the King's prerogative to remove it; and of that opinion was the Parliament, 38 *E.* III. where the Commons pray that the Staple may always continue in *England*.

The King anſwers, it ſhall continue till the next Parliament.

The firſt of *March* in the ſame year, the King remiſed it to *Calais*; but 43 *E.* III. *cap.* 1. becauſe of a war that broke out with *France*, it is brought back: the Act recites, that it had been removed to *Calais* by the King, for the profit of the Realm and eaſe of the Merchants of *England*.

47 *E.* III. *nu.* 17. The Commons pray that the Staple may be only kept at *Calais*, and that no Grant be made to the contrary.

The King anſwers, that he will appoint the Staple, as by the Council he ſhall think beſt.

1 *R.* II. *nu.* 98. The Commons pray to know where the Staple ſhall be, if *Calais* haply be beſieged.

The King anſwers, in ſuch places of the Realm, as were laſt uſed.

By the conſtitution of theſe Staples, Merchants were not only licenſed, but obliged to repair thither, and reſtrained to export their Staple-wares to any other place.

And altho' many Statutes were made to fortify and ſtrengthen the Staple, by creating a forfeiture of all Staple-wares, if carried to any other place; yet by the Records I have produced, it is manifeſt that the ſole appointment and ordering of the Staples was in the King, and that by the acknowledgment of ſeveral Parliaments.

2 *H.* V. *cap.* 6. provides, that merchandizes of the Staple ſhall not be exported to any other place without the King's licence, before brought to the Staple, on pain of forfeiture.

2 *H.* VI. *cap.* 4. provides, that all Staple wares ſhall be carried to *Calais*, ſo long as the Staple is there.

And 8 *H.* VI. *cap.* 17. provides, that if Merchants export the merchandizes of the Staple to any other place, the merchandizes ſhall be forfeited; except the Merchants of *Jeane* and *Venice*. And *cap.* 27. ſeveral licences granted by the King to export to other places are revoked.

What theſe Staple-wares were, is fit to be known, they comprehending the greateſt part of the native commodities of this Realm, that were merchandizable in foreign parts.

By the Statute of the Staple, 27 *E.* III. the Staple-wares are Wools, Leather, Woolfels and Lead; to theſe are added, by a Statute made 50 *E.* III. Tin, Worſted, Butter, Cheeſe, Feathers, and many other commodities.

This Statute, tho' it be not printed, yet is taken notice of as a Statute and a Law of the Staple, by the Statute of 3 *H.* VI. *cap.* 4. whereby Butter and Cheeſe are recited to have been made Staple-wares by this Law.

The Record is 50 *E.* III. *nu.* 20. (or 200.) where the Commons of the Town of *Calais* pray that the Staple may be holden only there:

Which the King grants, that it ſhall be holden only there, and no where elſe beyond ſea; as well of all ancient Staple-wares, as of Tin, Worſted, Butter, Cheeſe, Feathers, *&c.*

The Staple was ſeveral times remov'd by *R.* II. but from 21 *R.* II. it continued at *Calais*, till that Town was taken by the *French*.

By all which it is manifeſt, upon what ſlender grounds the Statute of 15 *E.* III. *cap.* 3. that the Seas be open to all Merchants to paſs where they pleaſe, was urged and inſiſted upon to be a Law in force, or to have any influence upon this caſe.

For

For besides what Mr. Sollicitor truly observ'd, that it was made for a special purpose, to take off the present Staple; to which all Merchants, as well foreign as *English*, were confin'd to carry their goods, and was of the same purport, as the Statute of 8 *E.* III. *nu.* 20. I before mention'd, which open'd the then present Staple.

For by the several Laws I have mention'd for fixing and strengthening of the Staples, the Statute of 15 *E.* III. was absolutely repeal'd and set aside.

As to all *English*, *Welsh* and *Irish*, by the Statute of 27 *E.* III. for settling the Staple in *England*, by *chap.* 1. whereof all *Englishmen*, *Irishmen*, and *Welshmen* are expresly prohibited to export any Staple-wares; and liberty given only to Merchants-strangers to do it.

And by 3. *chap.* it is made felony for the *English*, *Irish* or *Welsh* to export.

And when the Staple was return'd to *Calais*, it was a forfeiture, as I have shewn, to export those wares to any other place without expres licence; for that the *Mare Liberum*, by the Statute 15 *E.* III. became *Mare Clausum* long since by many subsequent Laws, and not to be open'd but by a royal licence.

1 *H.* V. *nu.* 40. The Commons pray all Merchants may export to any place beyond the Seas, or import any goods except goods of the Staple.

The King answers, he will advise with his Council.

The Parliament did not insist upon any right, by 15 *E.* III. but pray'd it as an act of Grace, and were modest in their request, that the general licence desired might be restrain'd to merchandizes, which were not Staple Commodities, yet it was denied by the King.

17 *R.* II. *nu.* 15. Several Towns in the *West* prayed they might carry their Wool into *Normandy*.

The King answers, let them repair to *Calais*, as is appointed.

18 *H.* VI. *nu.* 50. The Commons pray that every Merchant may lawfully transport all manner of Hides, Calves Skins, Coney Felts and Tallow, to what place him liketh, other than to *Calais*.

Which is denied by the King.

By 18 *H.* VI. *cap.* 6. Liberty is given to export Butter and Cheese to any other place besides the Staple, in amity with the King, provided the King may restrain the same when it shall please him.

Where was the force of 15 *E.* III. if so minute a thing as Butter and Cheese could not be freely exported without an expres Statute?

And that is obtain'd upon such urgent reasons as are mention'd in the Statute, and granted too but conditionally, with a saving of the King's right to restrain.

This may suffice for making out the first head, that the Staples to which all Merchants are obliged to repair, were principally instituted and appointed by the King alone; and that the Statute of 15 *E.* III. is wholly repealed by the Laws for settling the Staples.

Second Head; In the next place, I shall offer some authority to make out the King's undoubted right to grant liberty of trade to other places, after the Staple was fixed at *Calais*.

My Lord *Coke* in 4 *Inst.* 282. is much in the right, in affirming the Staple was continued at *Calais* above 200 years, though he be mistaken in another assertion, as I have fully shewed,

That it could not be removed but by Act of Parliament.

But I will admit the Staple at last fixed at *Calais*, by 21 *R.* II. and strengthen'd and fenced under the penalty of forfeiture of the goods, by the Statutes, 2 *H.* V. and 8 *H.* VI.

Yet the Kings, by their prerogative, did and might lawfully grant licences to trade to other places.

I will not here trouble you with the general learning of dispensations with penal Laws, tho' our Books are full of it, and determine in favour of the Crown.

But I shall confine myself to instances of foreign trade, wherein it will appear, by what I have already said, and shall farther offer, that the Crown had a peculiar prerogative not disputed, or drawn into question in any times till of late.

The men of *Berwick* and *Newcastle* have had such licences granted them, which being found detrimental to the King's revenue, arising at the Staple, were revoked by Act of Parliament, 8 *H.* VI. *cap.* 31.

20 *H.* VI. *cap.* 4. Denizens, who shall take licences to export to any place but the Staple, shall pay Alien duties.

Here the King's right to grant such licences is acknowledged by the Parliament; 27 *H.* VI. *cap.* 1. upon complaint of the King's Officers in Parliament, that by the multitude of licences to export elsewhere than the Staple, the revenue of the Staple was sunk from 68000 *l. per Ann.* to 12000 *l. per Ann.* all licences before granted are vacated.

In the Year-book, 2 *R.* II. *fol.* 12. *Parl.* 16. and 1 *H.* VII. *fol.* 3. A licence granted to the Town of *Waterford*, to carry goods of the Staple where they pleased, is allow'd; the *Irish* being bound to the Staple as well as the *English*.

1 *H.* V. *n.* 15. which I before mention'd, the Commons allowed of the King's prerogative to license strangers to come into *England*, tho' prohibited by Act of Parliament.

Where the Statute 15 *H. cap.* 3. prescribed a form of safe-conduct, yet it was resolved the King might grant them, as before at Common Law: *Edw.* IV. *fol.* 33. *L.* 340. and 13 *E.* IV. *fol.* 9.

Where by 31 *E.* III. *cap.* 20. the exportation of all sorts of Corn was prohibited, except to *Calais* and *Gascoign*.

Several Indictments were preferred, 36 *Edw.* III. against *John Lamb*, *Andrew Taverner*, and several other Merchants, for exporting great quantities of Corn and Grain. They severally pleaded the King's licences, mentioning the quantities, and in some of them the certain places to which the Corn was to be carried; but in others generally, *ad quascunque Partes exteras, præter illas, quæ de Munitia Regis existunt.*

Which are allowed, Treasury, *Int. Pl. Coronæ & totum*, 36 *E.* III.

Whereas 5 *Eliz.* prohibited the exportation of Sheep-skins.

Hillary, 3 *Jac.* I. *Shaw* brings his action against *Hawes* upon that Statute.

The Defendant pleads a licence, 19 *May*, 31 *Eliz.* to *Gilbert Lee*, his factors, executors, deputies and assignees, to export Sheep-skins for ten years, not exceeding 200,000 in any one year; if it happen'd by any restraint, or any other cause, they should not export that number; and pleads that *Lee* assigned to, and nominated *Scot* to execute the Letters Patent, with the contingent clauses: And,

That *Scot* assigns to the Defendant, without any expres mention of the contingent clause, and pleads he was hindered during the Term; and justifies for the exportation afterwards.

All the Court held, that this was a dispensation the King might grant to *Lee*, the first Patentee.

But judgment was given against *Hawes* the Defendant upon these reasons:

First, Because being a dispensation, it is not assignable.

Secondly, That though *Scot* might have the benefit thereof, as nominated, yet he could not nominate over.

Thirdly, The advantage of the future contingent is not assignable, *Hillar.* 3. & *Pasch.* 4 *Jac. Banco Regis*, *Ro.* 128. *Hale's Common Place*, *tit. Monop. cu.* 3.

Third Head; In the last place I shall shew, that the regulation and managery of the foreign trade, in all cases where Acts of Parliament had not particularly interposed, hath been guided and govern'd by the prerogative of the Crown, both in point of licence and prohibition.

That the foreign trade was at first transacted and carried on by foreigners, is most evident from *Magna Charta*, which, as to this trade, provides only for foreign Merchants.

And if any *English* had at that time exercised such craft, or had had the least pretence thereto; no doubt can be, but the Great Charter of their liberties would have made some provision for them, as well as foreigners; which it doth not.

The Statute of *Acton Burnell* 13 *E.* I. introduced the Statute-Merchant for the benefit of Merchant-strangers, for the more speedy recovery of their debts.

For the only mischief the Statute takes notice of, was, that the Merchants withdrew themselves from coming into the Realm with their merchandize, because there was no speedy Law provided for recovery of their debts.

I have not met with any footsteps of any Record to make it out, that in the Reigns of *E.* I. or *E.* II. or before, any *English* Merchants ever enterprized the foreign trade.

But in those Kings reigns, the foreign trade was managed by the King's Charters to foreigners; for though *Magna Charta* gave a general safe-conduct to Merchant-strangers, yet the King might prohibit them, and after such prohibition might license, as I have shewn he did.

And therefore the foreign Merchants had a recourse to the King's Charters, *viz. Charta Mercatoria*, by *E.* I. and the Charter to the Merchants of the *Hans*, or the *Still-yard*, which I have mentioned.

And 6 *E.* II. the *Gascoigners* founded themselves in their difference with the City of *London*, 20 *E.* I. upon their privileges granted them by the Kings of *England*.

Indeed the men of *Guernsey*, 32 *H.* III. obtained a licence from the King to them and their heirs, freely to fish and to sell their fish in any of the King's Dominions thrice in the week, between the feasts of *Michaelmas* and *Easter*; *Par. Roll.* 32 *H.* III. *mem.*

The earliest attempt towards a foreign trade, I find enterprized by the *English*, is the fishing trade upon the seas, 11 *E.* III.

At which time the King granted licences to the men of *Yarmouth*, *Scarborough*, *Whitby* and *Dunwich*, to them and others repairing to those towns to fish, to fish in the sea with vessels of thirty tuns, *Quibuscunque inhibition' seu Mandatis MS. in contrarium factis non obstantibus*; *Rol. Clauso*, 11. *E.* III. *pars secunda*, *Membr.* 35.

Though these licences were intended only to extend to the narrow seas, whereof the Dominion was in the King;

Yet by colour of these licences, the *English*, about the latter end of *H.* IV's reign, made fishing voyages to *Iceland*.

Whereupon *H.* V. at the instance of the subjects of the King of *Denmark*, prohibited the *English* to fish there.

And thereupon the Parliament, 3 *H.* V. pray'd that it might be enacted, that the *English* might freely fish there.

Which was denied by the King, 3 *H.* V. *nu.* 33. *Rolls Prerog.* 170. whereby it is evident, they had no right to do it; but that the King might prohibit them, it being a foreign traffick, wherein no Act of Parliament had made any provision.

Afterwards the same King, in the 5th year of his reign, granted licences to *Geoffery Pamping* and *John Hastings* of *Yarmouth*; *John Statvill* and *Richard Pais* of *Winterton*; *William James* and *William Marriot* of *Corowmere*; to go *versus Partes exteras* to take fish. And,

That every one of them might employ two ships called doggers, to take fish and bring it into *England* by themselves, Attornies or Servants. *Par. Rot.* 5 *H.* V. *membr.* 34.

E. I. Before any Statute made therefore by proclamation, prohibited the exportation of Horses, Arms, Money, Gold and Silver Vessels. Some men of *Dartmouth* were proceeded against by information in the *King's-Bench*, for exporting Money contrary to the Proclamation: *Hill.* 1. *E.* II. *Rot.* 38. amongst the Records in the Treasury.

The Crime in the Information is said to be *contra pacem Domini Regis, Contemptum & Inobedientiam Coronæque suæ pl. judicium & Pacis, sive perturbationem manifestam.*

To which, those of the Defendants that were taken, pleaded not guilty, of whom one afterwards died, and another was imployed by the King into *Scotland*. So the Record ends with a continuance of the issue.

Rot. Clauso, 41 *E.* III. *membr.* 25. A Writ issued to the Mayor of *Hull*, that he permit no Alien Ship to be freighted there, till the Ships of the Town were freighted.

It is evident upon what I produced under the other head from the Records of Parliament, 1 *H.* V. *nu.* 41. and 18 *H.* VI. *nu.* 50. that the *English* Merchants had not then any right or general liberty to export to what places they pleased any sort of merchandizes, tho' not Staple-wares.

But such Petitions were denied in both these Kings reigns; yet at that time there was a Company of Merchants-Adventurers licensed to trade into *Holland*, *Zealand*, *Brabant*, *Flanders*, and other parts beyond the seas, erected for the rule and government of all *English* Merchants trading into those parts; and all who should trade there, enjoin'd to be obedient to the rules of the Company.

But it was not objected to those Kings, that some were licensed, and others, unless they would be subject to the rules of the Company, were restrain'd.

The Company was erected by Letters Patent, 5 *Feb.* 8 *H.* IV. and confirm'd by *H.* V. 1 *Oct.* 1 *H.* V. and confirm'd by *H.* VI. 6. *July*, 8 *H.* VI.

That the Merchant-Adventurers enjoyed their privileges, and permitted none to trade within their limits, who ſubmitted not to the rule of the Company, and who ſhould not be contributors to their publick charges, is evident from the *Stat.* 12 *H.* VII. *cap.* 6. inſiſted on by Mr. *Pollexfen*; but was made uſe of by him, only for the hiſtorical part of it contained in the petition preſented by the Merchants to the Parliament for their liberty of trade; which, by what I have already ſhewed, could not be true as to the ſtaple wares, unleſs they have licences from the King (which in all probability they had) to certain places.

And what is it they pretend to in their Petition? Only freedom to repair to, and trade at the four general Marts, which being annually held and proclaimed, was an invitation to all neighbouring Nations to repair thither; and all *Engliſh* Merchants, as well as others, if they had lain under no reſtraint from the Company's Charter, or other Prohibition of the King, might have repaired thither with their cloth or other wares, not being ſtaple wares, without offence, as I before admitted.

In caſe there had been ſuch a right to a free trade to all Nations in amity, as the Petition ſuggeſts (for as yet the Merchants retain ſome Modeſty, not to pretend to a free trade with aliens, not in amity, much leſs with Infidels, whom the laws of all Chriſtian Countries adjudge alien enemies):

This had been the proper time for the Parliament to have aſſerted that right, and adjudged the Patent illegal, as Parliaments have frequently done with Patents which have been againſt Law: But the Parliament knew no ſuch right, and therefore by the enacting clauſe, allowance is given to the Charter; only their immoderate demands of admittance-fines are reſtrained, and the fine limited to 10 Marks. And accordingly in their Charter afterwards renewed by *H.* VII. they are obliged to take no more of any perſon admitted into their Company than 10 marks.

Ph. & Mary, 26 *Feb.* 1 & 2 *P. & M.* erected a Corporation of Merchants-Adventurers to *Ruſſia*, and Parts adjacent, with licence to trade, and prohibition to others, upon pain of forfeiture of Ship and Goods.

That this forfeiture might be effected, the Charter is confirmed by Parliament, 8 *Eliz.*

This Act takes notice, that ſeveral perſons, after the trade was found beneficial at the coſt of the Company, for their peculiar gain, utterly to decay the trade of the Company, contrary to the tenor of the Letters Patent, in great diſorder traded into thoſe parts, to the great detriment of the commonwealth.

Here is a full deſcription (*mutato nomine*) of the defendant and his interloping companions.

By the Judgment of the Parliament then, a limited trade, under the order and rule of a Company, as ſettled by the Crown, was thought moſt beneficial to the King.

And thoſe that traded contrary to the tenor of the Letters Patent, are reckoned diſorderly traders, in prejudice of the commonwealth.

So far was the Parliament from thinking all the ſubjects had a right to trade there.

After the taking of *Calais*, in the latter end of Q. *Mary*'s reign, Q. *Elizabeth* and the *Engliſh* Merchants were no doubt in great ſtraights what to do.

For by the *Stat.* 2 *H.* VI. all merchandizes of the Staple were to be carried to *Calais*, while the Staple was there, which ceaſed by the taking of *Calais*.

But by 2 *H.* V. no merchandizes of the Staple could be exported without the King's licence, till brought to the Staple.

The Queen had no place convenient left for erecting the Staple at, beyond the ſeas. And though in *R.* II's time, when the Parliament demanded where the Staple ſhould be, if *Calais* were beſieged? The King's anſwer was ready (viz.) *At ſuch places in* England *it was laſt at:*

Yet now when *Calais* was taken, ſuch anſwer would not ſerve the turn; but the placing of it in *England* would be uſeleſs and ineffectual, and deſtructive to the Queen's revenues in her cuſtoms.

For by ſeveral laws made by *E* IV. *R.* III. & *H.* VII. moſt foreign manufactures were prohibited, and great diſcouragements put upon all foreign Merchants coming into *England*, but thoſe of the *Hans* and *Stillyard*.

And few foreign Merchants would repair into *England* to fetch our commodities, when they can bring little to barter with but ready money.

And to have granted to every Merchant a ſeveral licence, as it would be chargeable to the ſubject, ſo it might prove miſchievous to the Kingdom, the ſubjects trading ſeverally, without any rule or government, in foreign parts, upon the account of the general law of reprizals, which obtains in all Nations.

Whereby every ſubject and his goods are liable for the injuries and wrongs committed by any one; which, in the more barbarous Countries, is executed with great barbarity.

And therefore Q. *Elizabeth* in the direction of foreign trade, inſtead of Staples, for the rule, order and government of Merchants, at certain places, followed the precedents of the Merchants-Adventurers and *Ruſſia* Companies, by erecting Corporations of Merchants for the rule and government of the foreign trade.

Which Companies as they are preſumed to have a better State to anſwer for injuries done in foreign Parts, than any ſingle perſon can be preſumed to have:

So in their very conſtitution are more reſponſible to the Law for their miſdemeanour, by *Quo Warrantos*, whereby they may loſe their liberty of trade.

It is very doubtful whether licences granted for trade to ſingle perſons, may be forfeited, they paſſing an intereſt, if the licence to go beyond ſea, to trade or otherwiſe, be for a certain time, as moſt licences were. It is held by the Judges, 2 *Eliz. Dyer*, 176. in the Caſe of Mr. *Barnes* and the Ducheſs of *Somerſet*, that the licence is not revocable.

The Queen, in her reign, erected many Corporations for foreign trade: I ſhall mention only ſome, which have been publickly taken notice of, and received allowance.

17 *June*, 2 *Eliz.* The Queen, by Letters Patent, incorporated ſeveral Merchants of *Exeter*, and gave them licence to trade into *France*; and that no artificer ſhould be admitted of the Companies.

The Prohibition was not general to her other ſubjects, but only to the men of *Exeter*.

The Company enjoyed their liberties all the Queen's reign, and flouriſhed under them till 3 *Jac.*

When by Act of Parliament the trade was opened, and general licence given to trade with *France*, *Spain* and *Portugal*, and the dominions thereof.

Whereupon a queſtion aroſe, Whether their Charter was not ſet aſide by the general words of 3 *Jac.* and therefore 4 *Jac. cap.* 9. it is enacted, and declared, *That the ſaid general Act doth not nor ſhall diſſolve, annihilate, or impeach the ſaid Charter, or the ſaid Company, in any of their privileges, liberties or immunities, granted to them by the ſaid Charter; any thing in the ſaid general Act to the contrary notwithſtanding.*

This Act added no new force to the Charter, but enacted and declared it to be out of the proviſion of 3 *Jac.* for general licence to trade into thoſe Countries.

Where, by the Judgment of the Parliament, the Queen's power to grant ſuch Charters is admitted. For if the Patent had been void in Law, before 3 *Jac.* to make an Act of Parliament only to declare it out of the proviſion of that Law, were idle and illuſory.

The Queen's ſubjects, for their licence to fiſh at *Iceland*, paid the Queen a quantity of fiſh, called compoſition-fiſh, by the Act of Parliament made 5 *Eliz. cap.* 5.

Whereby, for the encouragement of the fiſhing trade, the purveyors are prohibited to take purveyance of ſea-fiſh; the compoſition-fiſh, payable by the Queen's ſubjects travelling to *Iceland*, are excepted.

The Patent of the *Greenland* Company to fiſh there, was held good, *Rolls*, 1 *pt. fo.* 5. in the Caſe of the Taylors of *Ipſwich*.

This trade, notwithſtanding the privileges granted to the Company, was almoſt loſt.

And thereupon 25 *Car.* II. *cap.* 7. that trade is opened, not only to the *Engliſh*, but to all foreigners reſiding in *England*.

The *Eaſt-India* Company was erected by Queen *Elizabeth*, 31 *Dec.* 43 *Eliz.* and renewed to them and ſucceſſors, 13 *May*, 7 *Jac.* with prohibition to all others to trade there, and confirmed to them by this King, 3 *Apr.* 13 *Car.* II. upon which Patent the queſtion ariſeth about a foreign trade, which hath been enjoyed by the Company above 80 years.

And its conſequence concerned the prerogative of the Crown, in all the Charters for foreign trade which have been granted.

Whereas I have ſhewn, the moſt conſiderable part of the foreign trade hath in all times been managed under Grants from the Crown, in appointing the Staples for Merchants to repair to, in licenſing trade to other places, notwithſtanding thoſe Staples; and in licenſing and prohibiting foreign trade in ſuch Caſes where Acts of Parliament had not made ſpecial proviſion.

I now proceed to conſider of Royal Licences by Act of Parliament.

It will be infinite to take notice of the ſeveral Statutes made relating to foreign trade.

And therefore I ſhall at this time offer ſome general obſervations upon them.

Obſerv. 1. Upon examining into the ancient laws for foreign trade, it will be found that there are far more laws for reſtraining the exerciſe of foreign trade, by *Engliſhmen*, than there are for opening of it.

So much, that for a long time whilſt the Staple was in *England*, they were prohibited, under ſevere penalties, not to export any Staple ware; and when the Staple was removed beyond ſea, they were confined to *Calais*, and ſuch liberty of trade to other places as the Kings from time to time had granted to Corporations; and ſingle perſons were frequently taken off, though the King's prerogative to grant them was never yet impeached by any Statute.

The great diſcouragement to them by foreigners firſt began in the reigns of *Ed.* IV. *R.* III. and *H.* VII. But in thoſe Kings reigns, the *Engliſh* were ſtrictly held to the Staple, unleſs licenſed by the Kings.

This obſervation is made out of the ſeveral laws I have touched upon, and many others, which are in the Statutes at large that are printed.

Obſerv. 2. There was never yet any Statute made, that gave a general liberty of trade to *Engliſhmen* to or with all Nations; but what were made, were ſpecial and particular.

The only law that had any reſemblance to any ſuch purpoſe, was 15 *Ed.* III. ſo much inſiſted on, which has been ſufficiently already ſhewn to import no ſuch thing; and the ſeveral attempts in Parliament to have introduced a greater liberty of trade with foreign Nations, in amity, and the particular laws that have been made for licenſing ſome trades, do fully argue that the law was never underſtood to intend any ſuch matter, as a general licence to trade every where.

Obſerv. 3. The ſeveral ſpecial ſtatutes that have been made for liberty of foreign trade to particular Countries, or for particular commodities, are introductive of a new law, and not declaratory; and do plainly argue the King's right before to prohibit ſome of them in expreſs terms, others by neceſſary implication.

I ſhall inſtance in ſome of them, the *Stat.* 17 *Ed.* I. *Ordinatio pro Statu, &c. Hiberniæ*, opens the trade from *Ireland* to *England* and *Wales*, for the *Iriſh* commodities.

Whereby all Merchants have liberty granted them to import their Merchandize into *England*, but ſo that they give good ſecurity, that they ſhall not go unto, nor commerce with our enemies of *Scotland*, nor others of our enemies.

This law reſtrained the ſubject of no liberty he had before; and therefore, if the Merchant had before ſuch general libert,y or right to import thoſe commodities, his right of trading would have excuſed his giving any ſecurity; which is not impoſed by law, otherwiſe than as a precedent condition to a right conferred by the Statute.

This law opened the trade from *Ireland* to *England*, as well to foreigners as *Engliſhmen*; but it extended only to *Iriſh* commodities: for the exporting of *Engliſh* commodities into *Ireland*, continued to be managed under the King's licences till *Edward* III.

And if any did to the contrary, he was ſubject to fine and ranſom for his contempt, as appeared by 34 *Ed.* III. *cap.* 17. whereby the trade is opened for *Engliſh* and other commodities into *Ireland*.

By that law it is accorded, That all Merchants, as well aliens as denizens, may come into *Ireland* with their merchandize, and from thence freely to return without fine or ranſom.

This law extended not to the *Engliſh* Merchants, but only to the aliens and denizens.

In the next Chapter, *cap.* 18. the *Engliſh* are provided for, who had not ſo large a liberty granted them as the aliens and denizens had. The 18 *chap.* provides, *That the People of* England *who have heritage and poſſeſſions in* Ireland, *may bring their corn, beaſts, and victuals, to the ſaid land of* Ireland, *and from thence to re-carry their goods and merchandizes into* England *freely, without impeachment.*

The liberty of exporting into *Ireland*, granted to the *Engliſh*, is reſtrained both to ſuch *Engliſh* only who had lands in *Ireland*, as alſo in the ſorts of the commodities, *viz.* corn, beaſts, and victuals only.

But the liberty to export from *Ireland* is larger, extending to all commodities, according to the latitude of *Ordinatio Hiberniæ*, which took in all *Iriſh* commodities.

38 *E.* III. *cap.* 11. The King wills of his grace and ſufferance, *That all Merchants-denizens, that be not artificers, ſhall paſs into* Gaſcoign *to fetch wines; and that the* Gaſcoigners, *and other aliens, may import; always ſaved to the King, that it may be lawful to him, whenſoever it is adviſed by his Council, to ordain of this Article, as beſt ſhall ſeem to him for the profit of him and his Commons.*

This is expreſſed to be an Act of Grace, and contains a ſaving of the King's ancient prerogative, 18 *H.* VI. *cap.* 3. which I before mentioned: for liberty of exportation of butter and cheeſe, expreſly ſaves the King's right, provided the King may reſtrain the ſame when it ſhall pleaſe him.

To paſs by many ancient Statutes of like nature, the Act of tonnage and poundage, 12 *C.* II. which gives liberty of exporting divers commodities, which the Kings of *England* might in all times prohibit, as to gunpowder, arms and ammunition, expreſly ſaves the King's right, to prohibit by Proclamation.

3 *J.* *cap.* 6. which is the largeſt licence for foreign trade that was ever given to any *Engliſhmen* in Parliament, by opening of the trade to *Spain*, *Portugal*, and *France*, and the dominions thereof, fully proves the King's prerogative in this matter, both in the title and body of the Act.

The title of the Act is, *An Act to enable all his Majeſty's loving Subjects of* England *and* Wales, *to trade freely into the dominions of* Spain, Portugal, *and* France.

A very improper Title, if ſo be the King's ſubjects were before enabled to do it, and had a right to do it by the Common Law, as is pretended; and would not be reſtrained from it by the King.

And no doubt can be made, if ſuch right had been, but the Parliament would have ſeen it, being very inquiſitive at this time into all the ſubjects rights, and very jealous leſt any of the ancient rights of *Engliſhmen* ſhould be invaded by K. *James* coming from another Nation, and would not have complimented the King with the title of an enabling law.

The reaſons from the body of the Act are ſtrong; the reaſons offered for ſuch general liberty are only politick, none drawn from the right or any ancient uſage the *Engliſh* could pretend to.

The Act in its recital admits, *That by the Letters Patent for incorporating the Company to trade into* Spain *and* Portugal, *his Majeſty's other ſubjects were diſabled and debarred from the free enlargement of common traffick into thoſe dominions.*

Which were not true, if the other ſubjects had before a right to trade there, but the patent would have been void againſt them.

3. There are no declarative words of any former right, but only of enacting, and proviſional for a future liberty, *viz.*

That it ſhall, and may be lawful from henceforth.

4. The Act, in expreſs words, provides only againſt the miſchief and inconveniencies which may grow or redound upon the Patent, and to redreſs any injury done by the Patent.

5. The liberty granted, is reſtrained to be in ſuch ſort, and in as free a manner, as was at any time accuſtomed ſince the beginning of the King's reign, and before the late Charter of Incorporation.

Whereby it appears, that the uſage to trade freely into theſe Countries without licences, was but from the entrance of K. *James*;

The Statute referring to no other free uſage: And therefore this Act did not over-reach any Charter granted by Queen *Elizabeth*, as was afterwards declared in the next Parliaments, 4 *J.* *cap.* 9. in the caſe of the Charter to the Merchants of *Exeter*, for the *French* trade granted 2 *Eliz.* which I before mentioned.

*Obſerv.*4. That all Acts of Parliament which grant licence of trade, do ſuppoſe the other foundation of foreign trade to have continuance, *viz.* according to leagues with foreign Princes.

For no Act of Parliament ever gave licence to trade with aliens not in amity; and if the leave be determined, the liberty is ſuſpended, tho' granted by Parliament, till the leave be renewed.

Obſerv. 5. The laſt thing I ſhall obſerve upon the laws that give licence of trade, is, that where liberty of trade is given by Act of Parliament, without any reſervation to the King of his ancient right, the King in ſuch caſe hath ſo bound up himſelf, that he cannot generally prohibit or reſtrain that trade wherein he hath granted his ſubjects an intereſt by a law.

For a general prohibition or reſtraint would amount to a repeal of a law, which the King cannot do without an Act of Parliament.

The law will be the ſame here as in the caſes where Acts of Parliament do generally prohibit, where general licences would be void, becauſe they tend to repeal a law.

Upon this ground the licence in *Darcy*'s caſe, for that part which concerned the importation of foreign cards, was judged void in law, becauſe too general, not limited to any certainty.

But the King may in particular, and certainly, diſpenſe and licenſe againſt prohibiting Statutes.

And ſo he may in particular reſtrain the perſons of his ſubjects from going beyond the ſeas, notwithſtanding any of the laws which give licence of trade:

But cannot grant a reſtraint or prohibition generally, where Acts of Parliament have given a general licence, unleſs it be in ſpecial caſes; and for a time, where the intereſt of the Publick requires it; as of the plague, and furniſhing out of the King's Navies, in time of war with any Prince. And therefore I ſhall admit, that if any publick law can be produced, which gives liberty of trade for all the King's ſubjects, to the Judges, that this Patent will be void, as a reſtraint of that liberty againſt law.

Upon this ground the *Canary* Patent was held void, becauſe againſt the expreſs liberty granted by 3 *Jac.* and therein ſaved; or of the Common Law Monopoly, by reſtraining the right of others againſt an expreſs law, for the benefit of a few.

Upon the ſame reaſon, the Grant of *Ph.* and *Mary*, that all ſweet wines ſhould be landed at *Southampton*, was againſt ſeveral expreſs Statutes, and the rights of ſeveral free ports, before granted by the Crown to the City of *London*, and others, as 27 *Ed.* III. *cap.* 6. whereby Merchants-ſtrangers had liberty granted to bring their wines to what Ports they pleaſed; and 43 *Ed.* III. whereby the *Engliſh*, *Iriſh*, and *Welſh*, had liberty granted to fetch their wines and bring them to any parts of *England*, *Ireland*, and *Wales*.

And therefore was repealed in Parliament of 5 *Eliz.* *Rolls* 2. *Rep.* 112. whereby it appears, that the Parliament in the Queen's time, were vigilant enough to take notice of Patents againſt law.

The like in the caſe of *John Peachy*, for the ſole ſelling of ſweet wines by retail, 50 *Ed.* III. the Parliament ſet it aſide, as againſt law: Upon that Grant an Inhibition under the Great Seal, iſſued, prohibiting all the Citizens of *London* to ſell ſweet wines in *London*. The Inhibition was revoked, 50 *Ed.* III. *No.* 13. and *Peachy* puniſhed for extortion, by colour of the Grant, 50 *Ed.* III. *N.* 33.

This Grant was not only againſt many expreſs Statutes, ſome whereof have been cited in the arguments in this Caſe, which gave the Merchant-Importers liberty to ſell their wines and Merchandize to whom they pleaſed; and many expreſs Grants to the Citizens of *London*, ſome whereof were confirmed in Parliament; but was againſt the rules of the Common Law, being a reſtraint and monopoly of an inland trade, as ſelling of wines in *London* and other parts of *England*, undoubtedly then was.

For when foreign merchandizes are brought hither to trade or traffick with, they fall under the rules and government of the Common Law, and the retailing of them here becomes an inland trade.

In *Lambard*, 43 *Ed.* III. *lib. aſſ. fol.* 276. *Pl.* 38. it was ruled, That when foreign merchandizes are brought in, a conſpiracy to inhance their prices is puniſhable.

At Common Law in like manner, as a deſign by falſe rumours, or otherwiſe to debaſe the prices of our inland commodities.

The reaſons of theſe caſes, which were the principal pillars to ſupport the arguments of the other ſide, prove nothing to our caſe, till they can produce ſome clearer Statute than 15 *Ed.* III. for giving liberty of trade to the *Eaſt-Indies*.

Having conſidered of foreign trade with aliens in amity, and how it hath been managed in all times, I proceed in the laſt place to conſider what the law determines of trade and commerce with alien enemies, and conſequently with Infidels. Here the conſideration is far different from what it was in the former; in that, the Common Law was ſilent, until an expreſs Prohibition by the King.

But here the Common Law is a Prohibition of itſelf, and is at open war with alien enemies.

Whether the commerce with alien enemies without licence, be within the extent of aiding and comforting the King's enemies beyond the ſeas, within 25 *Ed.* III. I ſhall not at this time argue. But it may be worth while for the interlopers who traffick into foreign Nations, not in amity with the King of *England*, without licence, well to conſider that point; but before the Statute at Common Law, it was criminal.

Paſc. 13 *Ed.* II. *Rot.* 13. *B. Rs. in the Treaſury*, In an information againſt three perſons for trading into *Scotland*, then in enmity with the King of *England*; the Defendants pleaded a licence from *Cuſtodes Trenge*, in the Marches of *Scotland*; which was held nought, none could licenſe but the King: thereupon they obtained and pleaded the King's pardon. *Rolls Prerogative, tit. Gaver reffo.* 173. *Pl.* 3.

I need not labour to clear a point which was not oppoſed by the Defendant's Counſel, but their endeavour was to exempt Infidels from being enemies; wherein they have a difficult taſk, in rowing againſt the ſtream of the laws of all Chriſtian Countries.

In the great Inſtance of the *Jews*, who have been expelled, and their eſtates ſeized, as of enemies almoſt in every Chriſtian Country;

They call for authorities, but offer none themſelves; not ſo much as the opinion of any one learned man, to give countenance to the leaſt amity between the *Engliſh* laws and Infidels. I will not diſtruſt the memory of the Court to repeat the authorities which have been produced to aſſert the enmity between Infidels and the laws of this Realm; which are more than ſufficient, after ſuch ſolemn proceedings againſt the *Jews* in *Edward* the Iſt's Reign.

All which have received a very ſhort anſwer, That theſe Records are obſcure.

That time hath hid the Law from us, ſo that we cannot diſtinguiſh whether they were Acts of Law, or Acts of Violence.

And that the reaſon why Princes were induced to uſe them ſo, might be, is becauſe they are under no government to vindicate them.

But why the Records ſhould be ſo darkened, and the Proceedings, in ſo eminent a caſe as that of the *Jews*, ſo obſcure, ſince *Edward* I. more than the Common Law, in the diviſion of the right and properties of others, I could not hear any good reaſon given.

For I take it, the principles of law upon which the *Jews* were proceeded againſt, are as clearly laid down in our Law-Books, as any point of Law we have.

For the caſe of the *Jews* ſtood thus: They came over as Merchant-ſtrangers, of ſeveral Countries in amity, both by ſpecial licences of ſeveral Kings, and under the general ſafe-conduct of *Mag. Chart.* whereby they were under the King's protection, and enabled to contract and ſue, as any other Merchant-ſtrangers under ſafe-conduct; which the King might grant, as I have ſhewn, to an alien enemy. While here, many of them were indenized, others born here, and had great poſſeſſions of lands, as well as leaſes and perſonal eſtates.

Then they are baniſhed by the King, by Proclamation, as well thoſe that were never indemnified upon the account of their religion, as infidels and enemies to the Chriſtian religion.

To whom then will their lands, leaſes for years, credits, and ſuch perſonal eſtates as they had not liberty to carry out, belong?

The Law adjudged it all to the King. And the controverſies that aroſe about their eſtates, did not fall out between the King and the defenceleſs *Jews*, (as the Defendant's Counſel terms them) for they were gone; but the King and ſeveral Doctors of the *Jews*, who well knew the Law, and were able to defend their right.

To

To the dark Records (as they were ſtiled) I will add a caſe ſolemnly adjudged between the King and a potent Subject, the Archbiſhop of *York*, 21 *Edw.* I. where the caſe was;

The Prior of *Pidlington* was indebted to a *Jew* in 300 *l.* After the baniſhment of the *Jews*, the *Jew* met with the Archbiſhop in *France*, and prevailed with him to help him to the money; that Archbiſhop perſuaded the Prior, that he was bound in conſcience to pay the money to the *Jew*'s Attorney; who did it accordingly.

And all this was after a Proclamation iſſued for diſcovery of the *Jews* debts.

For this concealment and treſpaſs, the Archbiſhop was ſued by the King, before the Council in Parliament, and laid it to his damage of 1000 *l.* To which the Archbiſhop appeared and pleaded, and to avoid a Trial by aCountry Jury, as the Record mentions, he was put upon his allegiance to tell the truth.

Whereupon he confeſs'd the Information, and Judgment was given againſt him, and the taxing the fine referred to the King.

The reaſons of the Judgment fully declare what the Law was; *Quia idem Epiſcopus bene cognoſcit quod poſt exilium Judæorum a prædicto Judæo intellexit, quod pecunia prædicta ſibi in regno debebatur, & poſt eorum exilium omnia quæ ſua fuerunt, & in regno remanſerunt, tam debita quam alia bona quæcunque, ipſi Domino Regi remanſerunt, & catella ſua fuerunt.*

That he did not only conceal, but contrary to his faith, wherein he was bound to the King, perſuaded the Prior and Convent, for ſaving of their ſouls, to pay. *Pla. Parl.* 173.

The Archbiſhop did not doubt of the Law, tho' the Defendant's Counſel do; but a recourſe to Conſcience againſt Law, in deceit of the King, againſt his faith and allegiance.

This I hope will be allowed to be a Judgment, and a Judgment that declares the Law as plainly as ever Judgment did, and of a higher nature than any Judgment in *Weſtminſter-hall.*

In the ſame year ſeveral mean Lords petition the King in Council for the arrearages, in rent and ſervices, of the lands the *Jews* held of them before their baniſhment.

The Council anſwered, That for the time *Jews* held it, it was their fault not to collect them; for ſo long as the King held them, he would pay them; for the time they were in any Grantees hands, they ſhould have recourſe to his Grantees. *Pla. Parl. Riley, fol.* 129.

Here the King's title to the real and perſonal eſtates of the *Jews* in *England*, is aſſerted by Judgment of the higheſt Court of Judicature in *England.*

The principles of Law, upon which the Judgment paſt againſt the *Jews*, are frequently laid down in our Book.

If an Alien Amy or Enemy purchaſe lands, the King ſhall have them, and may ſeize them at any time; and tho' the Alien died ſeized upon Office found, the King ſhall have them, and not the Lord, by Eſcheat.

This my Lord *Coke* reports to have been reſolv'd by all the Judges, *Paſch.* 29 *Eliz.* in Sir *James Croft*'s caſe, 1 *Inſt. fol.* 2.

There it was alſo held indeed, that if a Denizen died ſeized without heir, the Lord, by Eſcheat ſhould have the land, and not the King; but that is in caſe of a compleated Denization, where the iſſue of the Denizen is capable of inheriting. But in caſe of *Jews* or Infidels, the Denization was void, being made to them as ſtrangers, without taking notice of their enmity to the Chriſtian Religion; and ſo the King deceiv'd in the Grant.

And an Infidel, though born in *England*, is not inheritable to the Laws of the land; if he ſhould, the land might ſoon be over-run with *Jews* and Infidels, and no redreſs to be had: ſo that neither denization nor birth did altert he ſtate of the *Jews* as to Inheritances within *England*, but they remain'd Aliens under ſafe-conduct only.

If an Alien Enemy had a leaſe of lands, or of a houſe for habitation, the King ſhould have it, within the ſame reſolution in Sir *James Croft*'s caſe, and not any ſubject that ſhould enter upon him.

Nay, if an Alien Friend, who ſhould take a houſe for habitation, ſhould die, or leave the lands, the King ſhould have the leaſe.

But then, how ſtands the Law for the goods of an Alien Enemy without the Realm?

Mr. *Pollexfen*, to argue Infidels to be no Alien enemies, urged from the miſchief that might enſue, that then every man might ſeize the perſons or eſtates of *Jews* and Infidels; becauſe by Law every perſon might ſeize the perſons and goods of Alien enemies: and for that, cited the authority of 7 *E.* IV. *fol.* 13. *Co.* 2 *H.* VII. *fol.* 15. *b* which are but the ſame caſe, the authority of 7 *E.* IV. being only mention'd in courſe; argument in the Book of *H.* VII. The authority of 7 *E.* IV. is good Law, but miſapplied, in not obſerving the difference between the times of the enemy's, or his goods coming into the Realm.

After open War proclaim'd, whereby all the ſubjects have notice whom the King hath declared his enemies, and againſt whom they are to join in defence of themſelves and the Kingdom; if the perſons or goods of ſuch enemies come into the Kingdom, any ſubject may ſeize them, and gain a property in the goods, as a prize taken in open War, according to the authority of 7 *E.* IV. And indeed the Laws of all Nations; and that not only of enemies goods, but of *Engliſhmen*'s goods taken by the enemies; (whereby the property was left) and brought hither by the ſame authority of 7 *E.* IV.

Which plainly ſhews the meaning of the Book, to be of goods taken in open War; whereby the property of the goods reſts in the Captor as lawful prize.

But when the perſons or goods of Aliens are in, or come into *England* under ſafe-conduct; and the ſafe-conduct be not determined by the King, either by Proclamation of open War, or otherwiſe, no ſubject can ſeize the perſon or goods of ſuch Alien enemies.

Upon this difference the Law was ſettled, 36 *H.* VIII. by the Judges, *Bro. Property*, 38. in the abridgment of the caſe, 7 *E.* IV.

That where a *Frenchman* inhabited in *England*, and a War was afterwards proclaimed, no ſubject could ſeize his goods, becauſe they were here before.

But if he came after the War, any man may ſeize his perſon and goods, and ſhall have a property in them, and in ſuch caſe the King ſhall not have them.

And ſo was it put in practice, ſaith the Book, 'tween the *Engliſh* and the *Scots.*

And when *Eulloign* was taken by the King's ſubjects, 19 *Ed.* IV. *fol.* 6. *pl.* 4. where a debt was owing by a ſubject of the King of *Denmark*'s, and a war breaks out, the ſubject ſhall not retain the debt, but the King ſhall have it.

22 or 2 *E.* IV. *fol.* 4, 5. *pl.* 9. In falſe impriſonment, the Defendant juſtifies under the King's Commiſſion for apprehending a *Scotchman*; there being a war between the King of *England*, and the King of *Scotland.*

I before ſhewed, that an Alien enemy, which came over by the King's ſafe-conduct, was as much under the protection of the Laws, as any Alien Amy whatſoever; and no ſubject could ſeize or moleſt his perſon or goods.

And the determining the ſafe-conduct by the King, leſt the Alien enemy in the ſame condition as other Alien enemies, after war proclaimed, who were here before under the general ſafe-conduct of the Laws.

In which caſe the ſubjects had no liberty to ſeize either the perſons or goods of Alien enemies; but that power was reſerved by Law expreſly to the King.

Which, beſides the authorities I have produced, expreſly appears by *Magna Charta*, *chap.* 30. which provides, that if the Merchant-ſtrangers be of a land which makes a war againſt us, and be found in our Realm at the beginning of the war, they ſhall be attached, without harm of body or goods until it be known to us or our Chief-Juſtice how our Merchants be intreated there.

So that the diſpoſal of their perſons and goods was wholly in the King. And the liberty the ſubjects had to intermeddle with foreign enemies, extended only to ſuch who came here after a war proclaimed.

By all which, the King's title to the lands, debts and perſonal eſtates of the Jews, after the King had determined their ſafe-conduct, by baniſhing them out of the Realm as Infidels, evidently appears; and thoſe dark Records refined in ſome meaſure from their obſcurity, by the conſtant tenor of the Common Law, practiſed ever ſince.

But doth not the making leagues with, and ſending of Ambaſſadors to ſome Infidel Countries, argue that Infidels are not Alien enemies? No, certainly.

But the practice of the Kings of *England*, and other Chriſtian Princes, fully argues the contrary; for the making ſuch treaties, in order to trade, proves that no trade could be managed with them, before the treaty concluded.

My Lord *Coke* (who was of opinion that an Infidel is *perpetuus inimicus*) yet agrees with other learned men, that a league of peace, (which is only a ceſſation of all hoſtility) and a league of commerce (which amounts to no more than a reciprocal and general ſafe-conduct to each other's ſubjects) may be made with an Infidel Prince, 4 *Inſt. fol.* 155.

But he is called *perpetuus inimicus*, from the practice of the Kings of *England*, and other Kings and Princes, not to make any leagues of friendſhip or alliance with Infidel Princes; whether reſtrained from making ſuch leagues by the Municipal Laws of the ſeveral Chriſtian Countries, or the general Rights of Chriſtianity, is not to my purpoſe to determine.

But either a ceſſation of open hoſtility, or a general ſafe-conduct, by a treaty of commerce, binds up the ſubjects hands from intermeddling with the goods or perſons of Infidels.

And therefore the Act of Navigation, that mentions the goods of the *Ottoman* Country, makes nothing to the Caſe.

For by the treaty of commerce with the *Ottoman* Empire, they might be brought in, and by his ſubjects before, under a general ſafe-conduct. But as to the *Mogul* and other *Indian* Princes, there is no league of peace or commerce between them and the Kings of *England.*

Which makes the caſe of the *Eaſt-India* Company ſtronger yet, than that of the *Turky* Company.

Though I conceive, that upon theſe principles I have laid down Law ſtrong enough.

And herein the caſe of the *Eaſt India* Company is particular, for the King hath made no league for them.

But by the Letters Patent, hath given them ſpecial power to make war or peace with any Infidel Prince for the benefit and better advantage of their trade.

So that all other ſubjects are merely precarious, and have no pretence of taking any advantage of any peace made by the Company.

So as to them, the *Indians* remain to all purpoſes Alien Enemies.

Having now ſhewn, that all foreign trade depends upon, and hath been managed by leagues and royal licences, either by Letters Patent, or ſpecial Acts of Parliament; and

That the King may prohibit generally, where no Act of Parliament hath intervened to the contrary; and the Common Law prohibits trade with Infidels, and no Act of Parliament has provided for it.

That that trade cannot be managed but by the King's licence, in ſome ſuch manner as is directed by theſe Letters Patent to the Company.

That the anſwers to all the authorities and arguments made uſe of by the Defendant's Counſel, which I have not anſwer'd, lie open for the authority of the Taylors of *Ipſwich* caſe; and the ſeveral other authorities of mechanick trades, and of inland merchandize, to which the ſubjects have a right by Common Law, make nothing againſt our caſe of foreign trade, and to an Infidel country, to which I have argued the ſubjects have no right, but were prohibited.

The opinion of the Taylors in *Ipſwich* caſe, that a Patent to hinder trade at ſea is void; that generally to hinder all trade at ſea, is no doubt good Law: becauſe many licences then in being, and ſeveral Acts of Parliament in many caſes had granted liberty of trade.

But in the ſame caſe the reſtraining of trade to a particular country, for which no Act of Parliament had made proviſion, is allow'd of in the caſe of the *Greenland* Patent.

There was no authority produced, and I believe cannot be, that gives the leaſt countenance for liberty of trade with Infidels, or to impeach the King's prerogative of prohibiting trade to foreign countries, whereto licence for trade had not been granted by the King's Letters Patent, or by Acts of Parliament.

The arguments drawn from the reaſon of the Common Law were two:

Firſt, From the liberty the ſubject had to go and trade into all foreign parts, for which were cited *Fitzherbert* and *Dyer.*

That liberty, and thoſe authorities, I have already examined, and ſhewed that the ſubject had no liberty, but was prohibited by the Common Law to trade with Infidel countries.

And

And the liberty to trade with foreigners in amity, was but a bare permiſſion, till the King prohibited.

Secondly, The other ground inſiſted on was, that all ingroſſing of merchandize was unlawful at Common Law: and therefore a Patent leading to authorize an unlawful ingroſſing is void, as a Monopoly at Common Law, and declared ſo by 21 *Jac.*

Here I will join iſſue with Mr. *Pollexfen*, and do admit, that if it be an unlawful ingroſſing, whether by the Common Law, or any Statute in force, the Patent will be void.

And he muſt admit unto me, that if it be no unlawful ingroſſing, it is no Monopoly at Common Law.

As he did in his argument ingenuouſly admit, that if it were no Monopoly at Common Law, it is not within the Statute 21 *Jacobi*; ſo that the queſtion between us will turn upon this ſingle point:

Whether the ingroſſing the foreign merchandize of *India* be unlawful?

Upon what I have already ſaid, it appears it is not. For I have ſhewn that the Common Law regarded, and made proviſion only for, merchandizes within the land; and though when foreign merchandizes came thither, they fell under the rules of the Common Law; yet the ingroſſing, or ſole buying of foreign commodities beyond the ſeas, and ſelling in groſs, or by the Merchant-Importer, was no offence at Common Law.

Neither is there any Statute that makes it an offence at this day.

It is true, the Statute of 37 *E.* III. *cap.* 5. prohibited *Engliſh* Merchants to ingroſs merchandizes.

But the Merchant-ſtranger was not bound by that Law: and that Statute was the next year repealed, as to the *Engliſh* Merchants, 38 *E.* III. *cap.* 2. And that at preſent the Law is, that any Merchant may buy in groſs, and ſell in groſs, appears by the reſolution of all the Judges, *Mich.* 39 & 40 *Eliz. Co.* 3 *Inſt.* 196. in the chapter of ingroſſing.

And the reſolution goes a ſtep further than the Merchant-Importer.

That any perſon may buy in groſs of the Merchant-Importer, and ſell by retail.

And it follows by a clear conſequence, that if *Engliſh* Merchants in ſuch places, where by Law they have a right to trade, may ingroſs the commodity of the place without offence; the ingroſſing foreign commodities of any place, where the ſubject cannot trade without licence, can be no argument to invalidate ſuch licence.

Becauſe ingroſſing of foreign Merchandize, by any Merchant-Importer, is no crime, but lawful for every trader.

And then the conſequence of all ingroſſing will be the raiſing the price of the commodity.

Yet it being a commodity of foreign growth, and not ſuch as the Law hath any where determined neceſſary for the ſupport of life, as victuals and ſuch like;

The Common Law hath no regard to the price, but leaves the Merchant free to make his advantage of his dangerous adventure.

The advantages that ſome ſubjects may receive by the trade, and others may be debarred from, which are alike hazardous, and depend upon a multitude of accidents, are no meaſures of right or wrong, to paſs a legal judgment upon.

But if the Company have a right to trade, and others have not, as I have argued, whatever their advantage may be, which cannot be eſtimated till they have wound up their bottom:

The ingroſſing of the *Indian* commodities cannot be infected with the taint of a Monopoly, which always ſuppoſes ſomething done againſt common right, which is altogether inconſiſtent with having a right due to the King.

For it is of the eſſence of a Monopoly, according to the definition thereof propoſed by Mr. *Pollexfen*, and taken out of my Lord *Coke*, *viz.* that it tends to reſtrain ſuch liberty and freedom the ſubject had before, or to hinder him in his lawful trade.

So that every ſole buying and ſelling a commodity, if it be lawful, can be no Monopoly, in the legal ſenſe of the word; which is evident in ſeveral land commodities, where the ſole buying and ſelling is coupled with a right.

The King may grant to farm his pre-emption of Tin, whereby the Grantee hath the ſole buying and ſelling, if he pleaſeth, of the whole commodity.

Such a grant to *Tidman* a foreigner was complained of in Parliament, 21 *E.* III. and prayed by the Commons, that no ſuch merchandize be ſold, but to the commonalty of Merchants.

The King anſwers, that it was a profit belonging to the Prince, and every Lord may make his profit of his own; 21 *E.* III. *nu.* 29.

That this ſole right of buying and ſelling was ever enjoyed, appears by the caſe of the Stannaries, 4 *J. Co.* 12. *fol.* 10 & 11.

So of all Gold and Silver dug within the Realm, and of all royal fiſhes taken; the King and his Grantees ſhall have the ſole diſpoſal, or right of ſelling them.

It is no juſt anſwer to theſe inſtances, that they are inheritances and rights veſted in the Dukes of *Cornwall* and the Crown:

Which they may diſpoſe to whom they pleaſe. So is his prerogative of licenſing foreign trade. And as to the queſtion of a Monopoly, which implies a wrong in reſtraining the rights of others; there is no difference between having a right exiſting, which may be granted, and having a power or prerogative to confer a right on others.

For 'tis the having the right to do the thing that makes it no Monopoly.

And therefore, if the King have a right to licenſe ſome of his ſubjects to do a thing, which other of his ſubjects cannot do, or are rightfully prohibited to do; whether the thing granted were before *in eſſe* or *de novo* conſtituted, it is all as one to the validity of the Grant. This is proved by the inſtance of Fairs and Markets.

Whether anciently in the Crown, or *de novo* erected and granted to any ſubject, the caſe will be the ſame, as to the ſubjects ſole right of holding the Fair and Market excluſive of others.

And rights conferred by the King's prerogative, are every whit as ſtrong as any right granted out of the Crown, which was before *in eſſe* there.

So that the Pretence of an unlawful Ingroſſment and Monopoly being removed, by Mr. *Pollexfen*'s admittance, 'tis not within 21 *Jacobi*.

And it is plain, it is not within the words of the enacting part of the Statute, without the aid of the Proviſo: for it is expreſsly limited to grants made, or to be made, for the ſole buying and ſelling, or uſing of any thing within the Realm. So that it was only the liberty of the inland trade and traffick, to which the ſubjects had right before, that was fenced and ſecured by this Statute. And this Patent is not for the ſole buying of any thing within the Realm; and though the ſelling be here, yet ſuch ſole ſelling was, and is lawful, notwithſtanding any Law or Statute made, as I have ſhewn.

And the Proviſo was only added, to manifeſt the plain intention of the Parliament, not to intermeddle with any juſt prerogative of the King, which he might, and lawfully had exerciſed and uſed for the benefit of his ſubjects.

Beſides, to put it paſt all ſcruple, this Company is within the expreſs words of the Proviſo.

It was a Company in the reign of Queen *Elizabeth* and King *James*, as is recited in the declaration.

And by their Charter 7 *Jac.* had the ſole trade granted, with the excluſive clauſes to others.

And if the Parliament had not adjudged this Company to be for the maintenance and enlargement, or ordering of that trade, as well as the other Companies, they would undoubtedly have made a difference between them, upon that Charter of 7 *Jac.*

For this very Parliament was inquiſitive into all illegal Patents, which in the leaſt tended towards a Monopoly.

And if they had thought that Charter ſuch, they would not have been tender of the point at that time.

The objection made from the different managery, by joint and ſeparate ſtocks, is of no great weight, becauſe it touches not the queſtion of right; whether a Company may have a ſole trade granted, excluſive to others.

For every Company draws a charge with it, which thoſe not of the Company are not liable to.

And if the ſubject have a right to trade without being of the Company, he can be no more compelled to be of the Company, which manages and trades upon ſeparate Stocks, than of one which trades upon a Joint-Stock.

And the objection, that ordering of trade within the Statute cannot be intended of licenſing of ſome, with excluſion of others, is of no greater force; for it could not be intended of any others.

All the Patents for foreign trade before that time, and then in being, were Patents of excluſion of others than the Company.

And if it be well conſidered, all the authorities that allow there may be Companies erected for well-governing and ordering foreign trade, do admit, they may be excluſive to others;

It not being poſſible that a foreign trade can be under any rule or government, by any Letters Patent whatſoever, if carried on by perſons not ſubject to that rule and government.

And it is evident, that no rule of any Company binds farther than thoſe of the Company; and if every man, not of the company, may trade, ſuch trade will not be under any rules made for the Company, or by the Company.

So that ſuch Patent will be only for keeping ſome few perſons within rule and government, but not at all of the foreign trade.

Which of neceſſity muſt produce the ruin of the Company, and in all probability of the trade itſelf.

For if others trade without limitation, diſcharged of all the rules of the Company, and not be liable to the charges and expences, whereby the trade muſt be ſupported; they may and will both underſell the Company, and foreſtall and anticipate the Markets, than which nothing can tend more effectually towards the deſtruction of a trade, of that great concern both to King and Kingdom.

Beſides, the Factories and Stock of the Company in foreign parts are obnoxious and liable for all injuries committed, either to the Natives or Government of the place, by any Interloper trading without rule, by the general Law of reprizals.

I will not further purſue the arguments of convenience or inconvenience, but do reſt upon the right, which I have endeavoured to make out by theſe ſteps.

Firſt, That the ſubject had no right to this trade at Common Law as a foreign trade, but might be prohibited.

Secondly, That no league or royal licence hath introduced or given ſuch general right.

Thirdly, That foreign trade hath in all times been licenſed and managed by the undoubted prerogative of the Crown, in licenſing ſome, and prohibiting others. And that in all caſes not provided for by Act of Parliament.

And that ſuch Grants and Licences have received allowance in ſeveral Parliaments.

Fourthly, That no Act of Parliament ever gave a general liberty of trade, much leſs to trade with Infidels.

Fifthly, That the Common Law prohibits this trade with Infidels, as with Alien Enemies.

Sixthly, In the laſt place, I have applied anſwers to principal authorities and arguments made uſe of to impeach the Company's Patent.

Upon all which, I conclude the chief point of the caſe;

Firſt, That the Grant to the Company, of the ſole trade to *India*, excluſive to others, is good in Law.

Secondly, As to the ſecond point, whether the action will lie, admitting the Company have a right to the ſole trade there, by theſe Letters Patent;

I ſhall ſpend but a little of your time about it.

Becauſe if the Company have by Law the ſole right to the trade, the Law will give them a remedy to redreſs injuries done to their trade, for recovery of their damages.

Which is properly by an action of the Caſe, they having no other remedy to redreſs themſelves. For a proſecution for a contempt to the King cannot be in ſatisfaction of the Company's damage.

I ſhall therefore reſt that point upon the authorities already produced by the Plaintiff's Counſel.

I ſhall only apply anſwers to the objections made by Mr. *Pollexfen*.

Obj. 1. 'Tis not alledged the Defendant had no licence from the King.

Anſ. The Complainants caſe is ſufficiently ſet forth, that they had the ſole trade to the *Indies* granted to them; and that the Defendant had notice thereof, and yet traded contrary to their Grant.

If the Defendant had had the King's licence to come on his part by Plea, then the validity thereof, as againſt the Plaintiff, would have come into queſtion; but he reſts upon the licence, by Statute of 15 *E.* III.

Obj. 2. They have ſhewn no ſpecial loſs or damage.

Anſw. Neither need any be ſhewn, no more than in all other actions of the caſe, where the right of any perſon is injured, 18 *Rep.* 113. *Mary*'s caſe

of a Commoner who hath no estate in the land, nor the sole right in the profit *apprender*, comes not to the case; the Law denies such Commoner liberty of bringing his action, without a special damage, to prevent a multiplicity of actions, which upon the same ground every Commoner would be intitled to.

But otherwise it is, where any hath the sole Piscary or Profit *apprender*; after setting forth the special case, and wherein his right is invaded, a general declaration to his damage is sufficient, and the examination of the particulars will belong to the Jury.

Obj. 3. That the action is grounded upon the restraints in the Letters Patent; and that restraint is not absolute, but upon pain of forfeiture of ships and goods.

Ans. The first part is mistaken; for the action is grounded upon the grant of the whole, entire and only trade and traffick to the *Indies*, inforc'd with the King's covenant, not to grant licence to any others.

And besides this clause of the prohibition, there is a distinct clause of Grant, that none of these countries or places shall be visited, frequented or haunted by any of the King's subjects, during the continuance of this Patent, which hath no penalty annexed to it.

Upon these Grants the action is grounded; and if there were no clause of prohibition, the trading to these Infidels by others without licence from the King, is enterprizing a trade not only against the prohibition of the Common Law, but the King's express prohibition.

But the action is not founded upon this clause, but upon other clauses of conferring a right to the sole trade.

The authority cited by Mr. *Pollexfen*, as an authority in point, against the action out of 11 *Rep.* 88. and *Rolls Abridgment*, *fol.* 106. *nu.* 6. in *Darcy*'s case, that admitting the grant or dispensation to *Darcy* were good, for importing foreign Cards contrary to the Statute of *Ed.* IV. yet the action would not lie, reacheth not our case of a right conferred by the King's prerogative, and not of any dispensation from a penal law.

Before the Statute of *Edw.* VI. every Subject might import foreign Cards; the Statute restrains that liberty under penalty of forfeiture.

The dispensation of one subject from the Law, works no Interest but a bare exemption from the penalty;

Which in the case of *Shaw* and *Hawes*, was held could not be assigned over; and therefore Grants that are merely Dispensations, convey no Interest against any other Subject, who is no otherwise restrain'd from doing the thing, than by the Statute under a penalty.

But where the King by his prerogative may grant the sole use of a thing, (as in case of new Inventions) the Grantee hath an Interest sufficient to support an action upon the case, as *Rolls* is of opinion. The next paragraph, *fol.* 106. *nu.* 17. That if the King grant that none shall use such a thing (whereof the King hath power to grant), but the Grantee, reserving a rent, if another use it, an action upon the case will lie;

Which is a stronger authority in point for the action, than that of *Darcy*'s case of a mere dispensation, is against it.

And therefore having proved the Grant of the sole trade to be good, the action is well brought for damages;

And pray Judgment for the Plaintiffs.

Mr. *Williams*'s Argument.

De termino S. Michaelis, *Anno Regni Regis* Car. *Secundi* xxxvi. *Annoq*; *Domini* 1684.

The East-India *Company against* Thomas Sandys.

THE Questions in this Case, are two.

1. Whether this Grant of sole trading to this Company, excluding all others his Majesty's subjects who are not members of this Company, or within the qualifications of this Grant, be a legal Grant?

2. Admitting it a legal Grant, if this action be maintainable by the Company against the Defendant?

That this Grant is legal in all its parts, I do not find that the Counsel that argued for it, have endeavoured to maintain.

Mr. Attorney hath admitted in his argument, it is not.

That some parts of it are against law, is manifest, *viz.* it inflicts illegal penalties upon persons offending against it, by creating a forfeiture of their goods and merchandize, which shall be brought into the Realm, or any of the dominions thereof, contrary to this Grant.

It also creates a forfeiture of the Ships, with the furniture thereof, wherein such goods shall be imported or found; the one half to the King, the other half to the Company.

It grants, That the offenders against it shall be imprisoned during the King's pleasure, and not to be delivered out of prison until the offenders become bound to the Governor in the sum of 1000 *l.* at least, that such person shall not at any time after sail or traffick into any places mentioned in the Grant.

It gives the Company liberty to license persons to trade within the limits of this Grant; and that the King, his heirs and successors, shall not, during these Letters Patent, license any person to sail or trade there.

In these things the property and liberty of the subjects, are put into the power of the Company; and they are to dispose of the liberty and property to serve their own Company, and not the Publick.

If this Company may seize Goods and Ships, and imprison the King's subjects, according to their Grant, they will have a greater prerogative over the subject than his Majesty hath; they have power to seize goods, and imprison persons, without trial, without legal proceeding, which the King cannot do; and I humbly conceive, cannot grant to any subject or corporation.

The Judgment upon the *Canary* Patent, which I shall have occasion to mention more largely herein, by the opinion of all the Judges, damned the penalties of that, agreeing in substance with these. The substance of this was admitted, at least not defended, by Mr. Attorney General.

This Grant does not only give this Company dominion over the properties and liberties of the subject, and invest the Company with the prerogative of the Crown to license men and ships to trade in these limits, but it doth divest the Crown, the King, his heirs and successors, of a high prerogative; That the King shall not license, as I take it, the King shall not trade in these limits without the licence of this Company. For as this great and mighty Charter is penned, it doth not only invest the Company, but divest the King of his prerogative.

Mr. Attorney and the King's Counsel could not argue for the Company in this matter, without arguing against the prerogative of the King. They are of the King's Counsel that argued for this Grant, but 'tis not to be believed they were of the King's Counsel, or friends, that drew it or advised it.

We that argue for Mr. *Sandys*, argue for the King's prerogative: That the King, notwithstanding this Grant to this Company, may license Mr. *Sandys*, or any other subject, to trade in these limits; and it doth not appear upon this Record but Mr. *Sandys* hath the King's licence to trade in those places; he may license any other subject to trade there.

And that the King by his Grant cannot exclude himself of his prerogative.

It will serve our turn, for the defendant in this case to avoid the plaintiffs action. If the plaintiffs ought not by law to have the sole licensing of traders in these limits; for the stinging part of their declaration is laid in this, *That the Defendant traded without their Licence.*

There was greater care had to greaten this Company, than to preserve the prerogative of the King in this Grant; and the prerogative is named in this case, to serve the Company, and not the King: and they that drew this Grant, did neither consult the honour nor prerogative of the King, the liberty or property of the Subject, the trade of the Kingdom, nor the law of the land: But their business was to greaten this Company, to the detriment of the King, the Law, and the Subject; as I hope to make out in this case.

In my way to the particular Questions in this case, I shall observe,

1. That the plaintiffs in their declaration do alledge, That they have established and managed, and do manage a great trade of merchandize to the *East-Indies*, with the inhabitants there, who at the time of the making the Letters Patent, were not, and ever since are not Christians; but then were, and now are infidels, and enemies to the Christian faith.

Yet they do not alledge, nor can say that these *Indians* are in enmity with the Crown of *England*, or that they are alien enemies to *England*.

2. Tho' the present inhabitants of these places are Infidels, and enemies to the Christian Faith, yet it may be, and we hope there may be an universal conversion to the Christian Faith; and we are taught by the Church to pray for it, and to use all manner of means to bring it to pass.

Why may not these places, or some of them, become inhabited with Christians, as *Spain* and *Portugal* are now inhabited by Christians, where Infidels did inhabit about 200 years ago?

3. This Grant doth not exclude a trade with Infidels only in these places, but with all persons in these places.

I do not observe, that any of the Company's Counsel that argued before Mr. Attorney, have denied *Englishmen* the liberty of trading with Christians in any part of the World, without licence from the King. Herein I take him to be alone.

4. They say, this trade cannot be managed but *per corpus corporatum.*

Yet have they an exclusion of all persons, and bodies politick and corporate, to trade, or manage a trade in these places without their licence; and by this means exclude the King from constituting any other Company within the limits of their Grant, or in any part of it, which may be very necessary for the Government, and publick trade of the King.

1. It may be, the *Indians* may insist upon some such Company to be instituted by the King, by some treaty of commerce.

Now hath the King by this means, not only excluded his subjects from the trade of this Place; but he hath excluded himself of the liberty of making or constituting any other Company for trade or commerce, in all, or any of these places.

2. Perhaps the government and good management of trade in these places, may in time require more Companies to be instituted, in all, or some of these places; and the Company's Counsel, except Mr. Attorney, are now arguing the King by his prerogative, out of his prerogative:

That the King had prerogative enough to make this glorious Company the sole traders, and managers of trade in these places, and to exclude himself and his successors, and all the rest of his subjects, from this trade and management:

3. And by this means constitute a sort of Republick for the management of trade in these places, borrowing perhaps from *Hamborough* and other republican places, the ways and methods of managing trade upon a common stock, in fraternities and companies; and by this experiment alter the constitution of *England* in the management of trade, by altering the nature of our *English* properties in our goods vested and placed in persons, and placing our properties in companies and fraternities; and by fixing the mystery of trade in companies, to the prejudice of single persons; and may in time turn to ill example, and endanger the Government in its other parts, as well as the trade of *England*.

The main question in this case doth turn upon the power of the King;

If the King by his royal power may appropriate this trade in these infidel places to this Company?

First, That the King hath power to do this, by the advice of his great Council, the Parliament, is not doubted. So there is no defect or want of power in the King to do this by the Law of *England*; the exceptions in the Statute of 21 *Jac. cap.* 3. do except such Grants out of that Statute.

The question is only a question of the manner of doing this by the King.

Secondly, Whether he may do it, without the advice of his Great Council in Parliament?

As there is no defect or want of power in the King, so there is no defect in the Law of *England*.

Thirdly, But if there be a necessity or a conveniency to the doing of this for the Crown, or for the government, for the subject or for trade?

Fourthly, It is not to be supposed but that the Lords and Commons in Parliament, will and ought to assent to such a Grant in Parliament as much as the Privy-Council, or any other of the King's Counsel, are obliged to advise it out of Parliament; and it ought to be so presumed by the constitution of *England*.

And I take this to be one of the *Ardua Regni*, which is a subject matter fit and proper for the consideration and deliberation of a Parliament, and ought not to pass by any Grant without them.

The trade of *England*, the property and liberty of the subject, the King's revenue by Tonnage, Poundage and Customs, the prerogative of the King, are under great restrictions by this Grant.

This work is too heavy for the pen of an Attorney, or Sollicitor, to put into a Bill for the Great Seal, without the deliberation of a Parliament.

The King cannot naturalize an Alien; but by Act of Parliament, the Law doth intruſt the King by his Letters Patent, to make Denizens of Aliens, but not to naturalize them.

It may be too much for me to give the reaſon of this, why the King hath not power to naturalize Aliens, as well as to denizenize them.

I humbly take the reaſon to proceed from the intereſt of the Subject, that the right of the Subject is immediately concerned in letting in Aliens to have the ſame right, liberty and freedom with *Engliſh* Subjects in *England*, and that this ought not to be granted to Aliens, not by the King under his Great Seal, without the conſent of the Lords and Commons, the Repreſentatives of the Subjects in Parliament.

There may be high State-Policy, ſometimes to naturalize an Alien, and that perhaps it cannot always wait the meeting of a Parliament; yet hath the Law placed this truſt in the King, to be exerciſed by the King, with the advice of the Lords and Commons in Parliament, and no otherwiſe.

The right of every *Engliſhman* in his freedom of trade in theſe parts, is concerned in this Grant, and every *Engliſhman* not admitted to trade by this Grant, is excluded of his freedom; and the King diſables himſelf to licenſe any other *Engliſh* Subjects to trade in theſe parts.

If the King had made ſuch a Grant to Aliens, and excluded all his *Engliſh* Subjects from trading in theſe places, or if the King had granted only to his *Iriſh* or *Scotch* Subjects, and excluded his *Engliſh* Subjects, had theſe been good Grants or legal?

If the King has the prerogative, the Company's Counſel urge in this caſe, all this might have been done, and theſe Grants had been legal, tho' excluſive of all his *Engliſh* Subjects.

It is enough, I humbly conceive, the King hath the prerogative of granting and conſtituting ſuch Companies, and making ſuch Grants in Parliament; and the Law allows no more in caſes of this nature, which concern the right of every Subject in *England*, and therefore ought not to be taken from him, but by his conſent in Parliament.

I think it may be admitted, the King may by his Great Seal, without the advice of the Lords and Commons in Parliament, conſtitute a Company for the good management of trade in theſe parts, or any part of the world:

But he cannot, as I humbly conceive, by any Grant under his Great Seal, totally exclude his Subjects of their right and liberty of trading in any place upon the ſeas or beyond the ſeas.

Rolls 1. *Rep. fol.* 4. The Taylors of *Ipſwich* caſe; the King may grant a Charter for good ordering of trade; this is for the benefit of the Subject, 2 *Ed.*III. *Britton*'s caſe.

The good management of trade is for the benefit of the Subject.

I ſhall endeavour to maintain, that the Subjects of *England* had a right to trade in theſe parts, before the making of this Grant, or the conſtituting any Company by the Crown in the *Eaſt-Indies*, and without any licence from the Crown; and by conſequence this Grant appropriating this trade to this Company, and excluding the reſt of the King's Subjects from their right and liberty of trade there, is an illegal Monopoly in trade, condemned both by the Common Law and Statute Law of *England:* and the Infideliſm of the Inhabitants of theſe places, is no bar nor impediment to the trade and commerce of *Engliſh* Subjects in theſe places, without leave or licence from the Crown, no more than in Chriſtian Countries.

That the prerogative of the Crown, to grant and iſſue out Writs of *Ne Exeat Regnum*, againſt this or that Subject, is no argument for this power to make ſuch a Grant as this, or to exclude his Subjects from trading in Infidel Countries.

The *Ne Exeat Regnum* is a Writ that may be granted by the Keeper of the Great Seal, without any expreſs Warrant or Command from the King, upon ſome ſuggeſtion, that the party may be required to give caution not to leave the Kingdom, till he anſwers ſuch a ſuit, or the like.

This Writ is never granted without ſome ſpecial reaſon or cauſe in a particular caſe; the Subject complained of may appear in *Chancery*, and anſwering the Cauſe, may diſcharge the Writ.

Such a Grant under the Great Seal, for ſome of the King's Subjects to go abroad, and for the reſt to ſtay at home, I conceive, would not be good in Law. No parity of reaſon, becauſe the King may, by his Writ of *Ne Exeat Regnum*, ſtay a Subject from going out of the Kingdom, that therefore the King may by his Grant hinder him to trade out of the Kingdom. Men may, and do trade by their factors and correſpondents, and do not ſtir out of the Kingdom; their perſonal attendance in their trade in places remote is not neceſſary.

The Subjects of *England* trading in merchandize, have, and always had a right to trade upon the ſeas, and beyond the ſeas, without licence from the Crown.

That they had ſuch liberty to trade with all Chriſtian Countries, I do not find it denied by any of the Company's Counſel, but Mr. Attorney; he hath yielded ſomething the other Counſel have denied, and denied what others have admitted; and in ſomething in his argument, he is, as I conceive, inconſiſtent with himſelf.

That trade is as free to all men as the air, that the ſeas are like the highways, free and open to all paſſengers.

Grotius *de Mari libero, Mare & littora Maris jure gentium ſunt communia.*

Grotius *de jure belli & pacis, cap.* 3. *par.* 12. *Illud certum eſt, etiam qui Mare occupaverit, Navigationem impedire non poſſe inermem & innoxiam, quando nec per terram talis tranſitus prohiberi poteſt, qui & minus eſſe ſolet neceſſarius & magis noxius.*

Cap. 3. *Ad Reges poteſtas omnium pertinet, ad ſingulos proprietas.*

Welwood's Abridgment of Sea-Laws, in his Epiſtle to the Duke of *Lenox*, and Earls of *Northampton* and *Nottingham*, Lord Admirals of *England*, *Scotland*, *Ireland*, and the Iſles, he preſſes them to maintain the privileges due for the maintenance of the Admiralty, and the juriſdiction thereof, and that they would vindicate the ſame from all ſort of encroaching and uſurping; but above all, the conſervancy of the ſeas (as the chief point of the Office) requires ſecurity and ſafety in common for all loyal Subjects, traders on ſea.

By his opinion there's a community for all loyal Subjects to trade on the ſeas, and not to be appropriated to a few.

Britton, cap. 33. *De Purchaſ.* he diſtinguiſhes of things corporeal and not corporeal, of things in common and things particular.

Choſes communes ſicome la meer, & le eyr, & la ryvaille de la meer, droit ſicome & de pecher en flos, & en meer, & en communes elves, & ryvires.

The King I admit hath a ſovereignty in the ſeas, and his ſovereignty in the *Britiſh* ſeas is excluſive of other Princes.

Mr. *Jo. Burroughs*'s ſovereignty of the ſeas; the King was *Dominus utriuſque Reipublicæ* when he had *Normandy.*

Julius Cæſar de bello Gallico, lib. 4. King *Edgar*'s title, *Baſileus omnium rerum, Inſularum Oceani, quæ Britanniam circumjacent, cunctarum Nationum, quæ infra eam includantur, Imperator & Dominus. Barthol. tractat. de Inſulis.*

Bal. de rerum Dominiis, videmus de jure gentium in Mari eſſe diſtincta Dominia ſicut in terrâ. Mare ipſum ad centum uſque milliaria pro territorio diſtinctaque illius Regionis, cui proxima appropinquat, aſſignatur.

I do agree that the King hath a prerogative in the ſea, and that the ſea is within the King's liegeance; and that, by this prerogative, Wrecks and Sturgeon, and other great fiſh in the ſea belong to the Crown. *Stat.* 17 *Ed.*II. *cap.* 11.

And that the Statute *de prerogativo Regis*, among other things, does reckon Wrecks, Whales and great Sturgeons to belong to the King by his prerogative.

And that the King hath his old cuſtoms, and theſe royalties of Wrecks and great Fiſh, by his conſervancy of the ſeas; Sir *Henry Conſtable*'s caſe, *lib.* 5. *fol.* 108. *b.* 5. *Ri.* 2. *pars* 2. The King hath Tunnage and Poundage, *pro defenſione Maris.*

But the King hath not any prerogative that I meet with, to exclude the Subject from the benefit of his right of Community in the ſeas, as fiſhing and trade.

As the King hath his ſovereignty upon the ſeas, and his Subjects owe him liegeance there; ſo have they their rights and properties in and upon the ſeas, and they are not to be invaded.

And the King hath the care and conſervancy upon the ſeas, and for his care, guard and conſervancy of his Subjects, their ſhips and goods upon the ſeas, he hath his Tunnage, Poundage and Cuſtoms.

Rolls Abridgment, Tit. Prerogative. The ſubſidies of Tunnage and Poundage are granted to the King for the ſafe-guard of the ſeas.

Stat. 1. *Ed.* IV. *cap.* 13. recites, that *H.* VII. and *H.* VIII. and other Kings, had granted to them, by the Commons in Parliament for the defence of the Realm, for the keeping and ſafe-guard of the ſeas, for the intercourſe of Merchandize ſafely to come into the Realm, and to paſs out of the ſame, a ſubſidy of all manner of goods and merchandizes coming in, and going out of the Realm.

And if any one be afterwards robbed by Pirates, or loſe his goods by misfortune, he ſhall ſhip as many more without paying Cuſtom.

Stat. 1. *Mary, cap.* 18. and *Eliz.* 19. the ſame renewed.

Stat. 45 *Ed.* III. *cap.* 4. And all rates and impoſitions upon ſhips, trade and traffick upon the ſeas, and beyond the ſeas, are laid by the King in Parliament, and can't be laid by the King alone, by any prerogative out of Parliament. 3 *Inſt. fol.* 181. *Commercium jure gentium commune eſſe debet, & non in Monopolium & privatum pauculorum quæſtum convertendum, iniquum alios permittere, alios inhibere Mercaturam.*

Dyer, fol. 296. 13 *Eliz.* That a ſubject of *England*, being a Merchant, may depart out of the Realm without the Queen's licence, to live there, tho' not to merchandize; and ſuch going out of the Realm is no contempt to the Queen, before a *Ne Exeat Regnum*, an expreſs prohibition or proclamation iſſue.

Stat. 5 *R.* II. *cap.* 2. doth affirm this by the exception in that Statute.

Dyer, fol. 165 & 296. agrees with *Nat. Br.* and ſays further, that no Merchant pays at the Common Law any Cuſtom for any wares or merchandize whatſoever, except three, *viz.* Wool, Wool-fells and Leather, expreſs for all Merchants, and confirmed by *Stat.* 5 *R.* II. *cap.* 1 & 2.

Rolls 1. *Rep. fol.* 4. Taylors of *Ipſwich* caſe, 12 *Jac. Banco Regis*; no trade mechanick or merchandizing ought to be hindered by the King's Patent in any ſort, but by Act of Parliament.

9 *H.* III. *cap.* 30. A Charter to hinder trade at ſea is void; a Charter that only 100 perſons ſhall trade is void in itſelf; and he was Chief-Juſtice at this time. 2 *Inſt.* 57. The Patent to *Greenland* was allowed, becauſe the trade was found at the peril of the party's life, who firſt diſcover'd it.

Taylors of *Ipſwich* caſe, where there is no new Invention, the King by his Charter cannot hinder trade.

The Patent to the College of Phyſicians, that no perſon ſhall practiſe Phyſick without their licence, would have been void, had it not been confirmed by Act of Parliament; yet this concerned not all the Subjects of *England:* and is a myſtery, and the Profeſſors thereof fit to be approved by perſons of ſkill in it.

It may be admitted, that the King for ſpecial cauſes may prohibit this or that Subject, perhaps, to trade in ſome certain places.

As the King may inhibit a Subject's going beyond the ſeas; and if a perſon goes beyond the ſeas after ſuch an inhibition, it is a crime in the Subject, for which he is puniſhable.

But it is hard to infer from ſuch particular inhibitions of particular perſons, to trade in particular places or countries, or to inhibit particular perſons from going beyond the ſeas, to infer univerſally, that the King may inhibit all his Subjects to go beyond the ſeas, or that he may inhibit all his Subjects except ſome few to trade.

There is a great difference between an inhibition from the Crown to this or that perſon to go beyond the ſeas, and an inhibition for all perſons to trade, except ſuch a Company.

This Grant imports a reſtraint upon trade, and upon the common liberty of the Subjects, for the benefit of ſome few of the Subjects, without any benefit to the Crown, or ſecurity to the Kingdom, as in the caſe of *Ne Exeat Regnum.*

The Company may licenſe Aliens only, and exclude Subjects. No truſt is placed in the Company, which the Law places in the Crown.

For the allay that is offered to this excluſion of trading for *Engliſhmen*, and *Engliſh* Merchants in theſe places;

Obj. That they are excluded only from trading in the *East-Indies* with Infidels, and the Inhabitants there, who are enemies to the Christian Faith and Religion.

And that it is for the common safety of the Christian Religion, that this is done to avoid the danger of corrupting and perverting Christians to Infidelism.

I do not meet with any authority for this power given to the King.

But that *English* subjects have the same freedom of trade with Infidels as they have with Christians in places beyond the seas; so they be not in enmity with the Crown of *England*.

Michelborne's case, *Brownlow 2d Rep.* 296. That case hath been observed already to have no authority, nor the Book authentick, and at best but some saying of my Lord *Coke*, in a matter not then in judgment before the Court, and that perhaps mistaken by the Prothonotary.

I oppose to the probability of this saying, the report of the Taylors of *Ipswich* case, in *Rolls Rep. fol.* 4. 12 *Jac.* The Lord *Coke* was then Chief-Justice of the *King's-Bench*, and says in the resolution in that case, that no trade mechanick or merchantable can be hindered by the King's Patent, not in any place, without an Act of Parliament; a Charter to hinder trade at sea is void.

How can this stand with what is published in *Brownlow*, that my Lord *Coke* should say in the *Common-Pleas*, before this time, that an *English* subject cannot trade with Infidels, without licence from the King; and that he had seen a licence in the time of *Edw.* III. to that purpose?

The reason given for that saying, is as weak, because they are common enemies to the Christian Faith.

They may be enemies to the Christian Religion, and not enemies to the Crown of *England*, or to the trade of *England*.

The Law denies trade and commerce only with enemies to the Crown, not with enemies to the Christian Religion.

It is sufficiently observed already, by the Counsel that have argued on this side, that there are treaties of trade and commerce between the Crown of *England*, and these places of Infidels, and that there are leagues and embassies between them. 4 *Inst.* 155. allows leagues of commerce, and trade, and peace with Infidels.

And what may be the consequence, to declare that to be Law, that they are incapable of the benefit of the Law of *England*, allowed to other Aliens, and that they are not to be protected from personal injuries by our Law?

12 *H.* VIII. 4. A Pagan beaten in *England* cannot sue, *quia perpetuus inimicus*.

And to put them in the same condition with outlawed and excommunicated persons, how doth this consist with the common justice of Nations, or with the policy of trade in an Island?

Obj. By Mr. Sollicitor, 5 *Inst. fol.* 32. A Jewess born in *England*, marrying a converted Jew, not dowable.

Mr. Sollicitor hath cited many cases and Records out of Mr. *Prynne*'s Collections, and from the *Rolls* themselves, how the Jews were treated in *England* in trade; what restraints and taxes were laid upon them by the Crown.

I do not take it that any of these Records reach the reason of restraint of trade, imposed upon *English* subjects by this Grant.

There's no restraint but that *English* subjects might trade with Jews in their own countries.

That Jews were used thus in *England*, is no argument that the *East-India* Company may use *English* subjects like Jews abroad in other Countries.

St. *Paul*'s first Epistle to the *Corinthians*, *chap.* 6. reprehends the Christians for going to Law one with another before Infidel Judges, who were their enemies; calling it a fault, and he speaks it to their shame, that they would not rather receive wrong, or make Arbiters of their own to judge between the brethren, than to go to Law one with another, and that before unbelievers; but there's no reproof to the Christians for conversing or trading with Infidels.

4 *Inst. fol.* 155. *Darcy* and *Allen*'s case, *Moor*'s *Rep. fol.* 674, and 675. are Authorities for leagues and commerce with Pagans, which signify leagues of commerce with Infidels.

Lord *Coke* cites several texts out of the holy Writ to justify it, out of the Books of *Joshua*, *Kings* and *Chronicles*.

If it be true, there was such freedom of trade by the Common Law for all *English* subjects with Infidels and Christians in all parts of the World, and that without licence from the King:

To restrain this freedom of trade to a Company of *English* subjects, excluding all others the King's subjects from their ancient liberty and freedom of trade, I take to be a Monopoly, and comes within the description and reason of the odiousness of Monopolies, so largely argued by Mr. *Pollexfen*, that I shall not take up the time of the Court in repeating what he hath said, and I cannot add to it.

Neither will I trouble the Court with mentioning the authorities he hath cited for that purpose; but refer myself to the same authority in that matter.

Yet I take it, under correction, that it is fit to be very well considered, if this Patent be not a Monopoly, and an ingrossing and appropriating of trade to few persons, which did belong and was common to all *Englishmen*, though a licence from the Crown was necessary for their exercise of this trade; yet every *Englishman* was capable of such licence, and was intitled to such licence from the Crown, and had a right to it.

Now hath this Grant put it out of the King's power to grant such licences, and hath placed this power, and the exercise of it in this Company, and by this means hath by this Patent granted and appropriated a trade to this Company, which was common to all his subjects; and hath given to this Company the sole licensing of traders in these parts, excluding all the subjects of *England*, which shall not be licensed by this Company, to trade in these parts: I conceive this makes this Patent and Grant illegal and void;

And makes this restraint in trade, which was common to all with the King's licence, now peculiar to this Company; and doth monopolize the trade and the means of trading, by placing it in the sole hands and power of the Company, even the sole licensing of traders, and they may by this Grant license Aliens only to exclude *English* subjects.

My Lord *Coke*'s description of Monopolies and Monopolists, Projectors and Propounders, doth sufficiently illustrate this, with reflecting upon what Mr. *Pollexfen* hath said in his argument, without repetition of them to the Court.

The Statute of *Magna Charta* declares the liberty and freedom Merchants have to buy and sell without restraint, by the old and rightful customs, except in time of war.

2 *Inst. cap.* 29 & 30. *Stat.* 9 *H.* III. 30. *Nisi publicè prohibentur*, saith my Lord *Coke*, is intended a prohibition by Act of Parliament.

Yelverton, 10 *Jac.* is of the same opinion with Lord *Coke* in his book about impositions upon trade; as I have it from a Gentleman in our profession. *Vide* his Manuscripts.

21 *Jac. cap.* 3. declares all Monopolies to be against Common Law.

Coke 11. Case of Monopolies, 84 *Moor*'s *Rep.* 673. nay, *Darcy*'s Grant for the sole importing of Cards from beyond the seas, and selling them for twenty-one years, 44 *Eliz.* prohibited and judged a void Grant.

Stat. 2 *E.* III. *cap.* 9. confirms *Magna Charta*, for going and coming with merchandize to and from *England*, according to *Magna Charta*.

9 *E.* III. *cap.* 1. damns all Charters to the contrary, as illegal and oppressive to the people. 4 *E.* III. *cap.* 2. confirms also *Magna Charta*. 25 *E.* III. *cap.* 2. doth the same, and makes Letters Patent to the contrary void.

11 *R.* II. *cap.* 7. 12 *H.* VII. 6. for free passage, *&c.* such Letters Patent restraining trade have been pursued in Parliament, with hue and cry, in all Parliaments and Ages.

Obj. This Grant is made to a Company for good government, and for the ordering of trade, and no Monopoly, and it is within the Proviso of the Statute 21 *Jac.*

Ans. Allowed in *Darcy*'s case by the arguments for that Grant, and if it be not for public good, the Grant is illegal.

If this Grant be neither good for the King, nor for the subject, nor for the trade of *England*, it cannot be said to be for the public good.

It cannot be good for the King, for it restrains him in his prerogative, as you would have it the King had power to license every subject; by this Grant he hath excluded himself of all power of licensing. He can license no subject to trade in these parts.

The King suffers in his Customs and in his Navigation.

The subject is excluded from trading in these places, without the licence of this Company.

Trade itself is restrained, for it is reduced and appropriated to a Company, and to few persons, which was common to all the King's subjects.

2 *Inst. fol.* 57. Lord *Coke*'s reason against it, for all the subjects are concerned in trade, therefore all ought to consent to it in Parliament.

Tho' they are a Company, they are not constituted by this Grant, to regulate and manage trade for *England*, but for themselves and their Company.

The heightening, the lowering of commodities, the raising, the lessening the rates of all the commodities of these places, the ingrossing of all the trade of these places, is in their power and in their pleasure.

There are no rules or qualifications in this Grant, injoining to admit numbers into this Company, or directing or requiring their licences for this trade. They have the trade in themselves, without any check or controul from his Majesty or the Government; they are independent from the Government by this Grant, they are without appeal.

Obj. That they are a Company, and that this Grant to them is within the exception of the *Stat.* 21 *Jac. cap.* 3.

Answ. 1. Because that exception doth not reach to Letters Patent made to Corporations, after the making of that Act.

No words of saving to any Corporation, that should be afterwards erected or granted.

2. This Proviso doth not make them better than they were before the making of the Act, only leaves them as they were before, and as it found them.

If they were legal before, they continue so; if illegal, they are so notwithstanding this Act.

Obj. That many Grants of this nature have been made to several Companies; to the *Turky* Company, *Muscovy* and *Hamborough* Companies.

Ans. They do not trade in Joint-Stock, and monopolize, as this Company doth; they do not exclude persons from their Company, as this doth. Mr. *Pollexfen* hath differenced them at large.

That there have been many Monopoly Grants in all Ages from the Crown, appears by the Statute of *Magna Charta*, by other Statutes made in *E.* IIId's time, *R.* II. *H.* VII. and King *James*'s time; and by the judgments given on Monopoly Patents in all ages.

In the case of Monopolies. In the Taylors of *Ipswich* case.

Peachy's case, 5 *E.* III. severely punished for procuring a licence under the Great Seal, that he only should sell sweet Wines in *London*, &c.

Inst. 3. *fol.* 181. *Darcy* and *Allen*'s, *Mar. Rep.* 44 *Eliz.* Oppression is older than the Law made to punish it; Monopolies are as old as the Laws made to punish them; it is no argument to justify injuries by their ages.

Sir *Arthur Ingram*'s Patent, 17 *Car.* II. for the *Canary* Company, granting them the sole trade there. There are glorious recitals in that Patent, of advantage to the King's subjects, and for the regulation of trade; making the Company a body politick, that they should have the sole trade to those Islands, excluding all others under pains and forfeitures, with a *non obstante* to the Statute against Monopolies; Judgment was given against this Patent, *Mich.* 20 *Car.* II.

11 *Rep. fol.* 54. Taylors of *Ipswich* case. Compare this case with the Company of Taylors case; for the good of Trade and Company, and the Orders and By-laws fair and plausible, yet damned, because a restraint on trade.

The Company had the profit of the reformation. No other difference between the cases, than that This is a mighty, That a petty Company.

14 *Car.* II. *cap.* 24. That Statute provides, that persons by having Stocks in this Company, shall not be adjudged traders within the Statutes against Bankrupts, which is called by Mr. Sollicitor the Judgment of the Parliament for this Grant.

Says Mr. Sollicitor, *Stat.* 14 *Car.* II. *cap.* 24. takes notice of this Company, and that it is an advantage to the Nation and Trade of it.

Stat. 29 *Car.* II. 1. takes notice of this Company, and taxes every Capital Stock in the Company at 20*s.* for every 100*l.* Capital Stock in the Company.

Ans. This Poll-Act taxes all Guilds and Fraternities, Bodies Politick and Corporate; this doth not make them legal Corporations, Guilds or Fraternities.

The

The Judgment the Parliament had of this Grant doth better appear upon the Journals of the Houſes of Parliament, of the complaints made to the Parliament, that this grant was a grievance.

It is no new thing to mention proceedings upon Journals of Parliament: and the Judges take notice of them. *Hob. Rep. & Rolls.*

And in a cauſe of this conſequence it may be proper to adjourn it to Parliament, where it may receive the Judgment of his Majeſty in Parliament.

This will be a ſafe eſtabliſhment of the Law in this great caſe, which concerns the King's prerogative, the right of the ſubject, and of the whole Kingdom in the trade of the Nation.

It will meet there with a Judgment that will certainly eſtabliſh it, if it be for the Intereſt of the King and Kingdom; but if for the enlarging of this Great Company, it will meet with the common fate of projecting Patents againſt the intereſt of the King and Subject.

It is a mighty argument for the reputation this Patent had with the Parliament, and the opinion they had of it, by taxing their Capital-Stock at 20 *s. per Cent.*

So they do reputed Eſquires, at 5 *l.* by the head.

Sollicitors, Attorneys, and oppreſſive Uſurers, have the like eſteem with this Act of Parliament.

Stat. 3 *Jac. cap.* 6. This Statute is but declaratory of the Common Law, and made to avoid queſtions and ſuits in Law; which might be occaſioned by Charters of impropriating the trade of *Spain* and *Portugal*, and then in making for the trade of *France*.

If the miſchiefs recited in that Statute, and the evils happening to *England*, and the King's ſubjects be true, without all heſitation,

Thoſe Charters mentioned in that Statute, and condemned by that Statute, were not only grievous, but illegal, and Monopolies;

It appropriating the trade of theſe dominions to few Merchants, and excluding all other his Majeſty's ſubjects from the trade;

Debarring the King's ſubjects in *England* from that free and common traffick, which his ſubjects in *Ireland* and *Scotland* had;

To the manifeſt impoveriſhing of Maſters, Owners of Ships, Mariners, Fiſhermen, Clothiers, Tuckers, Spinſters, and many thouſands of handicrafts-men;

The decreaſe of his Majeſty's Cuſtoms, Subſidies, and other Impoſitions;

The ruin and decay of Navigation;

The abating of the prices of our Wool, Cloth, Corn, and ſuch like commodities;

The enhancing of all *French* and *Spaniſh* commodities, that all Owners and Mariners, with divers others, ſhall be cut off from the ordinary means of maintenance, and preſerving their eſtates;

And all *French* and *Spaniſh* commodities ſhall be in a few hands;

To the hurt and prejudice of all the ſubjects; therefore enacts, it ſhall be lawful for all his Majeſty's ſubjects in *England* and *Wales*, to have free liberty to trade into, and from *Spain*, *France* and *Portugal*, in ſuch ſort as was accuſtomed at any time in his Majeſty's time.

Stat. 4 *Jac. cap.* 9. Made to confirm the Charter to the Company of *Exeter* Merchants, upon ſingular reaſons recited in the Act of Parliament, declaring the *Stat.* 30 *Jac. cap.* 6. ſhould not impeach that Charter, being for publick good.

Stat. 45. *Ed.* III. *cap.* 4. That no impoſition ſhall be charged upon Wool in no ſort, without the aſſent of the Parliament: this *Stat.* was not made out of neceſſity, for it was the Common Law; yet it was thought fit by the Parliament at that time, to declare the Law by an Act of Parliament.

Stat. 1. *H.* IV. *cap.* 16, 17. Againſt Letters Patent made to ingroſs trades, *&c.*

So ancient was the Monopoly, and ingroſſing of trades by illegal Letters Patent.

When illegal things turn to a grievance, 'tis uſual to ſuppreſs them by Acts of Parliament, and not to leave their Judgment to the ordinary Courts of Juſtice, without declaration firſt had in Parliament.

Stat. 21 *Jac. cap.* 3. This Statute takes notice, tho' the King's Diſpoſition, Judgment and Declaration was, that all Monopolies were againſt Law; and that no Suitors ſhould move for ſuch Grants yet upon miſinformations and untrue pretences of publick good, many ſuch Grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of the ſubject, contrary to the Laws of the Realm.

For the avoiding whereof, that Statute is made againſt all Grants to any perſon or perſons, bodies politick or corporate, of any Monopoly; and declares the ſame illegal.

This Statute doth quadrate with the deſcription of a Monopoly.

So doth the *Eaſt-India* Company's Charter in all its points and parts, and in the exerciſe of it, quadrate with theſe Monopolies, and their deſcriptions in our Law-Books and Caſes;

With my Lord *Coke*'s deſcription of a Monopoly, in his 3*d Inſt. cap.* Monopolies.

If Mr. *Sandys* be pictured in Mr. Attorney's argument, I take it the *Eaſt-India* Charter is pictured in this Statute.

The Act of Tunnage and Poundage, 12 *Car.* II. ſays, The Commons in Parliament repoſing truſt and confidence in your Majeſty, in and for the ſafe-guard of the ſeas, againſt all perſons intending, or that ſhall intend the diſturbance of your Commons, in the intercourſe of trade, and the invading of this your Realm, give and grant for every Tun of Wine of the growth of *France*, that ſhall come into the Port of *London*, by your natural-born ſubjects, 4 *l.* 10 *s.* by ſtrangers and aliens, 6 *l.*

The like notice taken of Poundage, to be paid by ſubjects and aliens.

Fol. 67. Rates in Wares, Silks imported in Ships *Engliſh*-built, directly from the *Eaſt-Indies*, the pound weight containing ſixteen ounces; Subſidy duty 15 *s.*

Of the Manufacture of *Italy*, imported from thence in *Engliſh*-built Ships, the pound weight containing ſixteen ounces; duty 1 *l.* 13 *s.* 4 *d.*

This Act diſtinguiſhes between Subjects and Alien Importers, between *Engliſh* and Foreign Ships, not between the *Eaſt-India* Company only and Aliens: ſhall this Law made for *England*, be now appropriated to this Company, and the reſt of *England* excluded by this Grant againſt this Statute?

This Law is made for all the King's ſubjects and their *Engliſh*-built Ships.

The conſideration of this Subſidy moves from all the ſubjects, the Grant is by all, and the benefit ought to be for all the ſubjects of *England*.

The Law is the ſame as to foreign Importation from the *Indies*, as to importation from *Italy*, to which this Company doth not pretend.

The Act for encouraging and increaſing of Shipping for Navigation, 12 *Car.* II. the beſt Law that ever was made for *England* in that Parliament, except the Laws for the prerogative:

The Proviſo in it follows: Provided that this Act, nor any thing therein contained, extend not, or be meant to reſtrain the importing of any *Eaſt-India* commodities, laden in *Engliſh*-built ſhips; and whereof the Maſter and three-fourths of the Mariners at leaſt are *Engliſh*, from the uſual place or places of loading them, in any part of the ſeas to the *Southward* or *Eaſtward* of *Cabo Bona Speranza*, although the ſaid parts be not the places of their growth.

This Law made for the increaſe of *Engliſh* Shipping and Navigation, doth this Company invade; and appropriate this Shipping and Navigation to themſelves, by excluding all other *Engliſh* ſubjects.

Is this for increaſe or decreaſe of *Engliſh* Shipping and Navigation, to confine it to few hands, excluding many?

There is neither Common nor Statute Law can hold this Company.

I hope the Judgment of this Court will bind them; and that this Act of Parliament will prevail againſt this Company.

The Proviſo is, for all *Engliſhmen* to carry in all *Engliſh*-built Ships any *Eaſt-India* commodities brought from Infidels.

The Charter ſays, this Company, and the Ships and their men ſhall only carry. Which ſhall prevail, the Act of Parliament or the Charter? Theſe laſt mentioned Acts of Parliament diſtinguiſh between Subjects and Alien Importers, between *Engliſh* and Foreign Ships;

Not between the *Eaſt-India* Company only, and Aliens: Shall theſe Laws made for *England*, be now appropriated to this Company?

Shall they have the benefit of it? Can the King's Grant take from his ſubjects the advantages given by Acts of Parliament, and appropriate to ſome what is granted to all?

I crave leave to obſerve ſome things, by way of anſwer to Mr. Attorney's poſitions and inferences in his argument yeſterday.

He diſtinguiſhes between inland and foreign trade, he did allow the ſubject the benefit of a home trade without reſtraint.

That the Huſbandman might plough.

That one *Engliſhman* might privately ſell to another by the Common Law, without licence from the Crown.

Yet one ſubject could not buy, ſell, or trade with another publickly in an open fair or market, without licence from the Crown, and this for the preſervation of the peace, to prevent public aſſemblies and meetings: And that no Fair or Market could be kept, but by licence from the Crown.

I think there are Fairs, Markets, and Corporations in *England* by preſcription, and their beginning is not known, and ſuch are allowed by Law.

And preſcriptions are compared to the head of *Nile*, which could never be diſcover'd.

And that ſuch ancient preſcriptions are as ancient as the Grants of Kings or Inhabitants in the World.

And for foreign trade: He laid it down for a poſition, that no ſubject could trade abroad without the King's licence in any part of the Chriſtian World.

I do not find any authority for this, practice is againſt it.

The reſt of the Counſel that argued for the Company did not inſiſt upon it; nay, they did ſeem to admit a trade for *Engliſh* Merchants with Alien Chriſtians, without the King's licence.

This is againſt the authority of *F. N. Br.* 85. *Dyer* 165, 296. againſt Lord *Coke*'s opinion, *Rolls Rep.* Taylors of *Ipſwich*, *Stat.* 9 *H.* III. *chap.* 30. *Magna Charta*, 2 *E.* III. *cap.* 9. 18 *E.* III. *cap.* 3. 25 *E.* III. *cap.* 2. 38 *E.* III. *cap.* 2. 5 *R.* II. *cap.* 2. 12 *H.* VII. *cap.* 16.

Stat. 26 *H.* VIII. *cap.* 10. *Raſtall* 566. which gives the King for a limited time power to licenſe trade and traders in ſome meaſure, in ſome parts, in ſome commodities. *Vide* the Statute.

His diſtinction for Merchants to trade, without coming to the Staple: and therein he diſtinguiſhes between Merchants and Traders, who are obliged to come to the Staple.

What warrant hath he for this diſtinction? The Prayer of the Commons to the King in Parliament: the Petitions of Merchants to the King: the King's reſtraint of Merchants in their trade, notwithſtanding Acts of Parliament: the continuing of the Staple, notwithſtanding Acts of Parliament ſeeming to the contrary, give him a handle for this argument.

1 *H.* V. 7. The Prayer of the Commons to the King, to ſend foreign Merchants out of the Kingdom: the King's anſwer, *Roy adviſera.* 2 *H.* V. *cap.* 5.

Thoſe were Bills in Parliament preſented to the King for the royal aſſent; ſo were many of the Rolls of thoſe Ages, preſented to the Kings for their royal aſſent, eſpecially in things which any way concerned the King in his prerogative.

The Commons did not demand their rights in their Bills, but by Petition claim their right.

Such anſwers of *Roy adviſera*, are no argument againſt the right of the ſubject.

Neither is the Petition or Prayer of the Commons in Parliament, in any matter that is their right, to the Crown, any argument againſt their right.

This was the uſual method, and ancient courſe of preſenting Acts of Parliament to the Kings, eſpecially in *Rich.* II's time; *H.* IV. and part of *H.* V. then corrected upon ſome complaints in Parliament, *tempore H.* V. and *H.* VI. which may be read at large in the Rolls of Parliament.

It is their uſual way to ſecure their rights thus; ſo is the Petition of right in *Car.* I.

The Prince's caſe, *Co. Tit.* 8. *fol* 19. ſhews the various forms of Acts of Parliament, in the ſeveral reigns of Kings, ſometimes by way of Grants, *&c.*

That the Staple did continue till loſt, by the loſs of *Calais.*

Stat. 2 *E.* III. *cap.* 9. That the Staples beyond the ſeas, and on this ſide the ſeas, ordained by Kings in times paſt, and the pains thereupon provided, ſhall ceaſe, *&c.*

This Statute took away the Staples ſet up by the Kings.

But there was a Staple ſet up by Act of Parliament, and reformed and altered by ſeveral Acts of Parliament, did continue notwithſtanding the Act of 2 *E.* III.

But *Engliſh* Merchants are not within any of thoſe Statutes, or the meaning of them.

And

And I do not find that Mr. Attorney gives any account how these Staples were taken away by Law, but vanished at the taking of *Calais*; he hath not told us the beginning or ending of the Staple by Law; I know no Common Law for them, or his distinction.

Rolls Abr. Prerogative, Title Proclamation, pl. 6. 27 *E.* III. by the Statute of the Staple, it was ordained, that Merchants-Aliens might bring from beyond seas merchandize of the Staple, but not Merchants-Denizens.

Because Merchants-Denizens doubted to be impeached in time to come for their merchandize, which they passed by virtue of such Grant and Proclamation, forasmuch as they were made out of Parliament.

Ideò it is granted in Parliament, 34 *E.* III. *cap.* 2.

Stat. 5 *R.* II. *cap.* 2. This Statute prohibits the exportation of Gold or Silver, and that no person other than Lords and great Men of the Realm, true and notable Merchants, and the King's soldiers, go out of the Realm, without the King's licence.

This is declared to be after publication of this ordinance, which implies such licence was not necessary before the making of this Statute.

Mr. Attorney was pleased to allow, licences to particular persons to trade were not revocable; but Companies having such licences may be dissolved by *Quo Warranto*.

Therefore more safe to fix trade in Companies than persons.

Then doth this Charter do the greater wrong to particular persons, who by Law may have such licences, which cannot be taken from them.

And it doth not appear, but *Sandys* hath such licence, or may have, and ought not to be restrained therein by any Grant.

Mr. Attorney did turn this matter upon a question of fact, which will, or will not make this Company and their Grant a Monopoly:

Viz. Whether this Company and their Grant be a publick good and advantage to the trade of *England?*

This is a matter not to be decided in this Court, I suppose, and we cannot come at this question in this case; therefore not fit, safe or wise to determine the Law in this cafe, till the fact be cleared and settled, and that in such a Judicature where this question may be determined and settled, and the Law thereupon declared and established.

It appears to the Court, there are many illegal things in this Grant.

That the Grant is a restraint to the trade of *English* Merchants.

That it is a new Grant.

That it may be dangerous to establish such Grants by Judgment in a Court of Law.

That there are some things in the *Canary* Patent, in *Darcy*'s Patent, nay, in the Patent for sweet Wines, that were commendable and useful; yet that little good did not prevail, but the whole perished, and was poisoned in the Monopoly of those Grants.

It is advisable how this Court, in this action, can adjudge for the Plaintiffs upon this Record, where the whole Grant is set forth upon Record in pleading; and it appearing to the Court, that some parts of this Grant are manifestly illegal, and may occasion oppression to the subject, and that the best parts of this Grant are doubtful, if good or useful for *England*, or the trade of it:

It cannot appear upon this Roll, for what part of this Grant the Court shall adjudge for the Plaintiffs, and against the Defendant.

And it cannot appear what part of it doth appear to the Court to be illegal.

This may turn to a precedent for the whole Grant in after-ages, since we judge by precedents: And this precedent may occasion more Monopoly-Patents, and this Judgment give them sanction.

As for the second point in this case; whether this action be maintainable by the Company against the Defendant *Sandys*, admitting their Grant to be good:

1. To allow such an action in a Court of Law for this Company against a single subject, will be to give them opportunity to ruin any subject, that shall oppose them in trade.

They that are too great for all other Companies in *England*, must be too strong for any private subject in contest.

2. If their Grant be a legal Grant, they have sufficient pains and penalties in it to reduce any person to compliance with their Grant, without the aid of actions in *Westminster-hall*.

And the Grant which makes them a Company, and doth constitute them and their power, doth direct the remedies, ways and methods to support and maintain them in their power and Company, in all the things granted them; and there being no remedy given them by action, I think it may be hard to adjudge, that an action will lie for them in this case, against the Defendant.

In cases of new Injuries created by Grants, or by Act of Parliament, and remedies created to repair such injuries in the Grants and Acts that create them, such remedies are to be pursued, and not new remedies to be given in Courts for such new-created Injuries.

This is an action brought upon the Grant, where no such remedy is provided by the Grant, and other penalties are provided by the Grant.

The Grant directs and gives forfeiture of all the goods imported against it, and the Ship wherein they are imported; but the Grant doth not express the offender to answer damages to the Company, which is required by this Action, and no special damages are laid in the declaration.

This is like a penal Statute, which creates an offence, and adds a penalty.

The party ought to sue for such penalties, and not to sue for damages in an action upon the case.

This may be the case upon the Statute, 2 *E.* VI. for tithes, it gives debts and no damages; so the case doth not lie upon that Statute.

Upon the Statute for forcible entries, and upon all other Penal Laws, which give penalties by single, double, or treble damages;

It was never practised to bring actions upon the case, upon such Statutes, unless in *Darcy*'s case, which action miscarried, *Moor* 671.

I humbly conceive this action is not like actions upon the Custom of *London*, or upon Duties to the City of *London*, which have been brought by way of Indebitants for the duty.

In all these cases there was a certain duty created by the Grant, Custom or Charter, which made the party Debtor to the Corporation; but in this case here is no duty created;

Only an injury declared, and a penalty directed, which ought not to be turned to an action upon the case, in my opinion.

I hope the Court will not make a precedent, for the Company to multiply actions against all persons that they conceive to be interlopers or aggressors upon their Grant, Company or Trade.

There is no special damages laid in the declaration to accrue to the Company:

Only in general, that the Defendant, contrary to the form and effect of these Letters Patent, did trade within the limits of their Grant, without licence of the Company, with a Ship called The *Expectation*, to the prejudice of the Company.

Williams's case, 2 *Co.* 5. *fol.* 72. Defendant being Vicar of *Alderbury* in Com. *Salop*, is obliged by himself, or his Chaplain, to celebrate divine service at *Woolaston*, and within the parish of *Alderbury* every *Sunday*, and to administer the sacrament to the Plaintiff, his servants and tenants within his said Manor, time out of mind:

And that the Defendant had not celebrated divine service, or administered the sacrament to the Plaintiff, his servants and tenants for a certain time, *ad damnum* of the Plaintiff. *Non cul.* pleaded, verdict for the Plaintiff, moved in arrest of Judgment, that an action upon the case doth not lie. Had this been a private Chapel for himself and family, an action upon the case had lain; for then no other person could have brought an action but himself; his servants could not.

But in this action, his tenants might bring their actions.

Which may occasion multitudes of suits, for one default in the Plaintiff.

The same may happen in this case; every Member of this Company may bring the like action against this Defendant.

And as in that case the Plaintiff had his remedy in the Ecclesiastical Courts;—so hath the Company their remedy, as the King had against offenders, in trade without licence.

If licence was necessary by Law, by contempt to his royal prerogative, or proclamation:

Compare it to the case of a nuisance in the highway, no action lies for it, without special damages.

They do not aver in the declaration, that this trade cannot be managed without their Company.

If there be any legal punishment provided for such offenders, such punishments are to be pursued, and not new remedies by actions created, to the grievance and oppression of the subject.

Darcy and *Allen*, Action on the case, brought by *Darcy* against *Allen*, for selling Cards, contrary to his Patent; Judgment *pro Def.*

Williams's case, 5 *Co. p.* 72. *Mary*'s case, *lib.* 9. *publicum damnum* is not to be reformed by action upon the case, but by publick proceedings by indictment: or the like case lies *pro privato damno.*

The proceeding of the Company in this action, is supposed to be to right the Publick in the name of the Company; not for the reparation of private damage, but to repair the Publick in their Company.

The Company is in the nature of the late fancied *Custodes Libertatis Angliæ*; a notion to serve the Publick, as they would have it;

And not to be used to recover damages for private injuries, but to support and save the trade in publick actions.

This Charter restrains the King in his prerogative, the Kingdom in its trade, the subjects in their freedom to trade; the King is concerned in his revenue, the subject in his right, in this question.

What the Company cannot accomplish by the forfeitures, powers and penalties of their Charter; they design to establish by the Judgment of the Court, in this action for the Company.

I know the Justice of this Court is superior to this Company, and it is placed in safer and better hands than trade or regulation of it in the Company for *England.*

I therefore pray your Judgment against the Company, and their action, for the Defendant.

Term. Hill. 36 & 37 *Car.* II.

This Term the Judges * delivered their opinions *seriatim* in this great cause. *Walcot* was but short, and his reasons being included in those of *Holloway*'s, *&c.* who spoke after, I have omitted them, to avoid repetition.

Holloway said, all might be reduced to one single point, which was, whether the Charter granting a sole trade to this Company, exclusive to all others, be good?

That this was a great point, both in regard of the King's prerogative, and the People's liberty.

He divided all trade, *ut supra* was done *per Sawyer*, Attorney-General.

Foreign trade with Christians hath been opened by several Acts of Parliament; and at Common Law 'twas an inherent prerogative in the Crown, that none should trade with foreigners without the King's licence. And the King having this prerogative at Common Law, an Act of Parliament is necessary to divest him of it; which none hath done but to some particular places.

Michelborne's case, cited by those that argued for the Company, hath not in any sort been answered by the other side.

This is a trade not to be carried on but by a Company; and none can erect a Company but the King.

The King hath the sole power of this trade, as of war and peace; and by declaring a war, he may determine a publick trade, tho' settled by Act of Parliament.

No Parliament ever look'd on this as a Monopoly, nay, so far from it, as in the 14 *Car.* II. *cap.* 24. this Company, *&c.* are said to be an advantage to the Publick; and that Act was made, that the persons of this Company, *&c.* should not be discouraged in those honourable endeavours, for promoting publick undertakings; then how can this be a Monopoly?

It never hath been questioned as such by Parliament, though they have look'd narrowly into the King's prerogative, even to the questioning some things that were his undoubted right; and concludes *pro Quer.*

Withins. Here are two points;

First, Whether Letters Patent giving a sole trade to a Company, exclusive to others, be good?

Secondly, Whether, in case if they be good, an action lies?

He thinks there is but one question, and that whether the action will lie or not, as the Company hath an interest or not. For if they have an interest by these Letters Patent, then the action will unquestionably lie.

* Skinner's Reports, p. 223, 224, 225, 226.

The case depending solely on foreign trade with Infidels, he shall apply to that, and not meddle with inland trade.

'Tis a great point as to the King's prerogative, and the people's liberty.

First, He takes it, that by the Common Law the King has a prerogative to restrain all his subjects from going beyond sea, as *F. N. B.* 85. 'Tis true *F.* says, every subject may go out of the Realm to merchandize, *&c.* but that is to be understood, he shall not be punished for so doing, but the King may prohibit him, as appears by the same Book; and that three ways, (*i. e.*) by the Great-Seal, the Privy-Seal or Signet, or by Proclamation. And tho' in *Dyer* 165. cited by Mr. *Williams*, 'tis said, that before *R.* II. subjects may go beyond sea, yet 'tis there agreed, the King may prohibit; and a *quære* is made, if a going over without a licence be not a contempt, though there was no prohibition. Afterwards in the same Book 296. 'tis holden such departure before express prohibition is no contempt; but all the Books say, when there is a prohibition, then it is a contempt.

As none may go against or without the King's licence; so if they are gone, the King may recal them, as appears by *Dyer* 375.

'Tis *objected*, the King may prohibit some particular persons by writ; but he cannot prohibit all his subjects.

Answered, There are several ways of prohibiting by writ, which is directed to particular persons; and by proclamation, which is general.

And all the King's subjects are bound to take notice of the King's Great-Seal and Privy Seal.

Secondly, The King hath the controuling power over all trade with Infidels; he may say, over all foreign trade in general: he saith, *Michelborne*'s case goes farther than *Fitzherbert*'s *N. B.* and he hath not heard any authority offered against *Michelborne*'s case, as to trade with Infidels; and the opinion in that case seems to be given upon such a question as this. So that it is the judgment of the Court in a like case, for he who was then Chief-Justice delivered it, and none of the Court opposed it.

The prerogative of making leagues is in the King, and he may make them as he pleases; then it would be hard, the Law should give the King a power to make leagues, and yet the subjects should have a right to do such things to break them. But though the subjects may not trade with Infidels, yet the King may license them, or trade himself; as the *Jews* were prohibited commerce with the Nations, yet *Solomon* traded with *Hiram* King of *Tyre* for Gold.

The several Licences and Petitions, cited and shewn by the Plaintiffs Counsel, though they prove no right in the Crown, yet are evidences of it; for to what purpose should there be so many licences from the Crown, and petitions from the Commons to the King, for liberty to trade, unless the King had such a right? Therefore, unless where the Parliament hath opened it, the King hath power to controul all foreign trade, especially with Infidels.

Objection. But though the King had such right, yet now the prohibiting part of the Patent is void by the Statute of *E.* III. which is pleaded; and the enabling part of the Patent is void by the Statute of Monopolies.

Answer. As to the first, that Statute relates not to this trade.

First, Because no such trade then in being; so that the Parliament could have no regard to it, unless by prophecy, neither could they know whether it would prove hurtful or beneficial to the Kingdom. But take the Act at the largest, yet you must take it to relate to the subject matter, which was for Wool; so that the words *shall be open* may be taken *free from Custom*, and to have no other impositions upon them.

As to the *second*, whether a Monopoly: he says, a Monopoly is no Immoral Act, but only against the politick part of our Law; which if it happen to be of advantage to the Publick, as this trade is; then it ceases a so to be against the prohibiting part of the Law, and so not within the Law of Monopolies.

The Company hath been in possession of this trade near one hundred years, and that possession will in time give a right: and cited *Grotius de Jure Pacis*, &c. and concludes *pro Quer.*

The Argument of the Lord Chief-Justice *Jefferies*, at the Court of *King's-Bench*, concerning the Great Case of Monopolies.

The *East-India* Company Plaintiffs, and *Thomas Sandys* Defendant; wherein their Patent for trading to the *East-Indies*, exclusive of all others, is adjudged good.

Entered *Trin.* 35 *Car.* II. *B. R. Rot.* 126. and adjudged *Termino S. Hilar. Annis* 36 & 37 *Car.* II. & *Primo Jac.* II.

P L E A.

1. DEfendant demands *Oyer* of the Letters Patent which are set forth *in hæc verba:* In which (as it hath been observed) the penalty of forfeiture of ship and goods, one moiety to the King, and the other to the Company, and imprisonment, is omitted.

2. There is a clause, that the Company may license strangers or others, and that the King will not without the consent of the Company give licences, *&c.*

3. That none shall have a Vote in the General Assembly, but he that hath 500*l.* stock.

4. And there is another clause, which hath not been mentioned by the Counsel on either side; that if it should hereafter appear to his Majesty or his successors, that that Grant, or the continuance thereof, shall not be profitable to his Majesty, his heirs and successors, or to this Realm, that after three years warning, under the Privy-Seal or Sign Manual, the same should be utterly void.

For Plea, the Defendant says, by an Act of Parliament, made 15 *E.* III. it is enacted, that the sea shall be open for all Merchants to pass with their merchandizes where they please; and that the Defendant, by virtue of that Act, and according to the Common Law of *England*, did traffick within those places mentioned in the declaration, without any licence, and against the will of the Company, as the Plaintiffs have declared, *prout ei bene licuit.*

Plaintiffs demur.

In the debate of this case, at the Bar, there were several matters discoursed of; but at length by the consent of both sides, as I apprehend, the case was resolved into these two points:

1. Whether these Letters Patent giving or granting licence or liberty to the Plaintiffs, to exercise the sole trade to the *Indies*, within the limits of their Grant, with prohibition to all others, be good in Law?

2. Admitting the Grant good, whether this action be maintainable for the Plaintiffs?

Now to let me into the debate of these two points: I think not amiss, to remember some things that have been mentioned by the Counsel, that I think are no ways in question.

I. At this time I conceive, therefore, that whether the King may prohibit his subjects from going beyond seas by writ or otherwise, by his absolute prerogative, without giving any reason, is not the question; nor sure was it ever thought a question, till it was lately stirred at the bar. For the writ in *Fitz. N. B.* 85. and the *Register* import no such thing; and our Books say, the surmises mentioned in those writs are not traverseable: so is *Dyer* 165 & 296. For surely the King may restrain his subjects from going beyond sea, and is not bound to give any reason for his so doing; but that is not now in question.

II. In the next place, I do not conceive there is any difference (tho' much discourse hath been about *Indians* and *Infidels*) whether the *East-Indies* were, at the time of the Grant of this Patent, inhabited by *Christians* or *Infidels*; tho' by the way, in the debating of this case, I shall shew perhaps that matter may in some measure affect the Defendant, but will not at all affect the Grant to the Plaintiffs. So that I conceive, that whether this country or place, or any other inhabited by *Christians* or *Infidels*, that is not otherwise provided for by Act of Parliament, will make but the same question.

III. Whether every clause and article in these Letters Patent, *viz.* touching forfeiture of ship and goods, imprisonments, or divers other clauses contained in the Charter, be legal or not, is not now in question. For surely it would be hard to maintain them all, and therefore the Plaintiffs Counsel have avoided those questions, by bringing this action; and tho' the Defendant's Counsel have mentioned them, yet surely it was only intended to fully the cause, and not that they thought them to affect the question.

IV. Nor is it the question, whether by this Grant to the Plaintiffs the King has fettered or confined his prerogative, by putting in a covenant to exclude himself from granting licences to others of his subjects to trade within the limits of the Plaintiffs Charter; tho' Mr. *Williams* (always a friend to the King's prerogative), in tenderness and care thereof, seemed to be surprized by the inconsiderate extravagancy of the Grant; and would have us believe, that he was afflicted with the dismal consequences that must necessarily ensue by the King's parting with so great a prerogative; and that either by the advice, consent, or the inadvertency of his Attorney-General, and the rest of his Counsel, by having a greater regard to the *East-India* Company for the sake of their money, than they had to the King in discharge of their duty. To acquit them and us, therefore, of that dilemma, I am of opinion, though it makes nothing to the question that is now before us, the King may grant licences to any of his subjects to trade to the *East-Indies*, notwithstanding the Charter, or any article, clause or condition therein contained, to the contrary; and notwithstanding any caution or advertisement, that in his argument he gave to the King, or his reflection that he made upon his Counsel, either for their ignorance or hasty inadvertency in the passing of that Grant. And I am the rather induced to be of that persuasion, for that the most learned of our profession, whose opinions have been quoted by him and others that have argued on the Defendant's side, were then of the King's Counsel, and were privy to, and advised both these Letters Patent, and all others of the like nature, that have been granted for these hundred years last past. I therefore think fit to say, that I believe Mr. Attorney-General, and the rest of the King's Counsel, have discharged their duty as well to the King, by maintaining of this Grant, as Mr. *Williams* has in this instance manifested his loyalty, by endeavouring to destroy it. In short therefore, as I said before, every clause in this Charter is not to be maintained, and therefore is not to affect the question now to be determined.

V. Whereas it has been objected, that though upon the pleadings it is agreed, that the Defendant never was a member of the *East-India* Company, nor had any licence from them to trade to the *Indies*, yet he might have a licence from the King; which, as I conceive, the King is not debarred to grant by any clause in the Letters Patent; yet I am of opinion, that if the Defendant had any such licence, it ought to have been shewn on his part; which not being done, it ought to be taken by us, as I believe the truth of the fact is, the Defendant never had any such licence.

VI. It was observed, that the Plaintiffs in their declaration had alledged, that this trade could not be managed but *per hujusmodi Corpus Corporatum*; and by this means they had excluded the King from constituting any more Companies to trade within their limits, tho' perhaps the advantage of this Kingdom might hereafter require it. Nay, tho' the *Indians* might desire a further treaty of commerce, or that the trade of these places might require more Companies to be erected; yet say they, this Grant hath made the Plaintiffs a mere Republick, and thereby has altered the constitution of *England*, in the management of trade by Commonwealths, by placing it in Companies, who (were they independent upon the Crown) are truly so called. Yet in as much as I did before observe, that the King is not by this Grant either excluded from making any new treaties with the *Indians*, or from making any Corporations, or granting any other licences to any of the rest of his subjects, notwithstanding any of the clauses in the Charter; so I am of opinion that that objection also does not affect the question now to be determined: and for that reason, amongst others, I thought it not improper to mention that Clause in the Charter that was omitted at the Bar, which the King has annexed as a condition to his Grant; that if it should hereafter appear to his Majesty or his successors, that that Grant, or the continuance thereof, in the whole or in any part, should not be profitable to his Majesty, his heirs and successors, or to this Realm; that after three years warning by warrant, under the King's seal or sign manual, it should be made utterly void. So that it appearing that the King hath neither divested himself of the power, nor at the time of the Grant did design to be prevented, to shew his inclination for the promoting of the advantage of his Kingdom has given himself scope enough to obviate all those emergencies. Yet

by the way I cannot but obſerve that Mr. *Williams*, to ſhew his diſlike to a Commonwealth, declared it to be abſolutely oppoſite to the intereſt of a ſingle perſon; but the ſingle perſon he concern'd himſelf for, was not the King and his prerogative, but his Client the Defendant, and his trade; who tho' I cannot in propriety of ſpeech call a Commonwealth, yet I cannot but think this oppoſition of his ſeems to proceed from a Republican principle. For he by his interloping has been the firſt ſubject that within this Kingdom, for near an hundred years laſt paſt, hath in *Weſtminſter-hall* publickly oppoſed himſelf againſt the King's undoubted prerogative in the Grant now before us: and I hope, by this example, the reſt of his Majeſty's ſubjects will be deterred from the like diſobedience.

There were ſome other ſuperfluous objections made againſt the clauſes in the Charter, and againſt the formality of the pleadings, which I think not neceſſary to remember; and therefore having thus premiſed, I ſhall now deſcend to thoſe points I think only material in this cauſe.

1. The firſt and great point in this cauſe, is, Whether this Grant of the ſole trade to the *Indies*, to the *Eaſt-India* Company, excluſive of all others, be a good grant in Law or not? And I am of opinion it is. And by the way, I cannot but make the ſame remark in this caſe, as my Lord Chief-Baron *Fleming* made in the great caſe of *Bates* in the *Exchequer*, *Lane*, *f.* 27. that it is a great grace and eminent act of condeſcenſion in the King to this Defendant, that he does permit this great point of his prerogative to be diſputed in *Weſtminſter-hall*; but by this he does ſufficiently ſignify to all his ſubjects, that he will perſiſt in nothing, tho' it ſeem never ſo much for his advantage, but according to the Laws of the Land. I ſhall therefore endeavour to make it appear, that he is inveſted with this prerogative by the Law of this Nation: but by the Law I do not only mean the cuſtomary Common Law or Statutes of this Realm, which are native and peculiar to this Nation, which, as Mr. Attorney well obſerved, are not adapted to this purpoſe; but ſuch other Laws alſo as be common to other Nations, as well as ours, and have been received and uſed time out of mind, by the King and People of *England* in divers caſes, and by ſuch ancient uſage are become the Laws of *England* in thoſe caſes; namely, the general Laws of Nations, the Law-Merchant, the Imperial or Civil Law; every of which Laws, ſo far forth as the ſame have been receiv'd and us'd in *England* time out of mind, may be properly ſaid to be Laws of *England*.

And for the better communicating my thoughts upon this ſubject, I will proceed by theſe ſteps:

1. I will very briefly conſider of the inland trade within this Kingdom, and the foreign trade with other Nations; and therein obſerve, that the King's prerogative is concerned in both, and that there is a great difference between both, allow'd by the Municipal Laws of this Kingdom.

2. I ſhall ſhew that the liberty of foreign trade may be reſtrain'd.

3. That foreign trade and commerce being introduc'd by the Law of Nations, ought to be govern'd and judg'd according to thoſe laws.

4. That by the Laws of Nations, the regulation and reſtraint of trade and commerce is reckon'd *inter Juris Regalia*; *i. e.* the prerogative of the ſupreme Magiſtrate.

5. That tho' by the Laws of this Land, and by the Laws of all other Nations, Monopolies are prohibited, yet Societies to trade, ſuch as the Plaintiffs, to certain places excluſive of others, are no Monopolies by the Laws of this Land, but are allow'd to be erected both here, and in other countries, and are ſtrengthen'd by the uſage and practice of both in all times.

6. I ſhall ſhew the authorities that are extant in our Books, together with precedents, and reaſons both publick and politick; for, as my Lord *Fleming* ſays, that ſuch reaſons are good directions for our judgment in ſuch caſes as theſe, being demonſtrations of the courſe of antiquity; and therein alſo obſerve the neceſſity and advantage of ſuch Societies, and by the way endeavour to anſwer the ſeveral Acts of Parliament, precedents and authorities, with all other the objections that have been made againſt my concluſion.

Firſt, then, to conſider the difference between the inland and the foreign trade allow'd of in our Books, and that the King's prerogative doth affect both. As to Manufactures, under which all ſorts of Artificers are concern'd, I think they remain with the moſt liberty by the Common Law; and as Mr. Attorney obſerv'd, the publick weal is little concern'd therein, only to preſerve every one in the quiet enjoyment of the fruits of his own labour and induſtry, yet even in that the King's prerogative hath not been totally excluded: for as it is taken notice of in our Books, all things that are at this day enjoy'd by cuſtom or preſcription, had their commencement by royal Grant; and by that means no Artificer within the City of *London* can at this day uſe two trades; *i. e.* a *Carpenter* cannot uſe the trade of a *Joyner*, or a *Bricklayer* of a *Plaiſterer*.

2. As to the trade of merchandize or inland commerce, generally ſpeaking, it had the next freedom by the Common Law, but was ſubject nevertheleſs to be limited or reſtrain'd by the King's prerogative in ſeveral particulars; as for inſtance, to prevent all foreſtalling and ingroſſing. So Mr. Attorney did well obſerve, that numbers of people could not meet to traffick or merchandize, without being in danger of being puniſh'd as unlawful aſſemblies: the Crown therefore granted the liberties of Fairs and Markets, for the ſake of commerce and trade; all which did originally proceed from the Crown, and therefore by abuſing thoſe liberties may ſtill be forfeited to the Crown; and paſſing by all other inſtances, I ſhall only inſtance one taken notice of in our Books, which well conſider'd may go a great way in the caſe at the Bar. *Regiſter*, *fol.* 107. the King grants to the Abbot of *Weſtminſter* and his ſucceſſors, that they ſhould hold a Fair at *Weſtminſter* thirty odd days together, with a prohibition that no man ſhould buy or ſell within ſeven miles of that Fair during that time; and the King does there command the Sheriffs of *London* by his writ to ſeize the body of an inhabitant of *Salisbury*, for ſelling cloths in *London* within the time of the Fair. Now here is a Charter granted to a particular perſon excluſive of others, for a time ſubject to more objections than the Charter now in queſtion, yet approved of by our Books. Hence it came that Corporations were erected, and trade confined to places and perſons excluſive of others, for all ſuch came originally from the Crown: And as I ſaid before in the caſe of Fairs, ſo I may now ſay in the caſe of Corporations, that tho' they claim liberties and privileges by preſcription, yet theſe originally proceeded from the Crown, and are therefore forfeitable to the Crown: an eminent inſtance hereof is that caſe of the City of *London*, for abuſing their liberties, which they claimed by preſcription, confirmed by divers Charters and Acts of Parliament; by Judgment of this Court, their liberties and franchiſes were ſeized into the King's hands, and therefore remain as a Vill to all intents and purpoſes, till his Majeſty ſhall be pleaſed of his bounty to reſtore them. Now that the inland traffick is moſt concern'd, either in Corporations, Markets, or Fairs, which all proceed from the Crown, does plainly evince that the King's prerogative has a more immediate influence over dealings in merchandizes, than it has over other mechanick crafts and myſteries: and that, as Mr. Attorney did well obſerve, to prevent frauds, deceits, and other abuſes either in weight, meaſures, or otherwiſe, which would certainly interrupt ſuch commerce. But our Law goes yet a ſtep further, and allows further difference between inland merchandize and foreign, and allows a different way of determining controverſies that ariſe thereupon; the Common Law and Statutes of this Realm, allowing the Law-Merchant, which is part of the Law of Nations, ſhould decide ſuch controverſies. *Decimo tertio H.* IV. *fol.* 19. a complaint made to the King and Council of ſome goods taken away from a Merchant; it was moved in that caſe, that the matter might be determined at the Common Law: but the Lord-Chancellor ſaid, that the ſuit being brought by a Merchant, who is not bound to ſue according to the Common Law, to have his cauſe tried by twelve men, and to obſerve the other ſolemnities of our Law; but ſhall ſue in *Chancery* according to the Law of Nature, which is the Univerſal Law of the World. And it is in that caſe agreed by all the Judges, that if foreign merchandize were ſtol'n or waifed, they could not be ſeized, as other *Engliſh* merchandizes might be by the Rule of the Common Law, as waifs and ſtrays: which ſhews plainly there is a difference in the conſideration of our Law, between foreign merchandizes that croſs the ſeas, and other inland goods and commodities. If two Merchants be partners in merchandizes, one ſhall have an action of accompt againſt the other, *ſecundum Legem Mercatoriam*, ſays the *Regiſter*, *fol.* 135. and *F. N. B.* 117. *D.* And yet by the rule of the Common Law, if two men be jointly poſſeſſed of other goods, which are no merchandize, the one cannot bring an action of account againſt the other; if one of the Merchants die, the Executor may bring his account againſt the ſurvivor for his moiety, *Reg.* 135. *F. N. B.* 177. But if it were a copartnerſhip for other goods, it would ſurvive *per jus accreſcendi*, according to the rules of the Common Law.

In an action of Debt upon a ſimple Contract, the Defendant may wage his Law; but it is otherwiſe in a Contract about Merchandize, in *Lane*'s Reports, *Bates*'s Caſe agreed, *Reg.* 260. *A.* at Common Law, the goods of Eccleſiaſtical Perſons were excuſed from toll; but ſays the writ, *Dum tamen Merchandizas aliquas non exercitat de iiſdem.* It ſhews, that then they fall under another conſideration. If one man wrongs another man of his goods, here an action of treſpaſs will lie: But if a Merchant's Goods be taken upon or beyond the Seas, there muſt be a Writ of Reprizal to obtain ſatisfaction; the *Parl. Roll.* 3 *Ed.* I. *M.* 19. *in Archivi Turris Londini*, where the Bailiffs of *Southampton* are commanded by Writ, *quod omnes Mercatores Leodienſes ad partes Angliæ accidentes per bona & catella ſua diſtringantur ſecundum Legem Mercatoriam & Conſuetudinem Regni, ad ſatisfaciendum Mercatoribus Florentinis*, &c. Where, by the way, obſerve, that *Lex Mercatoria*, which differs from the ordinary Common Law, is ſaid to be *Conſuetudo regni Angliæ*; by which we may obſerve, that foreign merchandizes and trades differ from others in the eye of Law, even by the allowance of Common Law itſelf.

Several Acts of Parliament have been alſo made for the more ſpeedy recovery of debts contracted for merchandizes, as the Statute of *Acton Burnel*, the Statute *de Mercatoribus*, and the Statute *Viceſimo Septim. Ed.* III. *cap.* 2. amongſt other things it is enacted, *That for merchandizes taken away, the Party ſhall be arreſted, and ſpeedy and ready Proceſs ſhall be againſt him from day to day, and from hour to hour, according to the Law-Merchant, and not at the Common Law.* So the Statute for erecting the Court of Inſurance, deſigned for the ſpeedy eaſe of Merchants, has left the determination according to the Law of Merchants; and therefore hath ordered the Judge of the Admiralty Court always to preſide in thoſe Commiſſions. By all which I think I may fairly conclude, there is a great difference allowed of, between the inland and foreign commerce, and that.

2. I ſhall endeavour to prove, that the liberty of foreign trade may be reſtrained.

And here I muſt premiſe, that as at firſt all things were promiſcuouſly common and undivided to all, ſo the free exerciſe of this univerſal right, was then inſtead of property; but as ſoon as the number of men increaſed, and they found by experience the inconveniency of holding all things in common, things were reduced into property by agreement and compact; either expreſs, as by partition; or implied, by *premier Occupancy*.

After this Government was eſtabliſhed, and laws were made, even for the ordering thoſe things to which no man had any right; as for example, deſerts, places uninhabited, iſlands in the ſeas, wild beaſts, fiſhes, and birds; the former were uſually gained and diſpoſed of by him that had the ſovereignty over the People; the latter, by him that had the dominion over the Lands and Waters, who might forbid others from hunting, fiſhing, *&c.*

And in virtue of this univerſal Law, his Majeſty and his Predeceſſors have always diſpoſed of the ſeveral Plantations abroad, that have been diſcovered or gained by any of their ſubjects, and may do for the future, in caſe any other be diſcovered and acquired. For tho' the laws of Nations can command nothing which the law of Nature forbids, yet they may bound and circumſcribe that which the Law of Nature leaves free, and forbid that which naturally may be lawful. Now to apply this to our preſent purpoſe of trade and commerce, Mr. *Williams* quoted that common ſaying, *Commercia debent eſſe libera*; from whence he infers, that by the law of Nature and Nations, the ſea and trade, and traffic ought to be free as the air; and for that he has cited *Grotius de Jure Belli ac Pacis*, *cap.* 3. *Welwood*'s Abridgm. of the Sea-laws, in his Epiſtle to the Lord Admiral; *Grotius de Mari libero*, where he ſays, *Mare & Littora Maris Jure Gentium ſunt communia. Britton*, *cap.* 33. *De purchaſ. le Mere & le air ſunt thor's Common*; Sir *John Burrough* his Sovereignty of the Seas; *Baldus de rerum Dominis.* But I think none of thoſe Books can warrant his concluſion; for ſurely that expreſſion, *Commercia ſunt libera*, cannot poſſibly be underſtood in ſuch a literal

a literal ſenſe, That every man in every Nation ſhould be at liberty to trade, either in what commodities, or to what place, or at what time ſoever he ſhall think fit. For I took it to be granted by all that argued for the Defendant, that trade and commerce muſt be ſubject to ſome laws; and *Grotius*, in his book *de Mari libero*, propoſes this main deſign, to prove, that any one Nation had not power to hinder another Nation from free commerce; and that the *Spaniards* therefore had no right to prohibit the *Dutch* from trading into ſuch parts of the *Indies*, whereof the *Spaniards* were not poſſeſſed, upon pretence that they had the dominion of thoſe ſeas: *Inter nos & Hiſpanos*, ſays he, *hæc controverſio eſt, ſitne immenſum & vaſtum Mare regni unius nec maritimi acceſſio? Populóne unquam jus ſit volentes populos prohibere ne vendant, ne permutent, ne denique commeent inter ſeſe.* And for the benefit of his Countrymen he doth therefore aſſert, *licere cuivis genti quamvis alteram adire, cumque ea negotiare*; which, taking that to be true, which by the law of Nations is certainly otherwiſe, yet nothing can be inferred from thence, but only the queſtion of commerce between one Nation and another. And how that was before leagues and treaties were made, little may perhaps be found, as Mr. Attorney well obſerved, beſides the laws of hoſpitality, which do not give any demandable right; but ſurely *Grotius* there hath no particular reſpect to particular ſubjects of this or any other Nation, how far the ſupreme power of any Nation may erect a ſociety of trade to a certain place, and for certain commodities, excluſive of all other ſubjects of their own.

And that plainly appears, both from the ſcope of his Book, as alſo for that for ſeveral years, both before and at the time of publiſhing that Treatiſe, the *Dutch Eaſt-India* Company was eſtabliſhed; which I ſhall have farther occaſion to diſcourſe of by-and-bye.

As for *Welwood*'s Epiſtle, I have ſeldom obſerved that Epiſtles have been cited in *Weſtminſter-hall* as authorities: Yet ſuppoſing it to be ſo, That all loyal ſubjects ſhall have their Petitions granted to ſafety and ſecurity in their trade; I ſuppoſe *Welwood* little dreamt of Interlopers, when he talk'd of loyal ſubjects: if it can be meant only of ſuch who may trade by Law, that is to beg the queſtion in reſpect of the Plaintiff and Defendant. As to that of *Britton*, That the ſea is common, it is anſwer'd by what hath been ſaid before; and *Welwood*, pag. 66. ſays, That by *Commune* or *Publicum*, is meant, a thing common for the uſe of any one ſort of People, according to that Saying, *Roma Communis Patria eſt*, but not for all of all Nations; *Welwood*, *pag.* 66. That paſſage of *Burrough* is only obſerved to prove the King's prerogative within the four ſeas; and though Mr. *Williams* would have inſinuated, as if the Sturgeons and other great fiſh, and wrecks, and the like, had come to the King by the *Stat.* of 17 *E.* III. *c.* 2. that Act was but a declaration of the Common Law; for he had it by the right of his prerogative; *Plowden*'s Commentaries, in the caſe of *Mines*; *Coke* 5. Sir *Henry Conſtable*'s caſe; theſe things were veſted in the King by his prerogative by the Common Law. Yet I cannot but obſerve, that the Treatiſe of *Mare Liberum*, on which Mr. *Williams* ſo much relies, was craftily writ, to overthrow the King's prerogative in that beneficial part thereof, relating to the fiſhing on the *Engliſh* coaſts; and contains a plain Proclamation for all perſons of any Nation, indifferently to fiſh in all kinds of ſeas; for, ſays *cap.* 5. *fol.* 10. *Quæ autem navigationis eadem Piſcatus habenda eſt ratio, ut communis maneat omnibus.* And herein tho' Mr. *Williams* intends to make good the premiſſes, I preſume that Mr. *Pollexfen*, that argued on the ſame ſide, has a greater concern for his friends in the *Weſt*, than to join with him to make good that concluſion. And before I go off from this point, I think it not amiſs, the better to clear the way to my concluſions, to give ſome inſtances wherein other Nations, as well as our own, have not only thought it legal, but neceſſary for their ſeveral publick advantages, to put reſtrictions upon trade, and did not think it injurious to natural equity, and the freedom of mankind, ſo much diſcourſed of on the other ſide. To give ſome few inſtances; *Videmus Jura Commerciorum*, ſays *Bodin de Repub. lib.* 1. *cap.* 7. *non ſolum omnibus populorum principumque inter ſe conventis, verum etiam ſingularum Statutis*, &c. And after he has enumerated the compacts for trade between the Pope and the *Venetians*, between the citizens of the *Hans* Towns, and the Kings of *England*, *France*, and *Spain*, and ſeveral other Countries; *Illi*, ſays he, *inter ſe Commercium multis modis perſonarum, mercium, locorum, temporum atque omni alia ratione coarctarunt.* So is *Marguardus*, *fol.* 155. and *Buchanan* in his 7th Book *de Rebus Scotiæ*; and in all Countries, the importation and exportation of ſome commodities are prohibited, as ſalt from *France*, horſes from other Countries, wool from hence. In whomſoever that power of reſtraint does remain, the power of licenſing ſome, and reſtraining of others, ſurely does alſo remain by parity of reaſon; but of that more by and bye. And as Mr. Attorney did truly obſerve, upon peruſal of the Statutes that are now in print relating to trade, the Parliaments have in all ages, even to this King's reign, ſince his reſtoration, thought fit to make more laws to prohibit foreign trade, than to increaſe it; as looking upon it more advantageous to the common weal. And thus having obſerved that other Nations, as well as we, have not only thought it legal, but neceſſary, to make laws for the reſtraint of trade; and thereby thought they did no injuſtice to the liberty of mankind:

3. I proceed to the next ſtep. I ſhall therefore, *thirdly*, endeavour to prove, that foreign trade and commerce, being introduced by the Laws of Nations, ought to be governed and adjudged according to thoſe Laws; and I do not know of any Statute or Book of the Common Law now in print, that doth oppoſe this aſſertion. *Coke* 3 *Inſt. fol.* 181. in the margin, cited by the Defendant's Counſel at the Bar: *Commercium*, ſays he, *Jure Gentium eſſe debet*; nay, it is the expreſs text of Law, *ex Jure Gentium Commercia ſunt inſtituta:* which being laid down as undeniably true, and ſo admitted to be by the Defendant's Counſel; I would infer from thence, ſince commerce and traffick are founded upon the Law of Nations by the natural reaſons of things, all controverſies ariſing about the ſame, ſhall be determined by the ſame Laws, eſpecially where there is no poſitive and expreſs Law in that Country where ſuch controverſies do ariſe, to determine them by: and Mr. *Williams* ſeems to allow, that there are no ſuch Laws in this Kingdom; for he thinks that the controverſy now before us, is not to be decided but by Parliament.

All other Nations have governed themſelves by this principle; and upon this ground ſtands the Court of Admiralty in this Kingdom, *viz.* That there might be uniform Judgments given there to all other Nations in the World, in cauſes relating to commerce, navigation and the like. And in as much as the Common and Statute Laws of this Realm are too ſtrait and narrow to govern and decide differences ariſing about foreign commerce, and can never be thought to bear any ſort of proportion to the univerſal Law of all Nations, as the intereſts of all foreign trade do neceſſitate them to contend for; it will become us that are Judges in *Weſtminſter-hall*, for the better determining this caſe, to obſerve the methods uſed by our Predeceſſors in determining ſuch like cauſes, and take notice of the law of Nations.

The Common Law, by the ſeveral authorities I cited before, takes notice of the Law-Merchant; and as the Book of *Ed.* IV. before cited, ſays it is part of the Law of Nations, and leaves the determination to be according to that Law; the ſeveral Acts of Parliament I before cited, make a particular proviſion, that matters of this nature ſhould be determined according to the Law-Merchant, which is part of the Law of Nature and Nations; and is univerſal, and one and the ſame in all Countries in the World. And therefore *Cicero* ſpeaking of this Law, ſays, *Non erit alia Lex Romæ, alia Athenis, alia nunc, alia poſthac; ſed & inter omnes gentes & omni tempore una eademque Lex obtinebit.* And I the rather thought myſelf obliged, more induſtriouſly to ſearch into the Law of Nations, the better to enable me to give judgment in this caſe; the conſequence whereof will affect the King's ſubjects in all parts of the World; and I was minded thereof, particularly, by my Lord Chief Baron *Fleming*, in the giving Judgment of the great caſe of *Bates*, about the impoſition upon currants, *Lane*, *fol.* 27. and does not only affirm it as neceſſary, but the common practices of all Judges, in all Ages.

Do not we leave the determination of Eccleſiaſtical cauſes to be decided according to the Eccleſiaſtical Laws; foreign matters, matters of navigation, leagues, truces, embaſſies; nay even in the caſe at the Bar, the ſtopping of the Defendant's Ship by an Admiralty Proceſs, was left, by the opinion of all this Court, and afterwards by the Courts of *Common Pleas* and *Ex. hequer*, to be decided in the Admiralty; and by virtue of a proceſs out of that Court, his Ship is detained to this day. And as I ſaid, that Court proceeds according to the Law of Nations, and the matters before ſpecified are not to be controuled by the rules of the Common Law.

And if cuſtoms make a Law, then the cuſtom of Nations is ſurely the Law of Nations; which brings me to my next particular, which is the main thing upon which this cauſe will turn.

Therefore, 4*thly*, I conceive, that both by the Law of Nations, and by the Common Law of *England*, the regulation, reſtraint and government of foreign trade and commerce, is reckoned *inter Jura Regalia, i. e.* is in the power of the King: and 'tis his undoubted prerogative, and is not abridged or controuled, by any Act of Parliament now in force.

This queſtion is not concerning the conſequences of this power, or any inconveniencies that may happen thereupon; becauſe upon inconveniencies ariſing, the King is to be ſupplicated to redreſs them: which I ſhall farther take notice of, when I come to anſwer the particular objections made againſt this Grant.

Commerciorum Jura ſunt privilegiata, ac non niſi iis conceſſa qui exercendorum Mercatorum licentiam Principis indultu & authoritate meruerunt, is the very expreſs Text of the Civil Law; and ſo is *Carpzovius*, *Conſt. n.* 5. *Bodinus de Republica*, *lib.* 1. *c.* 7. ſays, *Quæ tametſi Jure Gentium eſſe videantur prohibere, tametſi ſæpe à Principibus videmus.* And in *c.* 6. quoted by Mr. Attorney, That the Laws of Commerce are contained in the particular compacts and agreements of Princes and People. So *Salmaſius*, *pag.* 236. *Mercatura eſt res indifferens, in qua Magiſtratus vel in vetando vel permittendo ſuam pro Commodo Reipublicæ poteſt imponere authoritatem.* So *Carpzovius*, a famous *German* Lawyer, in his deciſions, *lib. deciſ.* 105. *N.* 13, & 14. *Exempla haud rara ſunt, ubi Privilegio & Edicto Principis commercia ad certas perſonas certave loca reſtringere videmus.* Theſe Rules and Principles, aſſerted to be the Laws of Nations, agree with the Principles of our Laws. Mr. Attorney, in his argument in this cauſe, cited many Records and Precedents to make good this aſſertion; which I think he did with great clearneſs. I therefore will content myſelf with as few of them as I can; and only remind you of ſuch as I think abſolutely neceſſary to make good my aſſertion, which I will do by theſe ſteps. I conceive the King had an abſolute power to forbid foreigners, whether Merchants or others, from coming within his dominions, both in times of war and in times of peace, according to his royal Will and Pleaſure; and therefore gave ſafe-conducts to Merchants-Strangers, to come in, in all ages, and at his pleaſure commanded them out again, by his Proclamation or Order of Council; of which there is no King's reign without many inſtances. And the Statute of *Mag. Chart. c.* 30. ſo much inſiſted on by the Defendant's Counſel, is but a general ſafe-conduct; *Omnes Mercatores niſi publicè ante prohibiti fuerint, habeant ſalvum & ſecurum conductum*, &c. Where by the way I muſt obſerve, that *Mercatores*, ſays my Lord *Coke*, in his Comment upon the Chapter, is only intended of Merchant-Strangers; for I cannot find, that in thoſe days any of the ſubjects of this Kingdom did apply themſelves to foreign trade; or at leaſt the trade was not ſo conſiderable, as to be taken notice of in any Book of Record that I can meet with. And before the making of that Statute, my Lord *Coke*, 2 *Inſt. fol.* 57. does agree, that the King might, and did prohibit Strangers at his pleaſure: But he conceives, and, with great reſpect be it ſpoken to his memory, I think without any colour of reaſon, would make theſe words, *niſi publicè prohibeantur*, to intend only a prohibition by Parliament; and his reaſon is, for that it concerns the whole Realm. Now did the coming in of ſtrangers concern the Realm after making of the Act, more than it did before? Surely no. Doth not the power of making war and peace, abſolutely belong to the King by his prerogative? And is not that of publick concern to the Kingdom? And is not the prohibition of ſtrangers a natural dependant upon that prerogative? If the word *publicè* there had been out, there had been no colour for that conceit; and ſurely the King's proclamation will make the matter as publick as an Act of Parliament can do: nay, and I may ſay more, for Acts of Parliament anciently were made publick by Proclamation; for in our Books we have many inſtances of Writs directed to Sheriffs of Counties, to cauſe Acts of Parliament to be publiſhed by Proclamation; and ſo

was the conſtant and ancient uſage. And is it not more natural for ſtrangers that are abroad, to take notice of the King's publick Edicts, which are known to be of great importance in all Countries, more than they would of an Act of Parliament that affects the King's own dominions only? Beſides, it appears more impertinent, if you turn thoſe words into a *Proviſo*; and then it will amount to no more in plain *Engliſh* than this, *provided that this Law ſhall continue, except it be hereafter repealed*; which ſurely would be very ridiculous.

Mr. Attorney and Mr. Sollicitor both, in their arguments, quoted ſeveral Records and Precedents, where the King, in all times after the making of that Act, did prohibit ſtrangers from coming in, and did command them out when they were here, at pleaſure. I ſhall not trouble you with the repetition of the Records, for they were many; nay, the King, when Acts of Parliament had prohibited, did grant ſafe-conduct; and of that ſort, in *Rolls Prerogative*, 180. you will find ſeveral inſtances; and in the ſeveral Acts of Parliament cited by Mr. Attorney, to confirm the King's prerogative, as to ſafe conducts, it doth appear. *Syderfin. Jol.* 441. it is ſaid, that the King by the Common Law, might prohibit the importation of foreign goods; and whoever acted againſt ſuch Prohibition, forfeited his Ship.

The King might prohibit any of his ſubjects from going beyond the ſeas at pleaſure, and recal them again as he thought fit; and that, as I have ſaid before, without giving any reaſon. The Books of *Fitzherbert*'s *N. B.* and *Regiſter*, before recited, make this evident. Mr. Attorney indeed cited many inſtances wherein the Kings had made uſe of their prerogatives, as 7 *Ed.* II. *M.* 10. *Quadrageſimo Ed.* III. *M.* 24. *Stat.* 5 *R. cap.* 2. which confirms it, 3 *Inſt.* 179. *Viceſimo quinto Ed.* III. *M.* 10. with many more *; and indeed I think it was not denied, but that after a Prohibition, it was an offence admitted of by the Defendant's Counſel for any ſubjects to go beyond the ſeas, *Dy.* 165 & 296. agrees it.

And that is ſufficient for the preſent purpoſe, there being a Prohibition in the Charter in queſtion, to all perſons that are not there mentioned. What influence the King's prerogative muſt neceſſarily have upon foreign trade and commerce, appears by his frequent granting Letters of Mart and Repriſal: Theſe are not allowed of by the Law of Nature, Civil or Common Law; for thereby no man is bound by another's act, without his conſent, but by the general conſent of Nations, *humana neceſſitate exigente*. The King only has the power of making leagues and truces with foreign Princes, upon which only all foreign trade does depend; and thoſe leagues are made upon ſuch terms and conditions, and under ſuch limitations, as both Princes think fit: Many inſtances to this purpoſe were alſo cited by Mr. Attorney, to which I refer myſelf; and the differences that ariſe from Merchants beyond the ſeas, are to be determined according to thoſe leagues, and cannot be decided by the municipal laws of this Realm, which cannot be put in execution in foreign parts.

Fourthly, The King is abſolutely Maſter of War and Peace; which he could not be, in caſe he had not a power to lay reſtraint upon his own ſubjects in relation to foreign commerce; ſince *eo ipſo*, that war is proclaimed, all publick commerce is prohibited: and the Counſel that argued for the Defendant, admitted, That the King might prohibit his ſubjects to go or trade beyond the ſeas in caſes of wars or plagues. How ſtrangely prepoſterous then would it be for a man to imagine, that the King ſhould have an abſolute power of War and Peace, and yet be denied the means to preſerve the one, and prevent the other! Is not that therefore the great reaſon why the King is at ſo great expence in maintaining Ambaſſadors and Envoys in all the trading parts of the World, without which we ſhould be in a perpetual ſtate of War? Would it not be monſtrous, that when the King is entered into league with any ſovereign Prince, in a matter of trade very advantageous to his People, to have it in the power of any one of his ſubjects to deſtroy it? As for inſtance, ſuppoſe a league between our King and the Emperor of *Morrocco*, for a trade to *Tangier*, were made upon condition, That no *Engliſh* Ship coming there for commerce, ſhould be above a hundred ton, and a fleet of merchant ſhips within that condition, were in Port at *Tangier*; and Mr. *Sandys*, with the ſame obſtinacy as he ſeems to appear in this caſe, ſhould have gone with a Ship of above a hundred ton to *Tangier*; that would have been an abſolute breach of the league; we ſhould have been immediately in a ſtate of war, the merchant-ſhips and goods abſolutely forfeited to the Emperor by the Law of Nations, and they and their families thereby undone, without any remedy, till Mr. *Sandys* ſhould be pleaſed to return into *England*; and alſo bring with him an Eſtate ſufficient to make them a recompence: and then alſo perhaps it would be difficult to contrive ſuch an action in our Law, to compel Mr. *Sandys* to do it. Beſides, the King has no other way, if his Ambaſſadors and Miniſters in foreign parts cannot prevail that right ſhould be done to his ſubjects; or if Mr. *Sandys*'s interloping Ship, and all its cargo, had been wrongfully taken away from him by any foreign Prince, but by the King's declaring of a War, and compelling them to make reſtitution by force; the conſequence whereof will affect more than foreign traders, who would be then concerned, both in their perſons and purſes; and it would be very hard for all the King's ſubjects to lie under the burthen and charge, and the profits and advantages accrue only to a few. And here, by the way, I think it not improper to take notice of an objection that was made by the defendant's Counſel, of the unreaſonableneſs that the King ſhould be entruſted with this prerogative: for as well as he may reſtrain perſons trading to the *Indies*, he may alſo reſtrain them from trading into any other part of the World. The very objection ſeems to carry an unfavoury, as well as unreaſonable miſtruſt in a ſubject to his Prince. For as it is a maxim in our Law, the King cannot be preſumed to do wrong; and I am ſure the conſtant practice of our preſent King has not given us the leaſt umbrage for ſuch diffidence; and I think I may truly ſay, we are as ſafe by our Prince's own natural inclinations, as we can be by any law in this particular. The King has the abſolute power of pardoning all offenders by his inherent prerogative, which an Act of Parliament cannot deprive him of, the caſe of murder is a full inſtance of that; nor was that prerogative ever diſputed in any age, tho' never ſo troubleſome; ſaving in that ſingle caſe of the Earl of *Danby*, and that without any reaſon, that I could ever hear of. Is it therefore to be objected and preſumed, that the King will pardon all the traitors, murtherers and robbers, and other felons, and make uſe of his prerogative to let all malefactors eſcape?

The King is the Fountain of Honour, as well as of Juſtice, and in virtue of that prerogative, may ennoble as many of his ſubjects as he pleaſes; and thereby exempt them from arreſts, and other common proceſſes of the Law, by means whereof men do more ſpeedily recover their juſt debts, and have redreſs for injuries. Is it therefore to be preſumed the King will make ſuch a glut of Noblemen, becauſe he may do it? And as this is againſt his inclination, ſo certainly it is againſt his intereſt, to make ſuch Grants as the defendant's Counſel ſeem to fear; for it is more for the King's benefit than it can be for his ſubjects, the greater the importation of foreign commodities is; for from thence ariſe his cuſtoms and impoſitions, thoſe neceſſary ſupportsof theCrown: and therefore, in ſome ſenſe, the King is the only perſon truly concerned in this queſtion; for this Iſland ſupported its Inhabitants in many ages without any foreign trade at all, having in it all things neceſſary for the life of man.

Terra ſuis contenta bonis, non indiga mercis, ſays the Poet. And truly, I think, if at this day moſt of the *Eaſt-India* commodities were abſolutely prohibited, tho' it might be injurious as to the profit of ſome few traders, it would not be ſo to the generality of the Inhabitants of this Realm. And therefore, as I have offered theſe few inſtances to prove the King ſhould have ſuch a prerogative; in the next place I come to ſhew, that the Kings of *England* have exerciſed this their prerogative in all ages: and as the King has the power of reſtraint of foreign trade, ſo he is the only Judge when it is proper to uſe that power, which ſeems plainly to be for the ſame reaſon. And I think Mr. *Williams*'s remark of the difficulty of this caſe, that it ſhould neceſſitate the King to call a Parliament to aſſiſt him with power to determine this queſtion, is not to be paſſed by without ſome obſervation.

God be praiſed, 'tis in the King's power to call and diſſolve Parliaments, when and how he pleaſes; and he is the only Judge of theſe *Ardua Regni*, that he ſhould think fit to conſult with the Parliament about. And Mr. *Williams* would do well to ſave himſelf the trouble of adviſing the King of what things are fit for him to conſult with his Parliament about, 'till ſuch time as he be thereunto called. But it hath been too much practiſed at this and other bars in *Weſtminſter-Hall*, of late years, to captivate the *Lay Gens*, by leſſening the power of the King, and advancing, I had almoſt ſaid, the prerogative of the People: and from hence comes the many miſchiefs to the King's ſubjects in parts abroad, by making the power of the King thought ſo inconſiderable, as though he were a mere Duke of *Venice*, being abſolutely dependant upon his Parliament. Would it not be mightily for the honour and dignity of the Crown of *England*, think ye, that the Emperor of *Fez* and *Morocco*, or any Prince of the remote parts of the World, ſhould be told, That Mr. *Sandys*, one of the King of *Great Britain*'s ſubjects, came into the Emperor's Territories againſt his Prince's conſent, and that he had no power to hinder him, unleſs he would conſult with all his Nobles, and the Repreſentatives of all his common ſubjects, to aſſiſt therein? Would not the Emperor believe *Sandys* to be the greater Prince of the two? But tho' ſuch ſort of declamations are ſo much for the ſervice of the Crown, and for the honour of the Kingdom, as they would have it believed; yet I think they have the ſame tendency of duty and ſervice to the King, with ſome other matters that of late have happened amongſt us, *viz.* Some have been ſo concerned, as well for the ſafety and ſecurity of his Majeſty's ſacred Perſon, and to make him formidable to his rebellious ſubjects at home, as to deſire that his Guards might be diſcharged, becauſe it looked as though he deſigned to rule by a ſtanding army; and to ſhew their tenderneſs to his ſacred Life, would have him removed from the aſſiſtance of evil Councillors, as they called them; and put himſelf into the hands of aſſaſſinates, as tho' one murdered Prince were not ſufficient to ſatisfy that piece of ſtate-policy in one and the ſame age. And in order that he might have ſufficient to ſupport the neceſſity, as well as the dignity of a Crown, which all good ſubjects are zealous for; ſome, of late, have induſtriouſly endeavoured to have prevented him from being able to borrow any money upon the credit of any part of his revenue, a privilege that the meaneſt of the perſons concerned in that queſtion would think themſelves highly injured to be debarred of.

Theſe and the like attempts, if not prevented, will render the King and his Government low and deſpicable in all other parts of the World: And as for the inſtance between a Denizen and a man naturalized, I think it rather makes againſt, than for Mr. *Williams*'s concluſion, as to the main queſtion. For tho' the King cannot naturalize a man, and thereby give him inheritable blood, as a natural-born ſubject, to inherit lands; yet he may make an Alien a Denizen; and by that means he becomes to have as much privilege as any of the King's natural ſubjects hath as to trade and commerce, which is the only queſtion now before us: And I cannot help being of opinion, that this Kingdom was in greater regard abroad, and the Inhabitants thereof more proſperous at home, when the prerogative of the Crown was more abſolute than now it is: therefore it is our duty as good Judges, as well as good Subjects, to endeavour to ſupport it as much as we can by Law. And ſo I proceed to mention ſome precedents and authorities, whereby the Kings of *England* have in all ages exerciſed this part of their prerogative, of reſtraining, diſpoſing, and ordering matters of commerce and foreign trade, by Royal Licences, Charters, and Diſpenſations.

And herein I ſhall content myſelf with as much brevity as I can, only in producing ſome few of thoſe many inſtances, which were with great care and induſtry found out by Mr. Attorney, and Mr. Sollicitor; and by them ſo learnedly and properly applied to the caſe in queſtion.

1. Therefore it has been well obſerved, that the Staples, which were the common and publick Marts for all Merchants to reſort to, were firſt erected by the King's prerogative, without any Act of Parliament; as it doth plainly appear by the ſeveral Acts of Parliament mentioned at the Bar, either for ſetting the places, or enlarging the commodities that were permitted to be brought to the Staple; for ſurely in all times, when

* *Rolls Abr.* 2. *fo.* 214. The Commons pray leave to export and import foreign Goods at their pleaſure, except Goods of the Staple, notwithſtanding any Proclamation to the contrary. *Reſp. Le Roy voet eſtre adviſe par ſon Counſel.*

the Staple was fixed in the Dominions of any other Prince, that muſt be done by league, which none can make but the King. To inſtance one authority for all, the *Stat.* 2 *Ed.* III. *cap.* 9. expreſly ſays, *It is enacted, That the Staples beyond the ſeas, and on this ſide, ordained by Kings in time paſt*, &c. Mr. Attorney and Mr. Sollicitor cited ſeveral Records, and other Acts of Parliament, that allow this to be the King's prerogative abſolutely; which I ſhall only name, they having opened the particulars at large, *viz. Viceſimo E.* III. *Plac. Parl. Rolls Abr. fol.* 108, 130. *Octavo. E.* III. *num.* 20. 27 *E.* III. *cap.* 1. 43 *E.* III. *c.* 1. 47 *E.* III. *N.* 17. *Prim. R.* 2. *N.* 98. with many more; which did not only licenſe Merchants to repair to their ſeveral Staples, but prohibited them from carrying their ſtaple commodities to any other places, and the ſeveral Acts of Parliament made touching the Staple, only inflicted greater forfeitures upon the perſons offending, more than the King by his prerogative did inflict; but neither added to, or diminiſhed any part of the power of the Crown: the truth whereof will alſo farther appear by the conſent of the Parliament, plainly declared in ſeveral Statutes following, *viz.* 2 *H.* V. *c.* 6. 2 *H.* VI. *c.* 4. 8 *H.* VI. *c.* 17 & 27. by which, and ſeveral other inſtances, both by Mr. Sollicitor and Mr. Attorney, I do conceive it does plainly appear, that the Statute of 2 *Ed.* III. *c.* 9. *Nono Ed.* III. *c.* 1. *decimo-quarto Ed.* III. *c.* 2. the *Stat.* of *decimo-quinto Ed.* III. mentioned in the Defendant's Plea, *decimo* 8 *Ed.* III. *c.* 3. which the Defendant's Counſel have much inſiſted on, for the opening the liberty of trade only concerned Merchants of the Staples; and by the Acts of Parliaments made relating to that trade, ſince particularly mentioned by Mr. Attorney, ſtand now repealed.

And tho' the place of the Staple, as well as the commodities, were aſcertained by Acts of Parliament, yet the King granted to merchants licences to trade elſewhere; which prerogative is allowed of by Acts of Parliament, and other authorities in our Books: for inſtance, amongſt many others, the *Stat.* 8 *H.* VI. 21 22 *Hen.* VI. *chap.* 4. 15 *Hen.* VI. *c.* 3. 27 *H.* VI. *c.* 1. 1 *H.* VII. *fol.* 3. *A.* 13 *Ed.* IV. *fol.* 3. *l.* 5 *E.* IV. 33.

And as the King, before thoſe Acts of Parliament mentioned, ordered the merchandizes of the Staple; ſo all other foreign trade, not taken notice of by Acts of Parliament, were begun and abſolutely diſpoſed of by the King's prerogative; for as my Lord *Coke*, in his Comment upon *Mag. Chart. c.* 30. does truly obſerve, That by *Mercatores* there, only is meant Merchant-Strangers; for as I ſaid, I do not find that any of the Subjects of this King meddled in foreign trade, in many years after the making of that Act: The firſt inſtance I meet with, is in *Malin*'s *Lex Mercatoria, fol.* 150, of the ſociety of Merchants, which is the Staples-Adventurers, made by a Grant from K. *Ed.* III. and were called the Brotherhood of *St. Thomas a Becket* of *Canterbury*, 'till the time of *Hen.* VII. who confirmed their Charter, but changed their name to that of Merchant-Adventurers, by which name they continued a Corporation.

And that the King did ſhut and open foreign trade at his pleaſure, by many inſtances mentioned by Mr. Attorney and Mr. Sollicitor, does farther appear, 33 *Hen.* III. *mem.* 1. 2 *E.* III. *pars ſecunda memb.* 35. 3 *H.* III. *N.* 33. *Rolls Prerogative* 170 & 214. before cited, *primo H.* V. 41. *decimo-octavo H.* VI. *N.* 60. and the *Stat.* of 12 *H.* VII. *c.* 6. which I have cauſed to be ſearched. And in *Plowden*'s Commentaries, in the great Caſe of *Mines Royal* it is ſet down as a Rule, That ancient Charters and Grants of the Crown, are the beſt evidences of the Prerogative. *Phil.* and *Mary* erected the Corporation of *Ruſſia* Merchants, by Charter, with a prohibition to others, with the like conditions within mentioned in the Charter at the Bar; and was afterwards approved of in Parliament in 8 *Eliz.* and the forfeiture mentioned in the Letters Patent made more effectual. And as Mr. Attorney did truly obſerve, that when *Calais* was taken, and thereby the Staples unſettled, Queen *Elizabeth* thought, according to the precedent of the *Ruſſia* and other Companies, it was moſt advantageous for the carrying on of Trade and foreign Commerce, to erect Societies and Corporations; which was well approved of in thoſe times, and ſo has continued ever ſince undiſturbed, until this preſent queſtion; which I ſhall more particularly inſiſt upon, when I come to diſcourſe of the next Head.

And here by the way, I ſhall only remember, that there were many Records and Books cited by the Counſel at the Bar, to prove the difference between alien enemies, and alien amies; and how theſe infidels are in law looked upon as perpetual enemies, and the many caſes that were cited about the Jews, and others, I think will not be neceſſary to be farther inſiſted upon; for I conceive they do not concern the queſtion that is now before us. For were not the Charter now in queſtion in being, it would be worth while for Mr. *Sandys* to conſider, how far he might be obnoxious to puniſhment, for trading with Infidels, who are in law called *perpetui inimici*. And therefore I conceive, it is as penal for any of the King's Subjects to trade with Infidels, who are alien enemies, without a Royal Licence, as it is to trade with aliens amies, contrary to a Royal prohibition. And I cannot conjecture how he will avoid this rock, notwithſtanding his pretended ſkill in navigation, without making uſe of this Charter as a ſafe-conduct to him, by implication; though he ſeems here ſo much to ſtruggle againſt it: and how far that would prevail for his benefit, may be alſo conſidered. But as I ſaid before,

4. The true Queſtion is, Whether this be a good Grant to the Plaintiffs, of a ſole trade to the *Indies*, were the Inhabitants thereof Chriſtians or Infidels, excluſive of others?

And therefore I proceed to the next ſtep, That though unlawful Engroſſing, and Monopolies, are prohibited by the laws of this, and all other Nations; yet I do conceive, that the Charter now in queſtion, of a ſole trade excluſive of others, is no ſuch unlawful engroſſing, or Monopoly, but is ſupported and encouraged, as conducing to publick benefit by the Law, Practice, and Uſage of this and other Countries. And herein, by the way, though the word *Monopoly*, or *Engroſſing*, generally ſpoken of is odious in the eye of our Law, yet ſome Engroſſings, and ſo ſome Monopolies, are allowed of in our Books; and ſo I deſire to be underſtood, when I ſay a lawful or unlawful Monopoly, or a lawful or unlawful Engroſſing. And in as much as this is the great, and as I think, the only objection that either hath, or can be made againſt the preſent Charter, I ſhall be the more particular in giving my opinion therein, with the reaſons and authorities that have induced me thereunto.

I premiſe only this, that in all thoſe Countries, where ſocieties of trade are erected by the ſupreme Power, excluſive of all others, as the caſe at the Bar, Monopolies are forbidden; and are as ſeverely puniſhed by their Laws, as they can be by the Common and Statute Laws of *England*, (*viz.*) in *Holland*, *Germany*, *France* and *Spain*, &c.

And ſo wherever the Civil Law prevails, Monopolies are puniſhed with confiſcation of Goods, and baniſhment. *C. de Monopoliis & Cenſ. forenſ. part* 1. *fol.* 497.

Now though Monopolies are forbidden, yet that cannot be underſtood to be ſo univerſally true, (as no general Law can ever be) that it ſhould in no reſpect, and upon no occaſion or emergency whatſoever, admit of any exception or limitation.

The exceptions thereof may be ſuch as theſe:

1. Though no private Perſons can have the ſole trade to themſelves, by their own private authority, yet this may be granted to a publick Society, by the prerogative of the Prince; if,

2. It be upon good cauſe, and for the publick advantage of the Kingdom.

3. From the neceſſity of beginning and carrying on ſuch trades and foreign commerce, which can be only done by Companies and Societies.

4. Such Companies and Societies ought to be continued and ſupported upon the natural equity and juſtice, that no other perſons ſhould be permitted either to reap the profit, or to endanger the loſs of what hath been begun, and been carried on by them, with great hazard and expence.

Now in as much as foreign trade can never be of advantage to this Kingdom, except the balance be kept equal between this and other Countries; which can never be done, but by keeping up to proportionable rules for the regulation thereof with the other Countries: And becauſe, as I ſaid before, the municipal Laws of this Realm ſeem too ſcanty for that purpoſe, I will therefore firſt conſider how this queſtion ſtands, as to the Law of Nations; and then how it is conſidered by our Law, producing authorities in both to make good my aſſertion. And becauſe I thought the former more natural and effectual for the deciſion of this queſtion, made me more inquiſitive than otherwiſe I ſhould have been. *Cujacius, lib.* 16. *Obſer.* 23. diſtinguiſhes *inter Monopolia licita & illicita.*

Licitum Monopolium, ſays he, *eſt, ſi certis perſonis vel quod potius eſt certo Collegio conceſſerit Princeps ut ei ſoli jus ſit vendendæ certæ mercis*; and therefore recites a Law of the Emperors *Theodoſius* and *Valentinian*, by which certain Governors of Commerce were appointed; *Edictali Lege ſancita, ut nulli Mercatori niſi ad deſignata loca temporibus præſtitutis ad negotiationis ſuæ ſpecies diſtrahendas paſſim liceret accedere.*

Carpzovius, in his deciſions before-mention'd, *lib.* 2. *Deciſ* 105. *N.* 13 & 14. makes this no new caſe; *Et certe (non eſt novum) modum commerciis (quæ tamen liberrima eſſe debent) poni ex cauſa nimirum publicæ utilitatis vel neceſſitatis, ex quo Monopolia alias prohibita jure ſubſiſtunt.*

And again, *Exempla haud rara ſunt ubi* neceſſitate & Edicto principis *Monopolia quandoque probari*: *Commercia* ad certas Perſonas & Loca *reſtringi videmus.*

Idem, *Deciſ.* 4. *N.* 10. & *N.* 13. *Nimirum Exercitium ac permiſſio Monopoliorum à* Principis *arbitrio dependet, &c. Scacca de Commerciis Q.* 7. *fol.* 301. *N.* 15. *Hoc non procedit in Monopolio, autoritate Principis ſive Reipub. contracto, quia ſicut monopolia, privatâ autoritate contracta Reipub. ſunt perniciosa: Ita hæc quæ Legis Autoritate, ex juſta contrahuntur, Cauſa Reipub. valde utilia ſunt.*

Grotius de J. B. & P. lib. 2. *cap.* 12. *Sect.* 16. *Monopolia non omnia cum Jure naturæ pugnant: nam poſſunt interdum à ſumma poteſtate permitti, juſta de cauſa & pretio.*

He gives amongſt others theſe two Examples:

1. From the Hiſtory of *Joſeph*, when he was Vice-roy in *Egypt*; which is, ſays he, an illuſtrious inſtance of this matter.

2. That under the *Romans*, the *Alexandrians* had the ſole trade of all *Indian* and *Ethiopick* commodities.

So *Thuanus, lib.* 32. gives an inſtance of a Grant from the *French* King, *Ann.* 1604. for the ſole trade into *Canada*, or *New France*; for which he gives this reaſon, *Ne gravis eſſet ærario ad ſublevandos navigationis illinc inſtitutæ ſumptus.*

Which I conceive will go a great way in ſupporting all ſuch trading Companies as cannot be begun but by a publick expence.

C. de monopoliis, the prohibition is expreſsly limited, *Niſi* Privilegium *vel alia* conſuetudo *in utilitatem publicam vergens reſiſtat.*

Mercatura eſt res indifferens, in qua Magiſtratus, vel in vetando, vel permittendo ſuam pro Commodo Reipub. poteſt interponere autoritatem. *Salmaſ. de Fœn. Trapezit. fo.* 236. *Hoc ſolum permiſſum eſt Regi ut poſſit prohibere, ne aliis vendat ſalem. Alciat. in Q. inter publica* 17. *in Fin. F. de Verb. Sign.* as it is at this day practiſed in *France*, *Thuan. lib.* 5.

Sic in Sale Vendenſi, Monopolia etiam hodie in Italia licite exerceri è Superiorum permiſſione. Scacca de Mercat. part. 4. *N.* 30.

Sic in Repub. Lubecenſi, certis quibuſdam Mercatoribus ob prædictas rationes jus coquendi ſacchari, & ſalis ſpeciali Privilegio conceſſum eſt. Marguard. lib. 4. *c.* 7. *N.* 29.

And then as to the uſage:

Hæc eſt communiſſima omnium, nullo prorſus reluctante Doctorum ſententia, quod jura hujuſmodi Emporalia & Regalia poſſunt acquiri non modo per Conceſſionem ſummi Principis, ſed etiam Conſuetudine & Præſcriptione. Leſſius de Juſtitia, lib. 2. *c.* 22. *Dub.* 21.

By the Imperial Laws commerce and traffick have received ſeveral other limitations; ſometimes the Subjects of the Empire have been forbidden to trade to certain places, particularly named; and in general by other conſtitutions, forbidden to export coin, gold, or arms, to any of the barbarous Nations.

And that the Law or cuſtoms of Nations is ſo, the practice does evince.

And firſt in *Germany*, where the Law prohibiteth all Monopolies; yet ſee how the Law there ſtands in reſpect of our caſe.

Circa Monopolia autem, quæ exercentur adverſus Cives, obſervandum, non eſſe illicitum, ſi non cuivis quodvis negotiationis genus exercere conceditur, ſed illis duntaxat qui ad idem exercendum juxta inſtituta Civitatis ſibi jus quæſiverunt, quemadmodum in rebus pub. Europæis tecta quædam præſtitiſſe oportet eum, qui mercatorium aut opificium aliquod tollere vult.

This as to Corporations.

As

As to trading Societies thus:

Sed & fieri poteſt, ut à ſumma poteſtate Societati mercatorum indulgeatur certum genus Mercium & certis locis advehere, excluſis reliquis, cujus privilegii concedendi variæ poſſunt eſſe cauſæ.

I. *Nam Commercia quæ ad loca remotiſſima inſtituerentur, priuſquam rite ſtabiliantur magnos requirunt ſumptus, & ancipiti eventui initio ſunt obnoxia; ergo Authoribus talium Commerciorum cavendum eſt, ne quod ab ipſis conſtitutum magno cum periculo, & ſumptu ſunt, alii gratis intercipiant.*

II. *Ac præterea ejuſmodi Societates privilegiatæ opibus ſuis Reipub. exigente neceſſitate, felicius poſſunt quam ſingula ſuccurrere.*

III. *Videntur etiam meliori fide Commercia tractari, ac majorem Copiam Mercium hoc modo poſſe advehi, neque de tot fraudibus & compendiis cogitare neceſſum habent, quorum lucrum in commune velut ærarium redactum æquilibus portionibus diſtribuitur.*

Puffendorff de Jure Naturæ & Gentium. lib. 5. *fol.* 655.

A learned Author does more at large deſcribe it.

It has been a queſtion ſometimes debated, whether the Society entered into by the *Hans* Towns were not againſt Law? *Quippe quod ſpeciem Monopolii præ ſe ferre videtur, ut certis locis merces emant confœderati quæ rurſus pretio eo, quo volunt, vendant.*

This is the ſame objection now made againſt the Charter at the Bar.

But the anſwer given was twofold, and will come home to this caſe.

I. That the Emperor, *Charles* IV. has given his approbation, and made it lawful by his authority.

II. That they had continued in poſſeſſion of this Society ſo long, that now the length of time (together with the Prince's conſent) removed all doubt whatſoever; *Carpzovius de lege Regia Germanorum, cap.* 6. *ſect.* 10. And the Charter now in queſtion, and other Charters of like nature granted by the Kings of *England*, which I ſhall have occaſion to remember by and bye, remain undiſturbed without the leaſt interruption, as long as this Society did before this queſtion was ſtated.

And though, according to the rules of our Laws, ſuch a length of time does not obtain the credit of a preſcription; yet by the Law of Nations, and the practices of all other countries, which are only adapted for this purpoſe, it is otherwiſe. *Præſcriptio enim tam longi temporis vim legis obtinet, imo tollit omne vitium.*

Præſcriptio temporis immemorialis, quæ privilegiata eſt, & ex vitioſo etiam titulo dominium & jus tribuit, omneſque Solemnitates, etiam extrinſecus, negotio acceſſiſſe præſumit tanti temporis Antiquitas, num. 10. *n. Atque omnem Monopolii reſpectum conſuetudo immemorialis vel Cæſarum approbatio excludit, n.* 10. 26.

Quia conſuetudo immemorialis Cæſarum ſcitu & conceſſu hæc antiqua Societas fulcitur, omnis Monopolii reſpectus etiam minimus læſerat. Marg. lib. 4. *cap.* 7. *n.* 50.

And as theſe *Hans* Towns were one of the firſt Corporations of trade I have read of, ſo was it thought the intereſt of *England* to ſupport and encourage them. I find above ſixty (ſome ſay eighty) Towns and Cities united their Stocks, making *Lubeck*, *Brunſwick*, *Dantzick*, and *Cullen*, the chief places of their reſidence; and ſo great was their trade and credit under that conſtitution, that many Princes granted them large privileges, and they kept Courts by their Deputies and Councils at *Bergen*.

By the Laws of *Spain*, all Monopolies are forbidden, and under the ſame penalties appointed by the Civil Law: yet there alſo a right may be acquired to a ſole trade, by licence obtained from the King, or by Preſcription.

Quinta partida Tit. 7. *leg.* 2. *membris hoc Commercium Maritimum excluſis cæteris ad* 20. *annos concederetur. Neque ulla re ſe magis prodidit Imperii odium Batavicæ noſtris diebus, (Deo ita volente) conſtituti magnitudo, & felicitas, quam Navigationum in Indias Orientales ſuſceptarum conſtantia & ſucceſſus, ad quas ut ærario parceretur, Societates inſtitutæ, cautumque tandem, ut ſub unam Societatem omnes coïrent, quod alioque experimento conſtitiſſet, Aromatum pretia ab inſularis ob emptorum frequentiam augeri, & cum alii aliis prævertere, & lucrum ad ſe aliorum damno derivare ſatagerent, ubi concordia maxima eſt opus, æmulationum & diſſidii ſemina ſpargi.*

I come in the next place to make it appear, that as the Law of Nations, and the practice of all other Countries, warrants the like Grants and reſtrictions with the caſe at the Bar; ſo I conceive this Charter of ſole trade to the *Indies*, excluding others, is neither oppoſed by the Common Law, or prohibited by any Act of Parliament; but is ſupported by both, as will more evidently appear by the practice and conſtant uſage in all times.

Therefore, though ingroſſing be a crime, odious in the Law, and puniſhable, yet all manner of ingroſſing is not.

Therefore in the caſe of foreign trade, which is only applicable to the caſe at the Bar; it was reſolved by all the Judges of *England*, 3 *Inſtit.* 196. That Merchants may buy beyond ſea in groſs, and ſell here again in groſs alſo. I ſay, that all Monopolies are not unlawful. Generally ſpeaking they are, and therefore, I will admit the deſcription of an unlawful Monopoly, made by my Lord *Coke*, 3 *Inſtit.* 181.

A Monopoly is an inſtitution or allowance by the King, by his Grant, Commiſſion, or otherwiſe, to any perſon or perſons, bodies politick or corporate, of, or for the ſole buying, ſelling, making, working, or uſing any thing; whereby any perſon or perſons, bodies politic or corporate, are ſought to be reſtrained of any freedom or liberty they had before, or hindered in their lawful trade.

Now if the ſubjects of *England* had not, before this Grant, a freedom and liberty to trade to the *Indies*, againſt the King's royal pleaſure, the Charter at the Bar will be no Monopoly within that rule.

Now that they had no ſuch liberty, hath been ſufficiently proved by the ſeveral prohibitions mentioned before; and the many more inſtances thereof, cited by Mr. Attorney and Mr. Sollicitor; and it would be very ſtrange, that the King might prohibit Foreigners from coming here into *England*, and not prohibit his own ſubjects from going into foreign Countries.

And it is not denied, but if the King ſhould proclaim a war with the *Indians*, that then it would be a prohibition to all his ſubjects to have any commerce with them; nay, and he might continue that war as long as he pleaſes; and by that means all his ſubjects would be as well prevented of any of the commodities of that country; and alſo of exporting any of our commodities thither. So that ſurely this Charter, with theſe reſtrictions, is much better than a total excluſion; and therefore foreign trade is not like our home trade, to which the word Monopolies is properly applicable; for that cannot be totally excluded for any time; tho' never ſo ſmall, by any Act of Prerogative.

Object. Ay, but, ſay the Defendant's Counſel, though the King can by his prerogative prohibit all trade to any country, upon ſuch great emergencies as war and plague, *&c.* yet to grant liberty to ſome, and exclude others, that makes the Grant at the Bar be thought a Monopoly. Which is ſtill begging the queſtion; for if the King by his prerogative, have the power of reſtraining and diſpoſing foreign trade, where Acts of Parliament have not interpoſed; as by the precedents already cited I conceive clearly he has, as inherent to his Crown; therefore, as he may reſtrain all, ſo he may reſtrain any part by the ſame parity of reaſon.

If the King proclaims a war with any country, which is a general prohibition of trade, and ſhould order that *John a Style*, or a dozen, or any greater number of his ſubjects, *&c.* and give them inſtructions to treat for a peace, and the perſons ſo appointed ſhould carry on a trade; would not Mr. *Sandys*, do you think, have as much reaſon to murmur that he was none of thoſe Ambaſſadors, as he has now by being not comprized within the Charter? And would it not be thought an arrogancy and ſaucineſs in him, to demand an account of the inſtruction given by the King to ſuch Ambaſſadors? Or durſt he trade there till a peace were ploclaimed with that country?

And the gloſs of that Law ſays, *Mercatores non faciant inter Monopolium de re non vendenda niſi pro certo pretio, vel de non excercendo officium niſi per eos recipiatur Officiales & Socios: Poſſunt tamen hæc facere cum conſenſu & ſcientia Regis & contra facientes perpetuo exulabunt, & eorum bona Regi applicantur. Ex privilegio ergo Regis poſſunt ſimiliter & conſuetudine vel preſcriptione, quia quod privilegio acquiritur, etiam præſcriptione acquiri poteſt.*

And there quotes *ubi dicitur, quod poteſt concedi privilegium; quod quis ſolus piſcetur in certa parte Maris, & aliis poteſt prohiberi.*

In *France* Monopolies are prohibited alſo, *Sub pœna Confiſcationis corporis & bonorum indict. Conſt. Fr.* 1. *Art.* 191.

Notwithſtanding which, there are eſtabliſhed ſeveral Corporations for trade; I will name but two. *Anno.* 1657, the *French* King makes a grant of the ſole fiſhery in his Dominions to a Society, excluding others upon pain that Interlopers ſhall incur the penalty, *de Confiſcation des Vaiſſeaux & Merchandizes & de dix mille Livres d' Amende. Aytz. vol.* 4. *pag.* 207. And in the year 1664, the *Eaſt-India* Company, by his declaration, with an excluſion to all others, like our *Eaſt-India* Company, *page* 74, 75.

In the *United Provinces*, the Laws againſt Monopolies are the ſame, yet there always were ſeveral trading Corporations excluſive of all others. 3 *June* 1621. in the Charter of the *Dutch Weſt-India* Company it is granted thus: And in caſe any one ſhall go to, or negotiate in any of the aforeſaid places granted to this Company, and without conſent of the ſaid Company, it ſhall be upon pain and forfeiture of ſuch ſhip and goods, as ſhall be found to trade in thoſe Coaſts and Places, which being preſently and on all ſides, on the behalf of the ſaid Company, ſet upon, taken, and forfeited, ſhall be and remain to the uſe of the ſaid Company, *Aytz. vol.* 1. *p.* 62. *ſect.* 1.

And in caſe ſuch ſhips or goods be ſold, or fly into lands or havens, the Riggers and Part-owners thereof ſhall and may be diſtrained to the value of the ſaid ſhip and goods.

That the aforeſaid Company ſhall within the ſaid limits make Governors, Officers of War and Juſtice; and for the other neceſſary ſervices for the preſervation of the places, and maintaining of good order, policy and juſtice, and the advancement of their trade, ſhall appoint, diſpoſe and diſplace, and ſubſtitute others in their places, as they ſhall find their affairs do require.

All ſhips coming to any place where the Company have their Garriſon and Government, ſhall not tranſport thence any men, goods, or money, without leave and conſent of the Council, upon the pain and forfeiture of ſix months wages, &c.

In the Grant to the *Dutch India* Company, 20 *Mar.* 1602. that no body, of what quality or condition ſoever, ſhall for the ſpace of twenty-one years paſs *Eaſtwards* of the *Cape of Good Hope*, upon forfeiture of ſhips and goods, *Aytz.* 1 *vol. fol.* 157.

That the ſaid Company may appoint Governors and Officers of war and juſtice, and for other neceſſary ſervices, for the preſervation of their places, and maintenance of good order, policy and juſtice.

The ſaid officers to take the oath of ſupremacy to the States-General; and of fidelity, as to what concerns trade and traffick, to the Company.

And afterwards, the 9th of *Sept.* 1606. a *Placart* was publiſhed, that nobody, directly or indirectly, ſhall paſs or trade beyond the *Cape of Good Hope*, upon pain of death, and forfeiture of their ſhips or goods, which ſhall be found to have done or to do ſo. And though they ſhould abſent themſelves out of the *United Provinces*, yet the ſentence ſhall go on, and be decreed and executed, with the preſent confiſcation and ſelling of their goods, actions, and credits.

Idem, page 158. And ſurely the *Dutch* have been always by us eſteemed as our greateſt and moſt dangerous rivals in trade.

And as for the reaſon and neceſſity of eſtabliſhing this way of trading by Companies, ſee the judgment of *Thuanus, lib. Hiſt.* 124 and 130, where making mention of the *Eaſt-Indies*, he ſaith thus: *Diverſis itineribus hujus Regionis Incolarumque Ingeniis cognitis tanta frequentiâ à privatis hæc ipſa Navigatio & Commercium exercitum fuit, ut alter alterum fere iviſſet perditum. Ad obviandum itaque huic malo viſum fuit, An.* 1602. *quibuſdam hujus Navigationis mercatoribus, præpotentum ordinum conſenſu certum conſtituere corpus, cujus tantummodo,* &c.

The *Indians* being Infidels are by law eſteemed common enemies; and the opinion of my Lord *Coke* in *Michelborne*'s caſe, I think, therefore, to be Law, notwithſtanding the objections that have been made againſt it, which none of our books warrant; now the King by his Charter makes the Plaintiffs as it were his Ambaſſadors to concert a peace, and Mr. *Sandys* murmurs becauſe he is not one of them.

The King may grant a Fair or Market to every ſubject he has; but becauſe he grants that privilege to ſome of his ſubjects, have the reſt any juſt ground of complaint? Becauſe the King may pardon every offender, but will not pardon any Highwayman now in *Newgate*, muſt thoſe gaol-birds, therefore, think themſelves injured in their liberty and property? Becauſe the King granted to his town of *Hull*, that

that no other Ships ſhould be there freighted for foreign Parts, till the Ships of that Town were firſt freighted; as he did, *Rot. Clauſ.* 41 *E.* III. *memb.* 25. did *London*, *Dover*, or any other Town of Trade complain? Would any of theſe Gentlemen that contend for this Liberty of Trade, adventure with their Fortunes to *Algiers*, and when they are ſeized upon be the *Algerines*, tell them we are *Engliſhmen*, and we have by the Common Law of *England*, and many Statutes of our Kingdom, which ſupport the Liberty of the Subject, a Freedom to trade wherever we pleaſe? Or would not they rather ſay, we have a Paſs from the King of *England*, and rely upon that, which preſumes Treaties, Leagues, and Truces between Princes; and in caſe that will not prevail, the King will ſee them righted? And in the Charter that is now before us, there is a particular Reſtriction and Limitation of Trade to any Prince in amity with our King. Now as the conſtant Uſage and Practice of other Countries warrants ſuch Societies as theſe, ſo does ours too: For, as I ſaid, the *Hans* Towns were ſome of the firſt Corporations of Trade that we read of in Hiſtory; ſo was it thought the Intereſt of *England* to ſupport and encourage them.

King *H.* III. gave them great Privileges, and the *Still-yards* for their Reſidence, which they enjoyed near 300 Years, managing their Trade by an Alderman and Counſel, called *The Guild of the Hans*, ingroſſing the Trade of *England* for Grain, Cables, Maſts, Pitch, Tar, *&c.* and under that Colour the *Jacobſons* at this Day claim ſeveral Privileges.

It is obſerved by many Hiſtorians, that the moſt flouriſhing Trades have been begun by united Stocks and Policies.

In this Kingdom a Patent was firſt obtained for the erecting the Staple, from *E.* III. before any Act of Parliament intermeddled in that Trade, and proceeded under ſeveral Regulations till the Time of Queen *Elizabeth*. In the Book I cited before, *Malyn*'s *Lex Mercatoria*, *fol.* 150. ſays, This Company of Merchants are above 400 Years ſtanding, as that Book reckons from 1248, when the ſaid Merchants obtained Privileges of *John* Duke of *Brabant*, and were called the Brotherhood of St. *Thomas Becket* of *Canterbury:* Which were confirmed by King *E.* III. *H.* IV. *H.* V. *H.* VI. *E.* IV. *R.* III. *H.* VII. who gave them the Name of *Merchant-Adventurers*; and after him confirmed by *H.* VIII. *E.* VI. Q. *M.* Q. *Eliz.* and King *James*, not without many Enemies and Oppoſers; eſpecially, ſays that Book, of late taxing them to be Monopolies, and unprofitable to the Commonwealth, being that all our Cloths are not dreſſed and dyed in *England*; yet it ſtill prevailed, as being thought for the publick good.

And 'tis obſervable, that Queen *Elizabeth* did not only confirm what was done by her Predeceſſors, but augmented and greatly enlarged the Privileges of this ancient Company; and confirmed the Charter of the *Muſcovy* Company, granted by *Philip* and *Mary*; and ſet up ſeveral other Companies, as that of *Exeter*, mentioned at the Bar; the *Eaſt-India* Company, and the *Levant* and the *Eaſtland* Company. And although that ancient and beneficial Company of Staplers was often oppoſed by particular Perſons, and complained of as a Monopoly intrenching upon the Liberty of the Subject, in ſeveral Parliaments, in the Time of *H.* IV. *H.* VII. *E.* VI. and Queen *Mary:* Yet all Parties being heard, theſe Complaints were fully anſwered, and the Company's Privileges ratified and enlarged.

Again, in Queen *Elizabeth*'s Time, the Clothiers having prevailed againſt the Company, the clothing Countries were almoſt quickly ruined, and reduced to that Extremity, that in 29 *Eliz.* the Lords of the Council ſent for the Members of that Company, deſiring them to reaſſume their Privileges, and chearfully to proceed in their Society; with Aſſurance of all Countenance and Aſſiſtance from the Government. And in the Reign of King *James*, after ſeveral Interlopers had endeavoured to deſtroy the Company, the King publiſhed his Proclamation to reſtore the Company to its ancient Privileges.

So did King *Charles* I. 7 *Dec.* 1634, reciting, "Whereas we have "taken into our princely Conſideration the manifold Benefits that re"dound to this Kingdom; and finding how much Order and Govern"ment will conduce to the Encreaſe and Advancement of the ſame, we "have thought fit, with the Advice of our Privy-Council, *&c.*" There he gives an Eſtabliſhment to the Company, and prohibits any to intrude upon their Privileges, upon pain of ſuch Puniſhments as the *Star-Chamber* ſhall inflict.

Since this, it may be worth Conſideration, whether the breaking of this Company, has not occaſioned the great Decay of our Trade in Wool: It being agreeable to Reaſon, that as no Law can be effectual without Courts of Juſtice to put them in Execution; nor a ſtraggling Army ſubſiſt without Diſcipline: So a ſtraggling Trade managed by particular Perſons, whilſt every one ſtrives to advance his own private Intereſt, will ruin the Trade in general, eſpecially ſuch a hazardous Trade as this to the *Eaſt-Indies*, which already hath been ſo chargeable, and can only be prevented by the Conduct and Government of a public Society: And ſurely to look after and ſettle theſe Matters, properly belongs to the Care and Prudence of our Governors.

Now I ſhall obſerve, how the Practice has been both in Queen *Elizabeth*'s Time, and ever ſince, and that although many Charters like ours at the Bar have been granted; and none ever demanded by a Judgment in *Weſtminſter-hall*, or ſo much as objected againſt, ſave only that of the *Canary* Patent, till this Cauſe at the Bar: And though ſeveral Attempts have been made both in Parliament, and in the Courts at *Weſtminſter-hall*, againſt Monopolies; yet this Charter, and others of the like Nature, were never looked upon under that Character. For inſtance,

1. A Charter was granted 2 *Eliz.* to the Merchants of *Exeter* for the ſole Trade to *France*, excluding all other Merchants of *Exeter* not of that Company, continued undiſturbed, and prevailed againſt a great Oppoſition that was made againſt it in Parliament. King *Edward* VI. and King *Philip* and *Mary*, having granted a Charter like ours to the *Ruſſia* Company, which continued in Peace till the eighth of Queen *Elizabeth*; when the Parliament taking Notice of that Patent, thought fit to confirm it with all the Commendations imaginable; and was ſo far from thinking it a Monopoly, that it ſays, the Commonwealth before that time had received great Advantages by it; and grants, and inflicts greater and other Penalties than were or could be inflicted by the Letters Patent: And it is obſervable, that there were ſome Interlopers upon that Trade in thoſe Days, and had been liable to the Forfeitures inflicted by thoſe Letters Patent, and were therefore forced to apply themſelves to that Parliament, and did obtain a ſpecial Proviſo to excuſe thoſe Forfeitures, which, had not that Act of Parliament been made, they had been liable to; which I take to be an Authority full, as to the Caſe at the Bar.

Queen *Elizabeth*, during her Reign, granted ſeveral Charters of the like Nature, which paſſed the Peruſal of her Attorney and Sollicitor, learned Men in our Profeſſion. In the Beginning of her Reign my Lord Chief-Baron *Weſton* was Sollicitor, Sir *Gilbert Gerrard* Attorney-General, and paſſed thoſe Patents both to the *Ruſſia* and *Exeter* Companies. 23 *Eliz.* my Lord Chief-Juſtice *Popham* was Attorney, and the Lord-Chancellor *Egerton* Sollicitor, in whoſe Time ſome few ſuch Charters were alſo granted like to this at the Bar. And then my Lord *Coke* was Attorney-General, and my Lord Chief-Baron *Fleming* Sollicitor-General, who approved thereof; and it is obſervable, that in the 43 and 44 of the Queen, the Parliament took Notice of many Patents of Monopolies, as it appears by the Book cited at the Bar; *Townſend's Collections*, 244 and 245. The Parliament ſeemed to be as high as ever they were in any Age before, and particularly were incenſed by thoſe Patents. A Liſt of all were brought in by Mr. Secretary *Cecil*, that were thought grievous or prejudicial to the Commonwealth; and though there were a Catalogue of forty or fifty, amongſt whom that of *Darcy* is one, yet the Parliament, nor none other, complained of any Charter granted to Corporations, but they continued undiſturbed. And by the way it is not amiſs to obſerve, that *Darcy*'s Patent was not immediately damned in Parliament, but referred to take its Fate in *Weſtminſter-hall*; the great Reaſon that guided that Judgment was, the Reſtraint that was put upon the home Trade; and ſo it appears in *More's Reports*, 672. And thus ſtood theſe Charters; the *China* Charter, the *Turky* Company, the *Barbary* Company, the *Guinea* Company, all Charters of ſole Trade, excluding others, remained in Trade during all Queen *Elizabeth*'s Time.

But in the third Year of King *James* was the firſt Act made for opening a general Trade to *Spain*, *Portugal*, and *France*, to all the King's Subjects; which could not be done in *Weſtminſter-hall*, as appears by the Preamble to that Act; nor does that Act call thoſe Charters Monopolies, or open a free Trade to any other Parts of the World, but leaves all Charters of foreign Trade, ſave to *Spain*, *Portugal*, and *France*, to remain as they did before. And in the 4th of *Jac. cap.* 9. there is Notice taken particularly of the Charter granted to the *Exeter* Merchants of the ſole Trade to *France*; and becauſe it was thought to be damned by the general Words of that Statute *E.* III. yet it is there enacted and declared, That the ſaid Statute of Patents, neither did nor ſhould diſſolve, annihilate or impeach the ſaid Charter, or the ſaid Company in any of their Privileges, Liberties, or Immunities, granted unto them by the ſaid Charter, any thing contained in that general Act to the contrary notwithſtanding; and from this Act of Parliament I obſerve two things:

I. That the Parliament thought that the Charter to *Exeter* for ſole Trade to *France*, excluſive of others, was for the publick Benefit and Weal of that City.

II. That the Letters Patent were good in Law, and did not want the Aſſiſtance of an Act of Parliament to ſupport them; for that Act does not confirm thoſe Letters Patent, but provides only, that the Statute 3 *Jac.* ſhould not by general Words be thought to impeach or deſtroy them. Now had the Parliament thought the Charter void or infirm, they might have confirmed or ſtrengthened it, as the *Ruſſia* Patent was; but they concluded, that had it not been for the Statute of *Tertio*, the Charter was good to all Intents and Purpoſes: And this I take to be full Authority in the Caſe at the Bar. But to proceed, the *Greenland* Patent for ſole Fiſhing, excluſive of others, granted by Queen *Elizabeth*, is held good, *Rolls*, *Part* 5. *fol.* 3. Taylors of *Ipſwich*'s Caſe, and the Caſe of the Abbot of *Weſtminſter*, is agreed to be Law; in *Darcy*'s Caſe, *More*, 673, by Mr. Juſtice *Dodderidge:* And by the way he gives good Advice to all Perſons that diſpute the King's Prerogative; and for the Friendſhip I bear to Mr. *Sandys*, and others that are now in Court, and I think need the Advice, I ſhall read the very Words of the Book: He that hews above his Hands, Chips will fall into his Eyes; *Et qui Majeſtatem ſcrutatur principis, opprimetur ſplendore ejus.*

In King *James*'s Time, many Grants, like ours, were made, but particularly in 7 *Jac.* the Patent granted to the *Eaſt-India* Company by Queen *Elizabeth*, was, by the Advice of her Council, as well as by my Lord *Hobart*, then Attorney-General, and Sir *Francis Bacon*, Sollicitor-General, confirmed and allowed with the ſame Clauſes as the Charter at the Bar; and ſo remained undiſturbed and uninterupted all King *James*'s Reign, and was not thought to be any whit touched or aimed at by the Proviſo in the Statute, 43 *Eliz. cap.* 1. *Sect.* 9. that Act only pointing at the Monopoly Patents complained of in that Parliament of 43 of the Queen, which I mentioned before. Then comes the Statute ſo much inſiſted on by the Defendant's Counſel, commonly called the Statute of Monopolies, *Stat.* 21 *Jac. cap.* 3. which certainly doth not at all affect the Caſe at the Bar. For *firſt*, This Charter is not a general Grant for the ſole buying, ſelling, making, uſing of any thing within this Realm, which are the very Words of the Acts: Nor does this Charter give the *Eaſt-India* Company Licence or Toleration to do, uſe, or exerciſe any thing againſt the Tenor or Purport of any Law or Statute, which are the only things provided againſt by that Act. But the Parliament then ſeemed to take the ſame general Care of all ſuch Charters as this at the Bar, as the Parliament did in 3 *Jac.* of that particular Charter of *Exeter*; and therefore, to the End that thoſe Words in the Beginning of this Act of Monopolies might not be thought to extend to Charters, to Corporations for Trade, there is a Proviſo, *Sect.* 9. that that Act ſhould not extend to any Corporations, Companies, or Fellowſhips, *&c.* erected for the Maintainance, Enlargement, or ordering any Trade or Merchandize, but leaves the ſame as they were before that Act, without any Immutation: And it is obſervable, that the Parliament then thought a general ſaving ſufficient to ſupport thoſe Charters that were then in being, to Corporations for Trade and Merchandize; but made particular Proviſos for the ſaving of Patents for Inland Commodities, *viz.* ſuch as Salt, Gunpowder, Ordnance, Shot, and the like.

So that this Company was in full Poſſeſſion of their Privilege of ſole Trade, excluſive of others, all King *James*'s and King *Charles* I.'s Time, till all the Prerogatives of the Crown were invaded, and the crown'd Head too was taken off by Traitors and Rebels. But the Providence of God

God having reſtored us our King, and re-inveſted him with all his undoubted prerogatives, as well as reſtored us to our ancient rights and privileges, and ſcarce, as I may ſay, warm in his Throne, but amongſt the other conſiderations that he had for the publick weal of his ſubjects, he conſiders the publick advantage of this Kingdom ariſing by trade, and amongſt them, one of his firſt thoughts are fixed upon this Company. For 3d of *April*, 1661, he by his Letters Patent taking notice of the Charters of Queen *Elizabeth*, and King *James*, granted to the *Eaſt-India* Company, and of the injuries that were done to them by the late troubles; with the advice of his Council, and approbation of Mr. Attorney *Palmer*, and my Lord-Chancellor *Finch*, he granted and confirmed to them all their privileges. The 27th of *May*, in the 20th of his reign, Lord-Chancellor *Finch* being Attorney, and my Lord-Keeper, that now is, Sollicitor, he confirms this Charter; and grants to the *Eaſt-India* Company other privileges, by another Charter in the 28th year of his reign; at which time the Lord-Keeper was Attorney, and Sir *William Jones*, Sollicitor; he confirms the former, and grants more privileges: and in the 25th year of his reign, by the Charter now in queſtion, paſſed with the approbation of the preſent Attorney and Solicitor, men of great ability in their profeſſions, and of whom, were they not preſent, I ſhould ſay much more; the Charter to this Company was confirmed with additional privileges.

Nor has this Charter paſſed only the approbation of his Majeſty and Council, ſince his happy Reſtauration, but the Parliament has likewiſe taken notice of it; the Statute 14 *Car.* II. *cap.* 14. takes notice of it to be of great advantage to the publick. The *Stat.* of the 29th of this King for poll-money, taxes them with twenty ſhillings for every hundred pound in Stock. In the great caſe between *Skinner* and the *Eaſt-India* Company, the Houſe of Commons defended them, even to an eruption between the two Houſes.

Mr. *Jenks* and ſome other Linnen-Drapers and Tradeſmen of *London*, taking the advantage of the heats that too frequently poſſeſſed the Houſe of Commons of late years, eſpecially againſt the point of prerogative, did furiouſly attack the *Eaſt-India* Company, but without any ſucceſs: and this Company was never aſſaulted in *Weſtminſter-Hall* till this cauſe at the Bar. I cannot help therefore this obſervation, that as the King by his Charter 1667, takes notice, that the Charters granted by Queen *Elizabeth* and King *James* remained uninterrupted till the late rebellion; ſo the Interlopers againſt the King's prerogative in this particular, and the horrid conſpirators againſt the King's life in this laſt helliſh conſpiracy, firſt appeared in *Weſtminſter-Hall* about the ſame time.

As to the objections I have not yet given anſwer to, I think they are but few: my Lord *Coke*'s opinion, cited by Mr. *Pollexfen*, 2 *Inſt.* 540. where my Lord obſerves new things, which with fair pretences prove hurtful to the Commonwealth; and amongſt them reckons, that new Corporations trading into foreign parts and at home, which under the fair pretences of order and government, in concluſion tend to the hindrance of trade and traffick, and in the end produce Monopolies, does not all concern the caſe at the Bar. For this Charter that hath continued for an 100 years without any interruption till of late, can neither be thought a new Corporation or hindrance of trade; and Sir *Edward Coke*, when he was Attorney-General, and paſt this Charter, was as learned in the Law, as he was when he publiſhed that Book, and was turned out of being Chief-Juſtice, did not think this Charter needed that caution.

As to the caſe of the *Canary* Patent between *Horn* and *Ivy*, that cannot affect the caſe at the Bar.

I. For firſt, the Judgment in that caſe was given upon the point of pleading, and not upon the validity of the Patent.

II. That Patent was in perfect oppoſition to the Statute, 3 *Jac.* that opened a free trade to *Spain*, and therefore could not be reſtrained by the King's Letters Patent, but there is no ſuch objection to our caſe.

The Counſel that argued for the Defendant ſeemed to allow the Charters to the *Virginia*, *Turky*, and *Eaſtland* Companies, which are excluſive of others, to be good; becauſe they are managed by a Regulation, and not by a Joint-Stock, which ſurely can make no difference: for it is a Grant of a ſole trade to them, excluſive of others, as well as the caſe at the Bar. And 'tis as hard to get into the *Turky* Company, as it is into this; and may be more chargeable: for you cannot be a Member of the *Turky* Company, but you muſt be a *Freeman of the City of London*; and makes you liable to all the great offices of charge in that Government. But a freedom of the *Eaſt-India* Company may be purchaſed at a much eaſier rate; the Members of the *Eaſt-India* Company are as viſible as thoſe of the *Turky*. And though it was ſaid, the *Eaſt-India* Company were ſometimes inviſible, yet, were the *Turky* Company infected with ſo many Interlopers as the *Eaſt-India* Company have, they would not appear ſo glorious and ſplendid as they now do, and as I heartily wiſh they may long continue. But the King by this Charter has reſerved to himſelf a power to deſtroy and alter the whole Charter, or any part thereof, ſo as to put it into a way of regulation inſtead of a Joint-ſtock, in ſuch manner as he ſhall in his great wiſdom think fit; therefore it becomes us in duty and modeſty to wait till we receive his further royal pleaſure therein. And whereas it was objected at the Bar, becauſe the King cannot lay any impoſition upon foreign trade, therefore he cannot reſtrain it:

I do not know to what end that objection was made, becauſe it does not affect the queſtion at the Bar; but leſt it may obtain the effect, that I preſume was aimed at, I think it not amiſs to ſay, that even at this day there is much more may be ſaid in the maintenance of the King's prerogative in *Weſtminſter-Hall*, in that caſe, than can be offered againſt his prerogative in this. But in as much as that and ſeveral other objections againſt the Charter proceeded from an unreaſonable, as well as unmannerly miſtruſt they have of the Crown, I cannot but remember that his ſacred Majeſty was not ſo miſtruſtful of them. For he ſince his reſtauration has beſtowed upon his ſubjects more than all his predeceſſors, put them all together, ſince the conqueſt, ever did. Nay, he in a moment frankly beſtowed upon us more than ever he deſires he ſhould be truſted with again, for by his act of indempnity he beſtowed upon his ſubjects their lives, liberties and eſtates, which were all juſtly and legally forfeited to him by the late rebellion; the conſideration whereof will prevent all fears and jealouſies, and promote in all loyal hearts a firm reſolution to ſacrifice their lives and fortunes, ſo freely beſtowed upon us by him, to maintain the Crown and juſt Prerogatives thereof; ſo that it may have a perpetual continuance in that Royal Family, in a lawful ſucceſſion; which I heartily pray may be ſo long as the ſun and moon endures.

From what has been ſaid, I hope it doth plainly appear, that ſince the Law of this Land, and the Law of Nature and Nations, allow the power of making Companies to manage traffick, excluſive to all others, to be in the Prince, that this is reckoned to be *inter Jura Regalia*; that no Act of Parliament does reſtrain this Prerogative; that the practice of all *Europe* has been accordingly; that particularly ſuch Companies have been erected in *England*, and thoſe Companies have been in quiet poſſeſſion of their privileges for ſuch a number of years; that they have paſſed the approbation of many learned men; that they have been thought for the publick advantage of the Nation, by ſo many Kings and Princes, with the advice of their Council, both in and out of Parliament; that all Statutes and Authorities of Law that we can meet with in our Books affirm it, and none that I can meet with oppoſe it.

That the *Eaſt-India* Company have ſolely run the hazard, and been at great expences,

In diſcovering places,
Erecting Forts, and keeping Forces,
Settling Factories,
And making leagues and treaties abroad;

It would be againſt natural juſtice and equity, (which no municipal law can take away) for others to reap the benefit and advantage of all this:

Eſpecially ſince all this has been occaſioned by an Act of the publick, and by the juſt prerogative of the Crown, under which they claim.

So that now, ſuppoſing the matter had been doubtful at the beginning (as yet the contrary is evident), yet after ſo many years undiſputed and uninterrupted prerogative of the King, and the poſſeſſion of the Companies purſuant thereunto; and yet the laws having always been open to any ſubjects who conceived themſelves grieved; that ſpeech which *Joſephus* records of King *Agrippa*, to thoſe Jews who after many years endeavoured to recover their loſt pretence, may be applied to theſe clamorous Interlopers:

Intempeſtivum eſt nunc libertatem concupiſcere, olim ne amitteretur certatum oportuit. Non amantes libertatis diſcendi eſtis, ſed ſubditi contumaces.

And ſo the *Romans* anſwered *Antiochus* (to ſhew the injuſtice of his demands), *That he required thoſe Cities which his Predeceſſors for ſo many years had never enjoyed.*

And Queen *Elizabeth* pleaded againſt the King of *Denmark*, for the rights of fiſhing upon the coaſts of *Norway* and *New-Iſland*, That neither his great-grandfather, grandfather, nor father, had exacted any thing for it; and therefore concluded it to be unjuſt. *Cambd. Eliz. ſub. ann.* 1600.

So that I conclude the firſt, and, as I conceive, the only point in this caſe, that Letters Patent which give licence and liberty to the Plaintiffs to exerciſe their ſole trade to the *Indies*, within the limits of their Grant, excluſive of all others, is a good Grant in law.

2. I do conceive, that the Defendant trading to the *Indies*, contrary to this Charter, may be puniſhed by information at the ſuit of the King; and that this action by the Plaintiffs is alſo well brought; but in as much as I have detained you ſo long upon the firſt point, I ſhall treſpaſs upon your patience but a few words to this.

1. Therefore I conceive, the Plaintiff need not alledge any ſpecial damage, no more than the Grantee of a fair, market, or any other franchiſe.

2. The action is brought, and grounded upon the Grant of the ſole and entire trade; which, as I conceive, is a franchiſe the King may grant, and is like the caſe of new inventions; upon which Letters Patent actions are brought by every day's experience; and the prohibiting clauſe is added, only to make the thing more notorious; and that Interlopers, in caſe they ſhould be proſecuted at the King's ſuit, ſhould be more inexcuſable. And until you can imagine there be as many *Eaſt-India* Companies, as there are commoners and ſchool-maſters in *England*, *Mary*'s caſe, *Coke* 9. can never be thought an objection. As to the objection in the 11 *Rep.* 88. *Rolls Abridg. part* 1. *p.* 106. *Darcy*'s caſe, that admitting the Grant or Diſpenſation to *Darcy* had been good, for the ſole importing of foreign Cards; yet that being only a Diſpenſation to the *Stat.* of *Ed.* IV. and did only exclude *Darcy* from the penalty of that Act, he could not maintain the action: But if in caſe that Grant had veſted an intereſt, as our Grant at the Bar does, he might have brought an action, as, my Lord *Rolls* ſays in the next paragraph, may be collected out of *Darcy*'s caſe.

The caſe upon Patents of new inventions, are full authorities in the caſe at the Bar: And ſo is that caſe of the Abbot of *Weſtminſter*, wherein the Grant of the market for thirty days, excluſive of others, is particularly ſet forth in the action. And the *Saliſbury* man that brought cloth to *London*, and ſold the ſame contrary to that Charter, is proſecuted in an action of treſpaſs upon the caſe, at the ſuit of the Abbot; and the writ concludes, (ſuppoſing the Grant good) *In noſtri contemptum & prædicti Abbatis grave damnum ac Fr. & libertatum ſuarum prædictarum læſionem manifeſtam*; which is an authority full as to this point.

Upon the whole matter, I am of the ſame opinion with my brothers; and do conceive, that that Grant to the Plaintiffs of the ſole trade to the *Indies*, excluſive of others, is a good Grant, and that the action is well brought:

And therefore let the Plaintiff take his Judgment.

XXXVII. The Lady *Ivy*'s Trial, for great Part of *Shadwell*, in the County of *Middlesex*, *Die Martis* 3 *Junii*, 1684. *Ter. Trin.* 36 *Car.* II. *B. R.* Before the Lord Chief-Justice *Jeffreys*.

Elam Mossam, Plaintiff; *versus* Dame *Theodosia Iva*, Defendant.

This Day this Cause came to be tried at the Bar of the Court of King's-Bench, *by a special Jury of the County of* Middlesex; *whose Names follow:*

Middlesex Jury.

Sir *Reginald Forster*, Bart.	*Richard Reynell*, Esq;
Sir *John Cutler*, Kt. and Bart.	*Ralph Bucknall*, Esq;
Sir *Goddard Nelthorp*, Bart.	*Thomas Austin*, Esq;
Sir *Michael Heneage*, Knt.	*Joseph Dawson*, Esq;
Sir *William Gulston*, Knt.	*Thomas Cleve*, Esq;
Sir *Richard Downton*, Knt.	*Richard White*, Esq;

Who being counted, the Record was read to them by the Clerk of the Papers, in *English*; and opened by Mr. *Holloway*, for the Plaintiff.

Mr. Serj. *Stringer*. MAY it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the Plaintiff; and the Question will be, whether the Lessor or the Plaintiff hath a good title to the Tenements in question; which are about three or four hundred tenements, near *Radcliffe*, in *Shadwell* Parish; and the ground thereof is, say we, the ancient Inheritance of the Church of St. *Paul*'s, who have had the possession thereof for four or five hundred years *. We shall prove leases down for some hundreds of years, till we come to that made to the Lessor of the Plaintiff; under whom we claim. We will begin with the last lease of Dean *Stillingfleet*, 30 *Sept.* 1678, upon the surrender of the lease made by Dean *Sancroft*, now Lord Archbishop of *Canterbury*.

Swear *Jeoffrey Willan (which was done)*; it is a Church-lease, but yet he is a witness to it.

The Lease of 30 Sept. 1678, *was read.*

Mr. Serj. *Stringer*. *(Shewing to him another Deed)* Did you see that Deed sealed and delivered?

Willan. Yes, Sir.

An Indenture quadripartite made the 25th of March, 1679, 31 Car. II. *between* Thomas Neale, *Esq*; *the Lady* Gold, &c. *Read.*

Mr. Att. Gen. We admit the Assignment.

Mr. Serj. *Stringer*. Then we shall prove the Lands in question were always held of the Dean of *Paul*'s.

Mr. Att. Gen. Ay do, shew that these lands in question were so, if you can.

L. C. J. I would not interrupt you, Gentlemen, pray go your own way; but if I mistake not, you had as good begin with 5 *Ed.* VI. as you did last time, as I remember; I have not indeed my Book I had then, here; I fear we have not overmuch time to waste: we shall want time at the latter end of the cause, therefore pray come close to the merits of the cause.

Mr. Serj. *Stringer*. We will shew it, if they require, they know it well enough.

Mr. Att. Gen. Shew what you can.

Mr. Serj. *Stringer*. In 5 *H.* VIII. the Dean of *Paul*'s, *Collet*, leases to one *John Hall*.

L. C. J. But it is 5 of *Ed.* VI. I ask for.

Mr. Serj. *Stringer*. 23 *Feb.* 5 *Ed.* VI. Dean *May* doth make a lease to *Joan Hall*, and *Marcellus Hall*. Then Dean *Fecknam*, 10 *Dec.* 2 and 3 *Phil.* and *Mar.* in consideration of a surrender of that lease, letts another lease to *Marcellus Hall*; and so it continued till *May*, 1630, and then Dean *Donne* made a lease for three lives; and upon the surrender of that in 1636, Dean *Winneff* made a lease to *Moor*; and in 1640, he made another lease to *Winterburn*, which was sold to Mr. *Neale*, and so came to the Lessor of the Plaintiff. First read this book.

Mr. Att. Gen. What Book is it, Mr. Serjeant?

L. C. J. Ay, tell us what it is; open it before you read it.

Clerk reads.] A tenement with a water-mill, *cum Pertinentiis*——

L. C. J. What is it you read there?

Mr. Serj. *Stringer*. It is a Book that belongs to the Dean and Chapter of St. *Paul*'s.

L. C. J. What Book is it? How do you prove it to belong to the Dean and Chapter of *Paul*'s?

(Then Mr. Spencer *was called, but could not readily come in by reason of the Crowd. Mr.* Porter *was sworn.)*

Mr. Serj. *Stringer*. Mr. *Porter*, What say you to this Book?

Porter. Since the beginning of this Suit, this Book was found among the Writings of the Dean and Chapter of *Paul*'s.

Mr. Att. Gen. How long ago, Sir, upon your oath?

Porter. About a year ago.

L. C. J. That is but a slovenly account of such a Book as this.

Mr. *Williams*. It is plain, my Lord, it is not a new Book made on purpose.

L. C. J. It is plain, that in this slippery age we live in, it is very easy to make a Book look as old as you would have it.

Mr. Serj. *Stringer*. We will go on to the lease made to *Marcellus Hall*.

(Then Mr. Spencer *came in and was sworn.)*

Mr. *Williams*. Pray, Sir, when first saw you that Book?

Spencer. Seven years ago.

Mr. Att. Gen. Where, Sir?

Spencer. Among the evidences of the Dean and Chapter of *Paul*'s.

L. C. J. What is it you would read in it? An entire lease, or what?

Mr. Serj. *Stringer*. 'Tis a short note of a lease.

Clerk reads.] A tenement with a water-mill——

L. C. J. See if the Book have any title.

Clerk. No, my Lord.

L. C. J. Let me see it. *(Which was done.)*

Mr. Serj. *Stringer*. The 23d of *Feb.* 5 *Edw.* VI.——

L. C. J. You, *Spencer*, have you seen in any of the Books an entry of any lease made by Dean *Collet*?

Spencer. I have not observed that I have seen any lease of Dean *Collet*.

L. C. J. Have you seen any lease made by Dean *Collet*, in the time of *Henry* VIII. about any of the Church's lands? I ask you the question, because I observe here in this Paper, in two places here is the Word Dean *Collet*, writ with another hand than that of the Book; but *Nowell* is writ with the same hand as the other. And so *Nowell* seems to have been put for the maker of this lease, as being put upon the top; when in truth he was not Dean till long after. Upon your oath, in whose name was that lease lett that is here spoken of?

Spencer. I know not, my Lord; that is the Book I saw then.

L. C. J. Is this lease in your Book of leases?

Mr. Att. Gen. Pray, Gentlemen, you did produce before your original Deed of purchase, where is it now?

Mr. *Williams*. That Book was produced and read at the first trial.

L. C. J. What first trial? Not that last Term.

Mr. *Williams*. It was in Court at that time.

L. C. J. I believe not, you are mistaken in that; for I have brought the notes I took then, and I find no such thing here.

Mr. Att. Gen. They produced then the first purchase of the Dean.

L. C. J. Is there any lease of *Henry* VIIIth's time in that Book?

Spencer. I do not remember any lease of *Henry* VIIIth's time of this land; but I have seen that Book ever since I belonged to the Dean's business.

L. C. J. Have you not a Book of the succession of your Deans? When was *Collet* Dean?

Mr. *Williams*. In 1505.

L. C. J. When was *Nowell* Dean?

Mr. *Williams*. In 1560.

L. C. J. Then I assure you this Book is grandly suspicious.

Mr. Att. Gen. They threaten us with forgeries, and I know not what; I believe it will be found on Mr. *Neale*'s side.

L. C. J. If in case you come and produce a Book, and you value yourselves upon the antiquity of it, as an evidence that this land did belong to the Dean and Chapter, and leased by them, 5 *H.* VIII. and in that Book *Nowell* is written by the same Hand as the rest of the Book, as Dean then; but because you find *Collet* was then Dean, and *Nowell* not till threescore years after, *Nowell* is turned by another hand to *Collet*; it draws a great suspicion certainly upon your Book, as set up for a purpose.

Mr. *Williams*. It is true, my Lord, if we did that, it were something; but we find an old Book among the evidences of the Church, and we produce it as such; we have not altered it, therefore it cannot be done for our purpose.

L. C. J. Who knows who did it? But done it is.

Mr. Att. Gen. And your title is under the Dean and Chapter of *Paul*'s.

L. C. J. Who keeps the evidences that belong to the Dean and Chapter of *Paul*'s?

Spencer. They are kept in the Chapter-house.

L. C. J. I am perswaded there may be an ancient Book, and this may be such an one; but it looks a little untoward in this particular. You, *Spencer*, did you look upon those two particular passages?

Spencer. No; I did not observe it.

Mr. Serj. *Stringer*. My Lord, our next lease in the Book recites one made by *Collet*.

Mr. Att. Gen. Come, upon your Oath; did not Mr. *Baron*, or Mr. *Neale*, come to search in this Book?

Spencer. Yes, they did.

Mr. Serj. *Lutwich*. How long ago was that?

Spencer. As to Mr. *Baron* or Mr. *Neale* themselves, I did never see them come to search; but some for them have.

Mr. *Williams*. Do you believe the Book was thus as it is now, before you came at first to it?

Mr. Serj. *Lutwich*. You say they did not come to search, what did they come for then, to drink?

Spencer. They have come to the Officer, Mr. *Porter*, but I never saw them search.

Mr. *Williams*. But I ask you again, was it so when you found it first?

Spencer. I believe it was, I know of no alteration.

Mr. Serj. *Stringer*. But to put it out of doubt, we have this second lease, which does recite this lease of *Collet*'s.

Mr. *North*. Nay, my Lord, we have another piece of evidence that will fortify that Book to be true, as to the foundation of it; that such a lease was then made as the Book says: for we have a kind of Particular, or Catalogue of the evidences of the Dean and Chapter. It is an ancient writing——And in this there is mention particularly made of a lease made in 5 *H.* VIII. Pray, Sir, look upon that, and give an account of it.

Spencer. I have seen this among the rest of the evidences of the Dean and Chapter of *Paul*'s.

Mr. Att. Gen. How long ago?

Spencer. I cannot directly tell.

Mr. *Pollexfen*. How long do you think, upon your oath?

Spencer. Two years ago.

Mr. Att. Gen. That is since this contest.

L. C. J. Ay, that is a little too lately for an ancient writing.

* The State of the question being, Whether the seven acres in *Shadwell*, was part of the ancient Inheritance of the Dean of St. *Paul's*, to whom Mr. *Neale* was Lessee, and so now Lessor of the Plaintiff; or part of *Wapping* Marsh, that had been drain'd by one *Vanderdelf*, and after sold to the *Stepkins*'s, under whom the Lady *Ivy* did claim.

Mr. Serj. *Lutwich.* Did you ſee it before Mr. *Neale* or Mr. *Baron* ordered a ſearch there?

Spencer. I cannot ſay particularly I did: I have ſeen this paper——

Mr. Att. Gen. Paper, man? It is a Parchment, pr'ythee mind what thou ſayſt: How long is it ſince you firſt ſaw that Parchment?

Spencer. I believe I have ſeen it this ſeven years; but not that I can ſwear to have taken any particular notice of it.

Mr. Att. Gen. Where did you ſee it firſt, upon your oath?

Spencer. Among the reſt of the Deeds and Evidences that belong to the Dean and Chapter of *Paul*'s.

Mr. Att. Gen. Upon what occaſion did you take notice of it firſt?

Spencer. Upon ſearching among the writings.

Mr. Att. Gen. Who did ſearch with you at that time, upon your oath?

Spencer. Mr. *Porter.*

L. C. J. Read it.

Mr. Att. Gen. Was it delivered to Mr. *Neale* before it was brought hither?

Spencer. It is brought here now among the Dean's other writings, we never uſe to deliver any out.

Clerk reads.] This is dated 2 *Eliz.* 1559. Books and other writings appertaining.

Mr. Serj. *Stringer.* Now we will read the leaſe to *Marcellus Hall*; wherein this is recited to have been made.

(The leaſe in the Book was read, dated 23 Feb. 5 Ed. VI. *for five-and-forty years, at* 10*l. rent.)*

Mr. Serj. *Stringer.* Then the next leaſe is in 2 & 3 *Phil. & Mar.* [*Which was read.*

10 Dec. 2 & 3 Phil. & Mar. *from Dean* Fecknam *to* Marcellus Hall *for ninety years from* Michaelmas *before.*

Mr. Att. Gen. There is a licence to alter the Mill, which we ſhall prove he afterwards did.

Mr. Serj. *Stringer.* Your Lordſhip obſerves here were grounds and ſeveral houſes at this time lett, with the Mill and Ponds, and ditches to receive the water. After this, *Marcellus Hall* aſſigned to *Adrian Moor*; he in the year 1618, deviſeth it to his Wife *Mary Moor*; and in 1630, ſhe ſurrenders, and hath a new leaſe for lives.

Mr. Att. Gen. Shew your aſſignments, Mr. Serjeant, from *Marcellus Hall.*

Mr. Serj. *Stringer.* That we cannot do, nor need we; for we are not to derive our title that way, but the Church's title is ours. We will ſhew you Dean *Donne*'s leaſe to *Mary Moor*, upon her ſurrender.

[*Which leaſe, dated* 14 May, 1630. 6 Car. I. *for three lives, at* 10*l.* &c. *was read.*]

Mr. Serj. *Stringer.* Then *Mary Moor*, ſix years after, ſurrenders this leaſe, and takes a new leaſe for three lives in Dean *Winneff*'s time, at 10*l.* a year rent, and 40*s.* increaſe.

[*Which leaſe dated* 5 Aug. 1636. 6 Car. I. *was read.*]

Then another leaſe dated 5 March, 1640, 16 Car. I. *by Dean* Winneff *to* Samuel Whitwick, *and* John Winterburn, at 10*l. the ancient rent,* 40*s. before increaſed, and* 4*l. more now increaſed.*

Mr. Serj. *Stringer.* Thus far it ſtood upon leaſes for lives: this leaſe continued till 1669, till Mr. *Neale* bought this land, and then he renewed it from the now Archbiſhop, then Dean *Sancroft*, who raiſed the rent to 80*l.* during the life of *Freak*, who was the ſurviving life, and to 100*l.* after.

[*Which leaſe, dated* 12 July, 21 Car. II. 1669. *was read.*]

Mr. Serj. *Stringer.* We have brought it home now, my Lord, to the Leſſor of the Plaintiff: For we have ſhewn this leaſe was ſurrendered to Dean *Stillingfleet*; and thereupon he made a leaſe to *Garrard* and *Cratford*, which we have given an account of before. And ſo we have ſhewn a ſucceſſion of leaſes from the Church, for 130 odd years.

L. C. J. The laſt leaſe is at the rent of 240*l.* a-year, I think.

Mr. Serj. *Stringer.* Yes, my Lord.

Mr. Serj. *Maynard.* Have you done, Gentlemen?

Mr. Serj. *Stringer.* Yes, we have, till you give us farther occaſion, Brother.

Mr. Serj. *Maynard.* Then, may it pleaſe your Lordſhip, and you Gentlemen of the Jury, I am of Counſel in this cauſe for the Defendant, my Lady *Ivy.* The Plaintiffs have given you a ſort of evidence for a title; but the truth of it is, all that they ſay will not make a concluſion, ſuch as they would have from their Premiſes: For all that they have proved, is, that the Deans of *Paul*'s, ſucceſſively one after another, have made leaſes. They did in the beginning tell you, they had had this land hundreds of years: But what have they had? and what leaſes have they made? But only a mill, a bakehouſe, a trough of lead, and all houſes, lands, meadows and paſtures thereto belonging. We do not deny but that they are to have a mill; their leaſes are alſo, even the new ones do moſtly follow the track and words that were uſed in Queen *Mary* and *Henry* the Eighth's times. But here is the truth of our caſe: That the Dean and Chapter had a mill, we agree; nay, more than that, we agree that they have eighteen acres that lie on the North ſide of *Ratcliffe* high-way; and alſo that they have another parcel of land, called the *Lynches.* That this may be underſtood, we now crave leave to deliver maps to the Court and the Jury.

Mr. Serj. *Stringer.* And we deſire ours may be ſeen too.

Mr. *J. Withins.* Aye, deliver in your maps, this is the only fit place for them.

(*Which was done on both ſides.*)

Mr. Serj. *Maynard.* Then, my Lord, I will go on. We agree, I ſay, they had a mill, which is now taken down and put in another place: We ſhall ſhew them where it did ſtand, and that was no part of the land now in queſtion. The Jury have ſeen the place, and I hope have had a ſatisfactory view of it. There was once a mill ſtanding, and there was once a pond, but that mill and pond do ſtand elſewhere. The land in queſtion, we ſay, was anciently marſh ground, and ſubject to the overflowing of the Water, and it is ſo to this day. In *H.* VIII's time, it was by one *Vanderdelf*, a *Dutchman*, drained. This, by Act of Parliament, *Richard Hill* was made owner of, and he convey'd it to *Stepkins*, who was the Defendant's anceſtor, and whoſe heir ſhe is. And the boundaries are ſet down in that, and the ſubſequent conveyances, which cannot poſſibly ſtand with thoſe that their mill is ſaid to ſtand in. We ſhall ſhew by ſeveral Records the Queen had a title to it by a conveyance in way of mortgage to her; and this afterwards was conveyed back again to the anceſtor of my Lady *Ivy.* We yield they had a mill, and they have increaſed the rent ſufficiently upon it, not to need other men's land. They have houſes built upon it; I know not indeed how much, but I think it is near 1000*l.* a-year that it yields to them. If then we can demonſtratively ſhew you where our ground is, and where their's is, and if we affirm our title by Records and good Conveyances; then by a pretence to a mill, I hope they ſhall not grind us, or take away all our land.

Mr. Att. Gen. My Lord, and Gentlemen of the Jury, I crave leave to anſwer the Evidence that has been given, before I enter upon our title. They have ſpent a great deal of time to derive down a title to the Dean and Chapter of *Paul*'s, to a mill, a bake-houſe, and ſome little ground thereto belonging. And truly, as Mr. Serjeant ſays, no man ever queſtioned the Dean and Chapter for their mill, and bake-houſe, and leaden trough. But the thing in queſtion is, ſeven acres and an half of land, which in the memory of man was marſh-ground; if you obſerved it. Gentlemen, upon the view how it lies, you know the *North* bound is the Dean's *Lynches*, the *South* bound is the *Thames Wall*, the *Weſt* bound *Foxe's-lane*, and the *Eaſt* bound is the *Hilly ground* that is called *Cock-hill.* And we ſay as to all this land, it is none of the Dean and Chapter's, nor ever did paſs, or was enjoyed by this leaſe; but we ſhall ſhew you it was under another leaſe. I muſt obſerve, that it is very ſtrange upon their own evidence, that a mill, *cum Pertinentiis*, ſhould paſs ſeven acres of ground; and a mill that was demoliſhed ſo long ago as in Queen *Mary*'s time, (for ſo we ſhall plainly ſhew you it was) and that theſe lands, containing ſo conſiderable a revenue, ſhould not have a ſurvey taken of them, or a boundary made of the land, that they might know what was theirs, and what their neighbours. For your Lordſhip and the Jury may obſerve, in all the leaſes and conveyances down to this time, in Dean *Collet*'s leaſe, and onward, there was nothing mentioned but a mill with the appurtenances, or a tenement with the appurtenances. But they have not one fixed boundary of their lands; and really it cannot be preſumed the Dean and Chapter ſhould be ſo ignorant. Beſides, in the ancient leaſe that they produced of *Ed.* VIth's time, there was a covenant to pay the quit-rent, as for lands holden of the manor of *Stepney.* And we did expect that they would have brought ſome of the Rolls and Records of that manor; and out of ſome ſurvey, there remaining, would have given a particular teſtimony of what lands belong to the Dean, and what do not. But in truth, we ſay this is properly marſh-land; for that will be your queſtion, Gentlemen, that you are to try, I believe, at laſt: Whether theſe ſeven acres, thus bounded on *Foxe's-lane*, *Weſt*; on the *Thames*, *South*; on the *Hilly-way*, called *Cock-hill*, or *Mill-ditch*, *Eaſt*; and on the Dean and Chapter's *Lynches*, *North*; be marſh-ground? The Dean and Chapter have given evidence of ſome leaſes, which upon the ſurrenders were delivered up to them; but there are none produced, they only read the entries in their Books. Now we ſhall demonſtrate that this mill of theirs was an overſhot-mill; for there is mention made of a leaden trough, which is the only proper inſtrument of an overſhot-mill. Therefore we will firſt ſettle (becauſe they themſelves will not) what is theirs; and then we doubt not to give you ſatisfaction that this was never any of theirs, but the undoubted Inheritance of the *Stepkins*; and not a foot of it belongs to any other man living. But further, ſince they will not, we ſhall produce a piece of evidence, which indeed we muſt thank Mr. *Neale* for; for he blabbing it about that he had a ſurvey of the manor of *Stepney*, which would do our work, put us upon ſearching there for it; and we have it here; and there you will find a particular of all the Dean's lands, under 33*s.* and 4*d.* quit-rent. And the particulars are thus deſcribed in that Book, (which ſhews that there was a tenement that ſtood by the mill, and that paid a quit-rent, and the other lands came under that quit-rent) Twenty acres, called *Shadwell-field*, that lieth on the North-ſide of *Ratcliff* high-way, known at this day; and all this piece of ground, of twenty acres, is built upon and improved; which was one part of the land that came under a quit-rent, but not pretended to be any part of this. The next is five acres, called the *Lynches*; and it appears by the Record to be but five acres, and ſo it is meaſured now. *Ratcliff* high-way went on the top of the hill, and this is called the *Lynch way*, not improved nor built upon; and is exactly abutted according to our Records, and decyphered by acres to an acre. Then comes the third parcel, and that only concerns you to enquire of, whether theſe ſeven acres and an half be parcel of that? And that is deſcribed in the Record to be a tenement, called *Derrick-hills*, which is a bake-houſe with a mill, and the leaden trough, the appurtenances of the mill, at the rent of 33*s.* and 4*d.* Theſe are all the parcels named of the Dean and Chapter's lands. And at the laſt trial when they produced the deed of purchaſe, whereby this was conveyed to the Dean, which I think was in *H.* III's time, it yielded but 3*l.* a-year in the whole, and now in time it is come to 2000*l.* a year, without this great gobbet, which they intend now, if they can, to ſwallow up. And now as to this parcel, all they can claim is but a mill, and in the latter leaſes, it is a houſe where the mill ſtood, and that we ſhall ſhew by Records where it ſtood; and it is ſaid to be called *Derrick-hills*, and ſituate on the *Eaſt* end of the marſh now in queſtion. And to go a ſtep farther, we ſhall ſhew that this was altered in Queen *Mary*'s time; for in 5 *E.* IV. the Book wherein their leaſe is, makes mention of the mill as ſtanding; then in 10 *Dec.* 2 & 3 *Ph. & M.* there is a kind of myſtery which we ſhall by our evidence unriddle: For then though the tenant had above forty years in being, and to come, he muſt renew his leaſe from Dean *Fecknam* at that time. Now we ſhall ſhew that the 20th of the ſame *December*, this place where the mill then lately ſtood, was lett to *John Carter*, Oar-maker. There are in that place, at this day, lands and houſes that yield the Dean and Chapter an hundred pounds a-year, diſtinct from the *Lynches* and the *North* ground of *Ratcliff* high-way, and that is a very good improvement for a mill, and a bake-houſe, and a leaden trough, and a ditch for the water. Now by their leaſe in 1630, they recite that the mill was not worth the keeping up; and according to the power given them by the leaſe, 2 & 3 *Phil. & Mar.* to pull down the mill, it was pull'd down and built upon, and it came to yield them 100*l.* a-year, as it doth at this day. After this we ſhall call witneſſes to ſet forth, that in this place, in the *Eaſt* end of *Cock-hill*, in the memory of man, there was found the floor of the old mill; and there are thoſe living that can atteſt it. So we ſhall ſhew they are fiſhing in a wrong pool; they have ſufficient to anſwer their deed of purchaſe; and all the evidence that hath been given you, will appear to be

be only to entertain the Court with an amuſing nothing; and to take up the time. But we ſhall go yet a ſtep further, and ſhew beyond all peradventure, that this land in queſtion was marſh-ground: And the other ſide muſt admit, that if it be marſh-ground, the Dean and Chapter have nothing to do with it, never pretended to a foot of it, nor doth any tittle of their evidence mention marſh-ground. And truly we will admit it to them, if it be not marſh-ground we have nothing to do with it. So that, Gentlemen, your great queſtion is, Whether this be marſh-ground, or not? And thereupon the main of the queſtion will be about the *Eaſt* boundary alone, and no other: For that *Wapping-marſh* bounded *South* on the *Thames*, *North* on the *Lynches*, and *Weſt* on St. *Catherine*'s, is no queſtion, nor ever was in all the trials that have been. Therefore the only point that the evidence is to be applied unto, is about the Eaſtern boundary. That we lay to be *Cock-Hill*, anciently called the *Hilly-way*, or *Millbank*, now *Cock-Hill*; and in the Records of *Stepney* manor, it is called *Cornhill*: And it is a riſing hilly ground, it appears to be ſo to this day; I appeal to the Jury who have ſeen it. Now that this was marſh-ground, and the Inheritance of the *Stepkins*'s, we ſhall prove by theſe ſteps: *Firſt*, We ſhall produce an Act of Parliament made in 27 *Hen.* VIII. wherein the bounds appear to be plainly the ſame as now we ſay they are at this day; only now it is all built, that is all the difference; and the marſh doth thereby contain 130 acres. Now by that Act, the whole marſh is veſted, as to one moiety, in *Richard Hill*, as aſſignee of *Vanderdelf* the *Dutchman*, who had drained it, and for his pains was to have one half; and he agreed with the participators, among whom *Stepkins* was one, and had 53 acres, and particularly this land. So that the Dean of *Paul*'s muſt derive a title from this Act, if he will have the land. But we ſhall ſhew how they colour their poſſeſſion. Afterwards *Richard Hill*, 11 *Nov.* 37 *H.* VIII. he doth make a leaſe to the Dean and Chapter's miller, and that for thirty-four years, wherein you will exactly ſee the boundaries of the Act are purſued. After he had leaſed it to the Dean's miller, he paſſeth away the inheritance to *Thomas Stepkins*, in time, 16 *Apr.* 6. *Ed.* VI. *Marcellus Hall* the *miller*, after *Stepkins* had obtained the inheritance upon agreement between them, gets a leaſe from *Stepkins* of 128 years of the lands in queſtion, as you may ſee by the bounds they are exactly the ſame; and this was in time 20 *Apr.* 6. *Ed.* VI. So the miller had now ground on both ſides the way that is called *Cock-Hill*; on the *Eaſt* ſide by leaſe from *Hill*, on the *Weſt* ſide by leaſe from *Stepkins*. Then in point of time we ſhall come to ſhew the leaſe made to *Roper*. For *Marcellus Hall*, after he had taken this long leaſe from *Stepkins*, 30 *Nov.* 2 & 3 *Phil & Mar.* doth demiſe the land in queſtion to *Richard Roper*, for twenty-four years: and we ſhall ſhew that in all the Queen's time *Roper* was tenant. Then *Jaſper Hill*, who was the Heir of *Richard Hill*, in 12 *Nov.* 5 & 6. *Ph. & M.* by deed, and afterwards 3 *Eliz.* by fine and common recovery, conveys all theſe lands particularly by name, and re-leaſeth them to *John* and *Macheline Stepkins*, and the heirs of *John*; and ſo lodged the inheritance in the *Stepkins*'s, all but that which was thus out in a long leaſe to *Marcellus Hall*. We ſhall prove that before *Richard Hill* died, he entered into a Statute to *Vivold* and *Salvago* for a great ſum of money; and this ſtatute comes to be extended 3 *Eliz.* and there this land, notwithſtanding theſe leaſes, is ſeized and extended as *Hill*'s lands. We ſhall ſhew all this land upon a commiſſion of ſewers, had a ſurvey taken of it. When we have ſhewn all theſe Records, and proved that this is marſh-ground, and not a witneſs of theirs but muſt acknowledge it to be marſh-ground (for that part of *Fox's-lane*, was raiſed at leaſt nine foot, and ſo proportionably was the reſt of the ground; and it appears at this day, that upon a high tide all their cellars are overflown), I think then you will make no doubt, whether this be our land or no. And to proceed in this order that I have opened, we will firſt ſhew you the ſurvey. There was one thing I forgot about the eleven acres—

Mr. Serj. *Stringer*. What is it you read firſt, Sir?

L. C. J. What do you begin with, Mr. Attorney?

Mr. Att. Gen. Your Lordſhip obſerves they ſhew a leaſe from Dean *Fecknam*, the 10 *Dec.* 2 & 3 of *Ph. & M.* Now on the 22 *Dec.* in the ſame year, we ſhall ſhew *Marcellus Hall*, by leaſe to *Carter*, butts it upon the *Eaſt* ſide of the mill.

L. C. J. I took the notes the laſt time of your evidence, and it began in *H.* VIIIth's time.

Mr. Att. Gen. My Lord, when we come to our title, we ſhall go on in the ſame method we did then; but now we are only ſhewing where the lands are.

L. C. J. Go your own way.

Clerk reads.] This Indenture, made the 22d day of *December*, in the ſecond and third years of the reigns of our ſovereign Lord and Lady *Philip* and *Mary*, by the Grace of God, King and Queen of *England*, *Spain*, *France*, both the *Sicilies*, *Jeruſalem*, and *Ireland*, Defenders of the faith, Arch-Dukes of *Auſtria*, Dukes of *Burgundy*, *Millain* and *Brabant*; Counts of *Haſpurg*, *Flanders*, and *Tyrol*; between *Marcellus Hall* of *Ratcliff*, miller, of the one part, and *John Carter* of *Ratcliffe*, oar-maker of *Stebunheath*, of the other part; witneſſeth, That the ſaid *Marcellus Hall* hath demiſed, granted, and to farm lett unto the ſaid *John Carter*, that his wharf lying in *Ratcliff*, where late the mill ſtood, called *Ratcliff-mill*, adjoining on the *Weſt* upon the *Eaſt* ſide of the mill-ditch, *alias* the mill-dam, reaching from thence *Eaſtward* 30 foot; and from the *North-eaſt* corner of the ſaid mill-dam, Southward to the River of *Thames*, 20 foot; to have and to hold all and whole the ſaid wharf, as is before ſpecified, with all commodities and profits belonging to the ſame, to the ſaid *John Carter*, to his heirs, executors, and aſſigns, from the feaſt of St. *Mary* the Virgin, immediately following the date of theſe preſents, until the end and term of 30 years.——

L. C. J. This leaſe was read the laſt time.

Mr. Serj. *Stringer*. Yes, it was ſo, my Lord.

Clerk reads.]———to be fully complete and ended, yielding and paying therefore for the ſame, unto the ſaid *Marcellus Hall*, his heirs, executors, and aſſigns, ten ſhillings of lawful money of *England* yearly; that is to ſay, at the feaſt of the Annunciation of St. *Mary* the Virgin. And if it happen the ſaid rent to be behind and unpaid at the ſaid feaſt, in part or in all, by the ſpace of one fortnight, and lawfully aſked of the ſaid *John Carter*, his executors, and aſſigns, then it ſhall be lawful to the ſaid *Marcellus Hall*, his heirs, executors, and aſſigns, to diſtrain for his ſaid rent ſo being behind, and the diſtreſs ſo taken, to keep until ſuch time as the ſaid rent with the arrearages, be fully ſatisfied and paid.——

L. C. J. For how many years is that?—*Mr. Att. Gen.* Thirty years.

L. C. J. What is demiſed by this leaſe?

Mr. Att. Gen. Read the Particulars again.

Sir *J. Trevor*. My Lord, we would gladly know where they had this leaſe, that ſo it may appear whence it came; for we know they have an excellent art at finding out of Deeds.

L. C. J. Ay, come, ſhew where you had it. Let me ſee it.

Mr. Att. Gen. We did produce it at the laſt trial, and at the firſt too.

L. C. J. But that this Jury knows nothing of, and they call for ſome account of it on the other ſide.

Mr. Att. Gen. Mr. *Knowles*, do you know any thing of that Deed? When did you firſt ſee it?

Mr. *Williams*. And where had you it?

Knowles. My Lord, I had it in a garret, in a kind of a nook, about ſix foot long, and three foot and an half wide, in my own houſe, in the garret among other writings.

L. C. J. How came you to have them?

Knowles. As I was Executor to *Winterburn*.

Mr. *Powis*. Pray, Mr. *Knowles*, will you tell upon what occaſion you looked there and found them?

Mr. Serj. *Pemb.* Ay, pray give an account of the whole.

Knowles. My Lord, upon the 2d of *Auguſt*, 1682, was the firſt time I ever ſaw my Lady *Ivy* to my knowledge; and ſhe was informed by one Mr. *Vicarer*, that I had ſeveral writings of *Winterburn*'s: I told her I had ſo, and my Lady deſired me to ſearch among them, if there were any writings that concerned *Stepkins*'s eſtate; I told her it would take up a month's time to look them all over, for there was a great quantity of them. She ſaid, I would do her a great kindneſs, if I would look; I promiſed her I would: And upon the fourth of *September*, I think I found the Deed.

L. C. J. How was *Winterburn* concerned?

Mr. Att. Gen. They have ſhewn that he was owner of the land once.

Mr. *Williams*. Did you ever read over that leaſe?

L. C. J. I aſk you again, how was *Winterburn* concerned?

Knowles. He was partner with *Wright*, who ſold the eſtate to Mr. *Neale*.

Mr. Sol. Gen. *Wright* ſold it to *Neale*, *Winterburn* died, and this man was his Executor, and ſo he came to the writings.

Mr. Att. Gen. But pray, Mr. *Knowles*, tell us, were theſe writings ever ſhewn to Mr. *Neale?*

Knowles. In the year 1669, when Mr. *Neale* bought this Eſtate of my Uncle *Wright*, the writings were all to be looked over; and upon Mr. *Neale*'s requeſt, all the writings were ſent to his Counſel, a Gentleman in *Gray's-Inn*, one *Cage*, I think his name was, or ſomething like it; and there they were left three months, and I believe in my ſoul that Deed was among them.

Mr. Att. Gen. Were they brought back again?

Knowles. There were two hampers brought back.

Mr. Att. Gen. Had you any diſcourſe with Mr. *Neale* about this buſineſs?

Knowles. I was arreſted upon his account in an action of 2000 *l.* and he preſently after came and got me off from that action, and told me, Mr. *Knowles*, I am ſorry you were arreſted upon my account. So am I too, Sir, ſaid I; ſaid he, I do believe really you found that Deed; I did ſo, Sir, ſaid I: But ſays he, pray will you anſwer me one queſtion ſeriouſly? That I will, two or three, if I can, Sir, ſaid I. Says he, did not my Lady *Ivy*, or *Baniſter*, foiſt the Deed into your houſe? No, ſaid I, for before ever I ſaw either of them, I had ſeen that Deed. Then I am undone, ſaid he.

Mr. *Williams*. Who was by, pray, when this diſcourſe paſt between you and Mr. *Neale?*---*Knowles*. There was none but he and I.

Mr. *Williams*. It was at the tavern; Mr. *Neale*, I ſuppoſe, will not deny this.

L. J. C. Will he not? Will you take his word for it?

Knowles. I do ſay, I found that Deed there.

L. C. J. Read it; read the demiſe. But, Mr. *Knowles*, let me aſk you a queſtion or two: As I underſtood, you ſaid my Lady *Ivy* deſired you to look among *Winterburn*'s writings, for deeds that concerned *Stepkins*'s Eſtate?---*Knowles*. Yes, my Lord.

L. C. J. Where was that?---*Knowles*. That was at her houſe.

L. C. J. And when did you find this deed?

Knowles. I found the deed in *September*, before any body came to look with me, or was in the place with me.

L. C. J. Was there any body with you, when you found the deed?

Knowles. No.

L. C. J. Then you found it yourſelf?---*Knowles*. Yes.

L. C. J. Did you read it?

Knowles. I did the outſide; what was I concerned further?

L. C. J. Nay, do not be angry; when thou art moſt calm, thou ſpeakeſt ſo faſt a man can ſcarce underſtand thee; anſwer my queſtion fairly: you ſay you read it, what part was it you read?

Knowles. The backſide, the outſide.

Mr. *Williams*. There is nothing writ upon the outſide.

L. C. J. How did you gather by reading the outſide, that it concerned my Lady *Ivy?*---*Knowles*. I only read *Stepkins*'s name.

L. C. J. *Stepkins*'s name, you ſay?

Knowles. What deed do you aſk me upon?

L. C. J. That deed, the only deed you have ſeen here. What is your Chriſtian name?

Knowles. *Stephen Knowles.*

L. C. J. If I miſtook you, I beg your pardon; our queſtion is concerning this very deed now ſhewn to you.

Knowles. I thought you had meant the leaſe of 128 years.

L. C. J. Well then, let that paſs for a miſtake; I would know of you now ſomething concerning this deed. Look upon it---(*which he did*)---upon your oath, when ſaw you that deed firſt?

Knowles. I cannot ſay what day it was.

L. C. J. But, look you, if I miſtook you not (if I did, I aſk your pardon again), did not you ſay you found that very deed among a great many other writings of *Winterburn*'s, in a room, ſo many foot long, and ſo many foot wide, in your garret? Did not you ſay, that in time you ſaw my Lady *Ivy* firſt, upon the 2d of *Auguſt*, 82, that you found that deed in *September* following? And did not you tell us, that you did believe, in your conſcience, that in the year 1669, Mr. *Neale* had this writing, among others, ſent to the Chamber of ſuch a Gentleman in *Grays-Inn*;

that they remained ethre there months, and then were brought back again to you; and you believe in your conscience this was one of them? And did not you say, when I asked you, how you came to know this belonged to my Lady *Ivy*; you said, because my Lady *Ivy* had spoke to you, to look if there was any thing belonging to *Stepkins*, and you read the outside of the deed, and found *Stepkins*'s name, and so you knew it to concern her? Did not you say all this?

Knowles. I believe I did.

L. C. J. Now tell me then by the outside of that deed, how thou canst tell that it belonged to *Stepkins?* For if thou canst, thou art more crafty than any body here, I believe.

Knowles. I thought it had been the long lease, for that has *Stepkins* on the outside.

L. C. J. Well, let that pass for a mistake; we must now begin again upon a new matter. When first saw you that deed?

Knowles. In *September*, 1682.

L. C. J. How do you know that?--*Knowles.* I put my hand to it.

L. C. J. Did you read the inside of that deed?

Knowles. No, I did not.

L. C. J. Look you then, we ask you how you came to know it was a deed belonging to *Stepkins?*

Knowles. I read the backside, and put my hand to it.

L. C. J. How came you to put your hand to this deed as belonging to *Stepkins*, when you never looked into the deed?

Knowles. When I found this deed to have written upon it *Marcellus Hall*, I did believe it was something that concerned the *Stepkins*'s.

L. C. J. Let us see the deed now---*(which was done)*--You say that was the reason upon your oath?----*Knowles.* Yes, it was.

L. C. J. Then look upon it again, and do not be surprized, but let us have the truth come out, in God's name. Was that the reason?

Knowles. It was, my Lord.

L. C. J. I would fain see Mr. *Sutton*, I have a question to ask him.

Mr. Att. Gen. He is here, my Lord.

L. C. J. Give Mr. *Sutton* his oath---*(which was done)*---Look upon the outside of that deed, and upon your oath tell us whose hand-writing that is.

Sutton. All but the word (*Lect.*) is my hand-writing.

L. C. J. Are not the words *Marcellus Hall* all of of your hand-writing?

Sutton. It is.

L. C. J. Then how couldst thou know this to belong to the *Stepkins*'s by the words *Marcellus Hall*, when you first discovered this deed in *September*, 1682, and you found it by yourself, and put your hand to it; and yet that *Marcellus Hall* be written by Mr. *Sutton*, which must be after that time?

Mr. Att. Gen. He says he knows it, because he put his hand to it; I suppose he read somewhat of the inside.

L C. J. He said the backside, the outside; he did not read the inside.

Mr. Att. Gen. My Lord, I desire our evidence may not be anticipated.

L. C. J. Mr. Attorney, I would not anticipate your evidence; but I must tell you by the way, your evidence anticipate themselves: And this fellow, *Knowles*, without any more ado, has proved himself an errant, notorious knave. And if your evidence will blunder and spoil themselves, I cannot tell how to help it. I knew, as soon as I saw the deed, that that was *Sutton*'s hand; I know his hand, as well as that you are Mr. Attorney.

Mr. Sol. Gen. Pray, my Lord, give me leave to ask him a question, which I hope may clear all this matter, for it is plain the man is mistaken.

L. C. J. Mistaken! Yes, I assure you very grosly. Ask him what questions you will; but if he should swear as long as Sir *John Falstaffe* fought, I would never believe a word he says.

Mr. Sol. Gen. Did you look into the middle of one of the deeds?

Knowles. Yes, I did.

Mr. Sol. Gen. Can you tell which you looked into the inside of, and which you did not?

Knowles. The lease and some others I did, but I cannot particularly tell.

Mr. Sol. Gen. Then, my Lord, here is the case: Here are multitudes of deeds, and a man looks on the inside of some, and the outside of others; is it possible for a man to speak positively to all the particular deeds, without being liable to mistake?

L. C. J. Mr. Sollicitor, you say well; if he had said, I looked upon the outside of some, and the inside of others, and wherever I saw either on the outside, or in the inside the name of *Stepkins*, or *Marcellus Hall*, I laid them by, and thought they might concern my Lady *Ivy*; that had been something. But when he comes to be asked about this particular deed, and he upon his oath shall declare that to be the reason why he thought it belonged to *Stepkins*, because of the name of *Marcellus Hall* on the outside, and never read any part of the inside, when *Sutton* swears *Marcellus Hall* was written by him, what would you have a man say?

Mr. Sol. Gen. My Lord, I have but this to say; if there were never a deed delivered by *Knowles* to my Lady *Ivy*, or *Sutton*, where *Marcellus Hall*'s name was written on the backside of it, but by Mr *Sutton*; I confess it were a strong objection. But where there are other deeds, and a great many, a man may easily be mistaken. It is impossible for any man, in a multitude of deeds that he finds among a great parcel, and delivers many of them out, to take it upon his memory particularly, which he looked on the inside of, and which he looked on the backside or outside of.

L. C. J. Did he not give it as a particular reason of his knowledge, that they belonged to my Lady *Ivy?* For wherever he saw *Marcellus Hall* or *Stepkins*, he thought that belonged to her.

Mr. Sol. Gen. Wherever he saw those names, that is either in the inside or outside.

L. C. J. Under favour, Sir, he did not say so; but positively said, he knew it by that name. And you shall never argue me into a belief, that it is impossible for a man to give a true reason, if he have one, for his remembrance of a thing.

Mr. Sol. Gen. I beg your pardon, my Lord; as I apprehend him, he swore he looked into the inside of some, and the outside of others, and there were a great many of them.

L. C. J. And I beg your pardon, Mr. Sollicitor, I know what he swore as well as any body else: If indeed he had sworn cautiously, and with care, it might have been taken for a slip, or a mistake.

Mr. Att. Gen. My Lord, we must leave it upon its own weight; but we are not come to our title yet: I have the deed in my hand, which is a very old one, and therefore needs not such exact proof. He is mistaken, we do own it; and I must appeal to the Court, whether a man may not be mistaken in a great multitude of deeds.

L. C. J. Well now, after all this is done, let him give an account how he came to know this to belong to *Stepkins*, or my Lady *Ivy*, if he can. I speak it not to prejudice your cause, but only to have the truth come out. But for the witness that swears, it may affect him I assure you. Give him the deed, and let him look upon it.—Look upon the inside, and look upon the outside too.

Knowles. I believe, my Lord, upon better consideration, I have read this deed before now.

L. C. J. Very well; and yet you swore the contrary just now.

Knowles. I was in a maze, my Lord.

L. C. J. I am sure thou sworest wildly.

Mr. Sol. Gen. Pray what deed did you take it to be at first?

Knowles. The lease of 128 Years.

L. C. J. Pr'thee read it now to us.

Knowles Reads.---This Indenture made the 22d day of *Dec.*----

L. C. J. Between whom?

Knowles Reads.---Between *Marcellus Hall* of *Radcliff*, miller, of the one part, and *John Carter*, oar-maker, of the other part, witnesseth, that the said *Marcellus Hall* hath demised, granted, and to farm letten to the said *John Carter*, all that wharf lying in *Radcliff*, where late a mill stood, called *Ratcliff-mill.*----

L. C. J. Can you say you ever read so much before?

Knowles. I believe I did.

L. C. J. When was it?----*Knowles.* In *September*, 1682.

L. C. J. Then you read it before you shewed it to my Lady *Ivy?*

Knowles. Yes, my Lord.

L. C. J. And you found what the contents were by reading?

Knowles. Yes, my Lord.

L. C. J. Did you read it through?---*Knowles.* No, I did not, I believe.

L. C. J. How far do you think you read?

Knowles As far as I have read now.

L. C. J. Did you find any thing there of the name of *Stepkins?*

Knowles. No, not in that I did not.

L. C. J. I would desire to know of you, who it was that came to my Lady *Ivy*, to inform her you had such and such writings?

Knowles It was one Mr. *Vicarer*, about a trial that was to have been two or three years ago, at the Bar of the Court of *King's-Bench* here; but the cause did not then go on: After that Mr. *Vicarer* did tell my Lady, that one *Knowles* had a great company of writings that were *Winterburn*'s; and she desired him that he would please to talk with me, to see if I could do her any kindness or service in any of those deeds. The first time that I saw her was the 2d of *August*, as near as I can remember, and then I told her, I was Executor to *Winterburn*, and had a great many writings. Said she, do you know the hand of *Stepkins?* if you do, and can find any writings that relate to *Stepkins*, you will do me a great kindness.

L. C. J. Did she name any body else to you?

Knowles. She named one *Lun*, and one *Barker*, and one *Holder*, and several others; I do not remember all.

L. C. J. Was there any mention made of one *Collet?*—*Knowles.* No.

L. C. J. Was there of one *Donne?*---*Knowles.* Of one *Lun* there was.

L. C. J. Of one *Fecknam?*———*Knowles.* No.

L. C. J. Of one *May?*——*Knowles.* No.

L. C. J. One *Joan Hall?*----*Knowles.* No.

L. C. J. Was there any mention made of any *Hall?*

Knowles. Yes, there was.

L. C. J. What *Hall* did she speak of?

Knowles. I am not certain whether any *Hall* was named or no.

Mr. Att. Gen. He says, he is sure there was of *Stepkins*, and several others, but not of any *Hall.*

L. C. J. He does so, Mr. Attorney. But now I would ask him this question; If there were no mention of any *Hall*, how came you to find out that this lease from *Marcellus Hall* to *Carter* should affect *Stepkins*, or my Lady *Ivy?*

Knowles. My Lord, I will give you an account of that.

L. C. J. Ay, do if you can.

Knowles. This was at the first time that I saw my Lady *Ivy*, that this discourse was between us; upon another discourse, at another time, *Hall* was mentioned to me.

L. C. J. How many names did she tell you of at first?

Knowles. I cannot remember them all.

L. C. J. He remembers as punctually as can be the 2d of *August* to be the first time that ever he saw my Lady *Ivy*; and then she spoke to him of looking for writings that concerned *Stepkins*, and *Lun*, and *Barker*; and he remembers such a day, the fourth of *Sept.* 1682, he found the deeds; but he will not give any account how he came to know, by *Hall*'s name, that this belonged to *Stepkins*. I would fain know when you first heard of the name of the *Halls?*---*Knowles.* It was all within a month's time.

L. C. J. Who was it first spoke to you to enquire about the *Halls?*

Knowles. My Lady *Ivy* spoke to me about *Hall* when I gave her account of some deeds I had found.

L. C. J. How often did you look over the writings?

Knowles. Several times.

L. C. J. The first time, did you give my Lady *Ivy* an account that you had found any thing?

Knowles. Yes, I gave her an account of the lease of 128 years.

L. C. J. Did you find nothing else but that?

Knowles. Yes.

L. C. J. What did you find else?

Knowles. Several: I cannot give an account of all.

L. C. J. Did you find that lease, or this deed first?---*Knowles.* The lease.

L. C. J. When did you first find this deed?

Knowles. The 4th of *September* I found the lease, and within fourteen or fifteen days after I found the rest.

L. C. J. How many deeds did you find out?----*Knowles.* Half a score.

L. C. J. Who was by when you found the deeds the second time?

Knowles. When I had found the leaſe for 128 years, I laid it by, and looked further for other things, and found a mortgage which concerned myſelf, and that made me more eager to look for what might concern me beſides; that I was not ſo careful as I ſhould have been of the leaſe of 128 years, but mixed it among the writings again: but I told my Lady I had found ſuch a deed; and ſhe ordered Mr. *Baniſter* to help me to find it again.

L. C. J. Prythee anſwer me once more. Who firſt put you in mind of looking after the *Halls?*---*Knowles.* My Lady *Ivy.*

L. C. J. Was any body by, when ſhe ſpoke to you to look after the *Halls?*---*Knowles.* Yes, Mr. *Baniſter* was by.

L. C. J. Who elſe?---*Knowles.* Several of my Lady's ſervants.

L. C. J. Name ſome of them that were by.

Knowles. There was Mr. *Baniſter*'s wife and his daughter by.

L. C. J. What day was it my Lady *Ivy* firſt ſpoke to you to look after the *Halls?*---*Knowles.* Within a week after I firſt ſaw her.

L. C. J. Was it before you found the leaſe you ſpeak of?

Knowles. Yes, it was before.

L. C. J. How comes it to paſs then, that you did not find it at the firſt looking, which was the 4th of *September*, when you found that leaſe, you ſay?

Mr. Att. Gen. We muſt lay aſide the teſtimony of this man.

L. C. J. Ay, ſo you had need.

Mr. Sol. Gen. Pray leave the deed in Court, we ſhall have Mr. *Neale* too buſy with it elſe.

Mr. Att. Gen. We ſhall deſire your Lordſhip to conſider all the uſe we make of this deed is to prove, that the mill was removed to another place.

L. C. J. I do not know what it proves, but if you had kept your witneſs *Knowles* in the mill, I think you had done better than brought him hither.

Mr. Att. Gen. Swear Mr. *Baniſter* and Mr. *Clerk.* *(Which was done.)*

Mr. Sol. Gen. Did you examine that with the Roll, Sir? *(Shewing him a paper.)*

Mr. *Clerk.* Yes Sir, I did examine that with the Book that Mr. *Northy* ſhewed me; I think they ſay he is ſteward of the manor of *Stepney*; he read in the book, and I read the copy; and it is a true copy of a ſurvey of that manor, taken 25 *Eliz.*

Mr. Att. Gen. I heard ſay you have the books of the manor here; pray let them be produced.

Mr. *Williams.* You are merry, Mr. Attorney; if it is a true copy, pray let it be read.

Clerk reads.] The Dean of St. *Paul*'s holds freely of fee or field, containing by eſtimation---

L. C. J. Who is Lord of the manor of *Stepney* now?

Mr. *Powis.* My Lady *Wentworth* is Lady of the manor.

Clerk reads.] The Dean of St. *Paul*'s holds—

L. C. J. This bounds it on the Eaſt, on the Dean and Chapter of *Paul*'s lands, and ſo doth you no good.

Mr. *Williams.* Let them go on, my Lord.

Mr. Att. Gen. With ſubmiſſion, theſe are our exact boundaries.

L. C. J. Well, go on.

Mr. Att. Gen. We ſhall go on; and with ſubmiſſion theſe bounds exactly agree with the bounds that are ſet by the Act of Parliament for draining the marſh. Here is nothing that we can ſee that they can claim but a mill and bake-houſe, and they are all bounded on the *Weſt* by *Wall-Marſh*; and the *Lynches* are bounded in, part upon the *North*, and in part upon the *Weſt*; and there was a little part of the marſh did run into the *North* bounds. But now we ſhall come to our evidence; and firſt we ſhall ſhew the Act of Parliament.

Which being Anno 22 *H.* VIII. *was read.*

Mr. Att. Gen. Next we ſhall ſhew *Richard Hill*'s conveyance by mortgage, to *Vivold* and *Salvago.*

Which Indenture of Mortgage was read.

Clerk reads.] This Indenture made the eighth day of *November*, in the 32d year of our Sovereign Lord King *Henry* the eighth, between *Richard Hill* citizen and mercer of *London*, on the one party, and *Anthony Vivold* and *Henry Salvago*, Merchants, of of the other party; witneſſeth, That where the ſaid *Richard* before time was indebted unto the ſaid *Anthony Vivold* and *H. Salvago* in the ſum of 560*l.* of lawful money of *England*, whereof they are of their free will have pardoned 280*l.* The ſaid *Richard Hill* by theſe preſents

All that moiety of marſh ground being 130 acres, lying and being that is to ſay, from *Ratcliffe* mill, that joins to the *Hilly Lynch* to *Ratcliffe* Town, on the party of the Eaſt; to *Graſh Mill* by the *Hermitage*, on the party of the Weſt; on the high-way, leading from *London* to *Ratcliffe* on the party of the North; and on the river of *Thames*, on the party of the South given and aſſured to the ſaid *Richard Hill*, by authority of Parliament, in the 27th year of the moſt noble Reign to have and to hold---

Mr. Att. Gen. This doth veſt the lands in queſtion with others in *Vivold* and *Salvago*, as a ſecurity for their money.

Mr. Sol. Gen. Now we ſhall ſhew a leaſe from *Hill* to *Marcellus Hall.*

Clerk reads.] This Indenture made the eleventh day of *November*, in the 37th year of the reign of *Henry* the eighth; between *Richard Hill*, citizen and mercer of *London*, of the one party, and *Marcellus Hall* of *Ratcliffe*, miller, of the other party; witneſſeth, that the ſaid *Richard Hill*, for the ſum of ſix pounds of lawful money of *England*, to him in hand paid, at the enſealing and delivery hereof, whereof the ſaid *Richard Hill* hereby acknowledgeth himſelf to be fully ſatisfied, contented and paid; and whereof he doth clearly acquit and diſcharge the ſaid *Marcellus Hall*, his Executors and Adminiſtrators by theſe preſents, hath demiſed, granted, and to farm letten, and by theſe preſents doth demiſe, grant, and to farm lett unto, the ſaid *Marcellus Hall*, a parcel of marſh-ground, lying and being at the Eaſt end of the marſh that butts on *Ratcliffe* hilly marſh wall-bank, or wall belonging and the well *Shadwell*, containing by eſtimation eleven acres and a half, more or leſs, abutting on *Thames* Wall, on the party of the South; to the lands called the *Dean*'s *Lynches*, on the party of the North; and on the wall that reaches from the *Lynches* to the Iſland, by the pond on the Weſt, with all the foreland and ſoil. All which marſh-land is in the Pariſh of *Stebunheath* to have and to hold the marſh-land foreland and ſoil to the ſaid *Marcellus Hall*, from the feaſt of the Annunciation of St. *Mary* the Virgin next coming, for thirty and four years---

Mr. Att. Gen. This was a leaſe made to their miller, and contains eleven acres and half an acre, which we ſhall ſhew is juſt exactly the contents of our land. Next then we ſhall come to the conveyance made to *Thomas Stepkins*, which will bring us to our title.

L. C. J. Read the reſervation of that leaſe.

Clerk reads.] Yielding and paying therefore yearly, and every year, unto the ſaid *Richard Hill*, his Executors and Aſſigns, three pounds of good and lawful money of *England*, at four terms of the year; that is to ſay, the feaſt of the Nativity of St. *John* the *Baptiſt*, St. *Michael* the *Archangel*, the Birth of our Lord, and the Annunciation of St. *Mary* the Virgin.

Mr. S. *Pemberton.* Pray, my Lord, we deſire they may give ſome account of this leaſe, where they had it, and how they came by it.

Mr. Att. Gen. You have had it in your hands; you ſee what it is.

Mr. S. *Pemberton.* Yes; and therefore we deſire to know ſomething about it, becauſe we find *Knowles*'s hand to it.

Mr. Att. Gen. We can give you a better account of it than you think for; but that will let you into an hour's wrangle more, which is all you have to ſay for yourſelves. We have it, diſprove it.

Mr. S. *Pemberton.* You have it we ſee; but remember you will give no account where you had it. But then we deſire to aſk Mr. *Knowles* a queſtion, Whether my Lady *Ivy* was with him---

Mr. Att. Gen. My Lord, we deſire we may go on and give our evidence intire; they would fain break in upon us, and take up another hour in quarrelling with our witneſs. When we hear them in their time offer to impeach the validity of the deed, then will be our time to juſtify it; and I doubt not but we ſhall give a ſatisfactory account of it. Pray, will you give an account of the deed you ſnapped up the laſt time?

L. C. J. Nay, nay, Gentlemen, we cannot take up our time in your dialogues and little heats. Do you not hinder them, and we ſhall ſee they ſhall not hinder you when it comes to your turn.

Clerk. This deed hath been read for the Plaintiff and Defendant, and is marked ſo.

Mr. Att. Gen. It has been twice read before.

L. C. J. Well, will ye go on, Gentlemen?

Mr. Sol. Gen. Then we ſhall ſhew this deed-poll next.

Clerk. This is alſo marked to have been read twice. *(Reads)* This is dated 16 *Apr.* in the 6th year of King *Edward* the VIth.

To all faithful People to whom this preſent writing ſhall come, I *Richard Hill*, citizen and mercer of *London*, ſend greeting in our Lord God everlaſting. Know ye that I, the ſaid *Richard Hill*, for the ſum of one hundred and thirty pounds of lawful money of *England*, by *Thomas Stepkins*, alias *Stipkin*, of the Pariſh of St. *Mary Matfellon* alias *Whitechapel*, in the County of *Middleſex*, beer-brewer, unto me the ſaid *Richard Hill* in hand paid, wherewith I confeſs myſelf to be well and truly ſatisfied—

L. C. J. Upon whoſe account is it that my brother *Gregory* comes here?

Mr. S. *Stringer.* My Lord, Mr. Baron *Gregory* was deſired by the Plaintiff to be here; and as ſoon as we come to our reply, we ſhall aſk him ſome queſtions: if he pleaſe to ſtay, we will diſpatch him ſo ſoon as we can.

Mr. Att. Gen. Nay, rather than trouble Mr. Baron to ſtay, we yield he ſhould be examined now.

Mr. Bar. *Gregory.* I am not in ſo much haſte, my Lord, but I can ſtay a while, and not break in upon the middle of an evidence for me.

L. C. J. If you pleaſe, they conſent you may be examined, and they may be long.

Mr. Bar. *Gregory.* I would not interrupt the courſe of evidence.

L. C. J. Nay, we will take you at your word; but if it be long, pray remember we would have eaſed you, but you complimented yourſelf out of it; now you are like to abide by it a while, I aſſure you, brother. Go on.

Clerk reads.] And do therefore acquit and exonerate the ſaid *Thomas Stepkins* alias *Stipkin*, his have given, enfeoffed, ſold, granted, and by this my preſent writing confirmed, all thoſe my four-and-twenty acres and a half of marſh-land, meaſured by the rod or pole, lying in *Wapping-marſh* Three acres of which are lying adjoining on the weſt ſide of the mill that butts upon the hilly bank, or way leading to *Ratcliff* Town, called *Ratcliff*-mill, with the bank or wall thereunto belonging, and the well adjoining to the way that goeth up to the *Lynches*, called *Shadwell*, lying in the Eaſt end of the marſh, and all the next piece Weſt adjoining to the ſame, containing by eſtimation one acre, and the pond and two acres adjoining on the Weſt ſide, ſix acres lying in the bottom of the hilly *Lynches*, adjoining North weſt on the wall that reaches from the *Lynches* to the Iſland by the pond. All which eleven acres and a half of marſh-land are in the holding of *Marcellus Hall*, miller; and alſo the bank, or wall-flood or pond, adjoining weſt on the ſaid eleven acres and a half, containing by eſtimation of meaſure two acres; and alſo all that parcel late divided into two, and now late in the tenure of *Richard Hill*, butcher, containing by eſtimation of meaſure ſix acres; and alſo all that parcel weſt, adjoining to the ſix acres, which I the ſaid *Richard Hill* hold in my own hand; and alſo, that is to ſay, all that parcel with the bank or wall Iſland and Pond, containing by eſtimation of meaſure five acres; which laſt thirteen acres I bought of, and had conveyed to me and my heirs, from one *John St.* All which four-and-twenty acres and a half, more or leſs, of marſh-land, abutteth on the *Thames* wall, on the part of the South; to the lands of the Dean and Chapter of the Cathedral Church of St. *Paul*, called the *Lynches*, on the part of the North; on the aforeſaid mill, on the part of the Eaſt; and on twenty acres of the ſaid *Thomas Stipkins*, on the part of the weſt. And alſo all the *Thames* bank or wall, belonging to the ſaid four-and-twenty acres and an half of marſh-land; which ſaid piece or parcel of wall doth abutt on the ſouth end of the ſaid on part of the eaſt, and on the bank or wall in the occupying of *William Knevet*, on the part of the weſt. All which marſh-land, bank or wall are in the eaſt end of *Wapping* marſh, abutting on the aforeſaid hill and hilly bank aforeſaid, in the way leading to the Town of *Ratcliff* aforeſaid. And which four-and-twenty acres are part and parcel of one hundred and thirty acres which

was

was heretofore continually for the moſt part overflown and drowned with the water of the River of *Thames*; and all and ſingular meſſuages, cottages, houſes, edifices, orchards, tofts foreland and ſoil, which were the ſaid *Thomas Stepkins*'s before the overflowing and all and ſingular meſſuages, edifices, cottages cellars, ſollars, orchards woods and underwoods, and all other the reſt of my hereditaments whatſoever, in the Pariſh and Manor of *Stepney*, in the County of *Middleſex*.

Mr. Att. Gen. Now we ſhall produce a leaſe from *Stepkins* to *Marcellus Hall*.

Mr. Serj. *Pemberton.* I hope they will give ſome account of this deed firſt.

Mr. Att. Gen. When you ſay any thing againſt it, Mr. Serjeant, we will; but we deſire now to go on with our evidence. Read that deed.

Clerk reads.] This has been read before, and is marked.

This Indenture made the twentieth day of *April*, in the ſixth year of the Reign of our ſovereign Lord King *Edward* the Sixth, by the Grace of God King of *England*, *France*, and *Ireland*; betwixt *Thomas Stepkins*, otherwiſe *Stipkin*, of the Pariſh of St. *Mary Matfellon*, in the County of *Middleſex*, without *Aldgate* beer-brewer, of the one part; and *Marcellus Hall* of *Ratcliff*, miller, of the other part; witneſſeth, That the ſaid *Thomas Stepkins*, otherwiſe *Stipkin*, for the ſum of 50*l.* of lawful money of *England*, to the ſaid *Thomas Stepkins*, otherwiſe *Stipkin*, by the ſaid *Marcellus Hall* at the enſealing hereof, well and truly paid and ſatisfied, and of the ſame doth clearly acquit and diſcharge the ſaid *Marcellus Hall*, his Executors and Aſſigns, and every of them, by theſe preſents hath demiſed, granted, betaken, and to farm letten; and by theſe preſents doth demiſe, grant, betake, and to farm lett unto the ſaid *Marcellus Hall*, all thoſe his parcels of marſh-land lying and joining on the weſt ſide of hilly bank, or way called *Ratcliff-way* and the well adjoining to the way that goeth up to the *Lynches*, called *Shadwell*, lying in the eaſt end of the marſh, containing by eſtimation of meaſure, three acres and a half, and all the next piece weſt, adjoining to the ſame, containing by eſtimation of meaſure, ſix acres and the pond; and two acres adjoining on the weſt ſide of the ſix acres, lying on the bottom of the hilly *Lynches*, adjoining north-weſt on the wall, which reacheth from the *Lynches* to the Iſland by the pond; all which eleven acres and a half, little more or leſs, abutteth on the *Thames* wall on the party of the ſouth; to the Dean and Chapter of the Cathedral Church of St. *Paul*, called the *Lynches*, on the party of the north; and on the wall by the pond on the party of the weſt; and alſo all the *Thames* wall belonging to the ſaid eleven acres and a half of meadow or marſh-land: which ſaid piece or parcel of bank or wall, doth abutt on the ſouth end of the aforeſaid *hilly Bank*, or way reaching to the eaſt ſide of it, which leadeth to *Ratcliff* Town on the party of the eaſt, and on the wall in the occupation of *John Everard*, on the party of the weſt; and alſo all the foreland and ſoil down to the low-water mark of the River *Thames* belonging to the premiſes; all which in the eaſt end of *Wapping* marſh, abutting on the aforeſaid mill, and the *hilly Bank*, or way leading as aforeſaid in the Pariſh and Manor of *Stebunheath*, otherwiſe *Stepney*, in the County of *Middleſex*, and now in the holding of the ſaid *Marcellus Hall*, to have and to hold all the ſaid parcels of marſh-land, foreland and ſoil, and every part and parcel thereof, to the ſaid *Marcellus Hall*, his Executors and Aſſigns, from the feaſt of the Annunciation of St. *Mary* the Virgin, before the date hereof, to the end and term of one hundred twenty-eight years, thence next enſuing, yielding—

Mr. Sol. Gen. Read the Proviſo.

L. C. J. Read the reſervation of the rent.

Clerk reads.] Yielding and paying therefore yearly for the ſame, to the ſaid *Thomas Stepkins*, his Heirs and Aſſigns, one pepper-corn, at the feaſt of the Annunciation—

Mr. Sol. Gen. Now read the Proviſo.

Clerk reads.] And the ſaid *Marcellus Hall* for himſelf, his Executors, and Aſſigns covenanteth and granteth to and with the ſaid *Thomas Stepkins*, his Heirs and Aſſigns, that he the ſaid *Marcellus Hall*, his Executors and Aſſigns, ſhall and will bear all manner of charges.—And it is further covenanted, granted, and agreed between the ſaid parties, that it ſhall not be lawful for the ſaid *Marcellus Hall*, his Executors or Aſſigns, to alienate or aſſign this preſent term of years, or any part thereof, without the ſpecial licence and conſent of the ſaid *Thomas Stepkins*, his Heirs and Aſſigns—

Mr. *Williams.* Pray, my Lord, will you give me leave to aſk a queſtion of Mr. *Baniſter?*

Mr. Att. Gen. My Lord, he has not been examined yet; they cannot, under favour, aſk him any queſtions.

Mr. *Williams.* You have ſworn him, and ſo he is under an oath, and we may doubtleſs examine him as your witneſs to this deed that you have read. Is that your name, Sir? *(Shewing the deed of* 16 April).

Baniſter. This is my name, written by my own hand.

Mr. *Williams.* When did you write your hand there, Mr. *Baniſter?*

Baniſter. The 16th of *April*, 1682.

Mr. *Williams.* Pray, Sir, look upon it again.

Baniſter. This is my hand, and I writ it myſelf when the deed was found; I writ a paper of ſuch deeds as were found at the ſame inſtant of time.

Mr. *Williams.* And you writ it when you found it?

Baniſter. I writ that name at that inſtant of time.

Mr. S. *Pemberton.* When was it, do you ſay?

Baniſter. The 16th of *Sept.* 1682.

Mr. *Williams.* Are you ſure of it?

Baniſter. Yes, I am ſure of it.

Mr. S. *Pemberton.* Juſt now it was *April.*

Baniſter. It was in *September*, 1682. I writ this paper at the ſame time.

L. C. J. Where did you write this name to this deed?

Baniſter. At Mr. *Knowles*'s houſe.

L. C. J. When was the firſt time that you ſaw that deed?

Baniſter. The very ſame day that I writ my name on this paper.

L. C. J. Did he find the deed, or you? Let me ſee it. *(Which was done.)*

Baniſter. He had found that deed before, but had miſlaid it, and deſired my aſſiſtance to find it again.

L. C. J. Where did you find it?

Baniſter. In a garret in Mr. *Knowles*'s houſe.

Mr. Sol. Gen. Were there not a great many deeds there?

Baniſter. Yes, there were a great many.

L. C. J. Prythee look upon it again, and conſider what thou ſay'ſt.

Baniſter. This is my name.

L. C. J. Very well; and how came thy name there?

Baniſter. This is the very deed I looked upon at that time.

L. C. J. Where did you firſt ſee that deed?

Baniſter. I was at the finding of it in a garret at Mr. *Knowles*'s houſe.

L. C. J. That was in *Sept.* 1682; you ſay.

Baniſter. Yes, in *Sept.* 1682. I never ſaw it before.

L. C. J. Pray, who are parties to that deed?

Mr. *Williams.* My Lord, it is the purchaſe of the Inheritance.

L. C. J. It is ſo; and how ſhould that come to be in the poſſeſſion of *Knowles?*

Baniſter. I never ſaw it before that time.

L. C. J. Read it again.

Clerk reads.] ---This is dated the 16th of *April*, in the ſixth year of *Edward* the ſixth. To all faithful---

Mr. Sol. Gen. Certainly, my Lord he is under a miſtake.

L. C. J. Ay, ſo is he ſure enough, but a very foul one upon my word: But let us ſee if we can bring him out of it. Mr. *Baniſter*, let me aſk you a queſtion.

Baniſter. Yes, my Lord, if you pleaſe.

L. C. J. Then pray mind what I ſay, and conſider of it. The 16th of *September*, 1682, was the time that you went on purpoſe to look for deeds at Mr. *Knowles*'s houſe?

Baniſter. I was there on the ſeventh day of *September*, and that was the firſt day that ever I came into Mr. *Knowles*'s houſe in my life.

L. C. J. There were ſome deeds, it ſeems, that Mr. *Knowles* had found before?

Baniſter. So Mr. *Knowles* ſaid.

L. C. J. What became of thoſe deeds he had found before?

Baniſter. As he told me he had miſlaid them.

L. C. J. And when did you come to have an account that he had found thoſe deeds firſt?

Baniſter. It was after I had paid him 3*l.* for water.

L. C. J. When was the firſt time that he ſpoke of it?

Baniſter. It was the fifth or fourth of *September.*

L. C. J. And when did you firſt go thither?

Baniſter. On the 7th of *September*, he deſired me to come and help him, and aſſiſt him in finding out the deeds that he had miſlaid.

L. C. J. What do you know of this deed?

Baniſter. We found one deed---

L. C. J. Look upon that carefully, is that your hand?

Baniſter. That is my hand.

L. C. J. Do you remember when you put your hand to that deed?

Baniſter. The paper I have in my hand was written at the ſame time.

L. C. J. Look upon that paper, and conſider it well; and now tell us whether you found that deed firſt, or Mr. *Knowles?*

Baniſter. Mr. *Knowles.*

L. C J. Now look upon it, and look upon it carefully, when was it?

Baniſter. This deed came into my hands the ſame day that I writ this note.

Mr. Att. Gen. My Lord, we deſire we may go on with our evidence, and not have them break in upon us to examine any ſuch thing till their time comes; if they have any thing to object againſt our witneſſes, let them take their time.

Mr. S. *Pemberton.* Mr. Attorney, we are very regular ſure in what we do; you produce a deed, and we deſire an account how you came by that deed; and finding Mr. *Baniſter*'s name, who is your witneſs, and ſworn by you, we would know of him what he knows of it.

L. C. J. Ay, ay, let truth come out, in God's name. Look upon it, Mr. *Baniſter*, once more. What ſay you to it?

Baniſter. This is the ſame deed, and my hand.

L. C. J. Upon your oath, Sir, when did you firſt ſee that deed?

Baniſter. This deed I ſaw the 7th of *Sept.* 1682.

L. C. J. Where?

Baniſter. In the garret at Mr. *Knowles*'s houſe.

L. C. J. Did you find it firſt, or Mr. *Knowles?*

Baniſter. I cannot tell, it may be I might.

L. C. J. Are you ſure you then put your name to that deed?

Baniſter. I did put my hand upon this ſame deed the 7th of *Sept.* 1682.

L. C. J. Prythee look upon it again, and look very carefully upon it. [*Which he did for a good while together.*

L. C. J. Now look upon your note again.

Mr. Att. Gen. Pray do ſo, and peruſe it carefully, and ſee whether that Deed be in your note.

L. C. J. Nay, good Mr. Attorney, let us have no directions. What ſay you?

Baniſter. I ſet my hand to ſeveral deeds that I found there, to ſome writings on the 7th of *September*, and to others on the 16th.

L. C. J. Now tell us, which of them it was that thou didſt put thy hand upon this deed?

Baniſter. I believe it might be the 7th.

L. C. J. Didſt thou not ſee that deed before the 7th of *September*, 1682, upon thy oath?

Baniſter. No, never.

L. C. J. Who was with you when you firſt found that deed?

Mr. Att. Gen. Pray my Lord, let this note be read, and that will clear all.

L. C. J. No, by no means Mr. Attorney; he may make uſe of what notes he pleaſes, to refreſh his own memory; but we will never ſupport or prop up a perjury at that rate, I aſſure you, by a note. Was Mr. *Knowles* with you when you found that deed?

Baniſter. He was.

L. C. J. Do you take it upon your oath that that deed was found the 7th of *September*, 1682, in the garret at Mr. *Knowles*'s houſe?

Baniſter. I cannot tell which of the two it was, the ſeventh or the ſixteenth.

L. C. J. Was it one of the two, upon your oath?

Baniſter. It was one of the two.

L. C. J. Now call Mr. *Knowles* again.

Mr. *Williams.* There he is, my Lord; if your Lordſhip pleaſe to look upon the deed---*Knowles*'s name was to it likewiſe, but ſcraped out.

L. C. J. Well, we will aſk him about it. But, Mr. *Baniſter* poſitively ſwears he was at the finding of this deed. What ſay you, *Knowles?*

Knowles. I know nothing of it, my name is not to it.

Mr. *Williams*. Was your name ever to it, or not?

Knowles. No, never.

Mr. *Dobbins*. But it was to it at the trial in *Michaelmas* term.

L. C. J. Did you ſet your name to all the deeds you found in the garret?

Knowles. Yes, I did.

L. C. J. Upon your Oath, *Baniſter*, did you ſet your name to any deeds that he did not, that were found there?

Baniſter. I believe I might do ſo, I would not ſwear punctually to it.

L. C. J. Was he with you?

Baniſter. He was with me in the very ſame chamber.

Knowles. I do not know that ever I put my hand to that deed in my life.

L. C. J. Did you ever ſee that deed?

Knowles. I cannot ſay I did; I remember nothing of it.

L. C. J. I aſk you once again, when you found this deed, was he with you?—*Baniſter*. Yes, Sir.

L. C. J. You, *Knowles*, did you ever truſt him to look and ſearch any deeds in your garret, but when you were by yourſelf?

Knowles. No, my Lord.

L. C. J. Then I would aſk you upon your oath, becauſe you are the perſons that had theſe deeds in your cuſtody; was there any deeds delivered out of your hand that you did not ſet your hand to?

Knowles. I believe there was never an one.

L. C. J. How came this deed, which he ſwears was found there, not to have your hand to it?—*Knowles*. I do not know that ever I ſaw it.

Mr. Att. Gen. Did Mr. *Knowles* ſay he was looking for deeds of his own concern, when he found the firſt deed?

Baniſter. He did ſay he had looked before, and had found ſome of theſe deeds, and then miſlaid them, and deſired my aſſiſtance to find them again.

L. C. J. What did he ſay to you at firſt?

Baniſter. He ſaid he had been ſpoken unto by my Lady *Ivy*, to look for deeds that might concern her anceſtors, and he had found ſome; but finding ſome alſo that concerned himſelf, he had miſlaid my Lady's, and deſired me to help him to find them again.

L. C. J. What employment have you under my Lady *Ivy?*

Baniſter. I am her rent-gatherer.

L. C. J. Her bailiff, I ſuppoſe: But now you ſpeak of what my Lady *Ivy* deſired of *Knowles*, I would aſk you a queſtion, leſt it ſlip out of my memory, Were you preſent at any time when my Lady *Ivy* ſpoke to Mr. *Knowles* to look after any deeds?—*Baniſter*. Yes, I was.

L. C. J. Pray tell us whoſe deeds ſhe deſired him to look?

Baniſter. The deeds he ſaid he had miſlaid.

L. C. J. What were they?—*Baniſter*. The deed of *Richard Hill*, and the deeds belonging to *Stepney* and *Shadwell*.

L. C. J. What names did ſhe mention to him, that ſhe would have looked after?—*Baniſter*. She did mention ſome.

L. C. J. Upon your oath, did ſhe mention any deeds made by Dr. *Donne*, Dean of St. *Paul*'s?—*Baniſter*. No.

L. C. J. By one *May*, Dean of St. *Paul*'s?—*Baniſter*. No.

L. C. J. Was one *Lun* named?—*Baniſter*. No.

L. C. J. Or one *Holder?*—*Baniſter*. Not that I know of.

L. C. J. Did ſhe mention one *Joan Hall?*

Baniſter. I do not know that my Lady *Ivy* gave particular order for any of theſe names.

L. C. J. Did ſhe, upon your oath, name *Marcellus Hall* to you?

Baniſter. No, my Lord.

L. C. J. Upon your oath, *Knowles*, was not he by when my Lady named *Marcellus Hall* to you?—*Knowles*. He was, my Lord.

Baniſter. I did not hear my Lady name that name at all.

L. C. J. No; he heard her give order for no particular deeds, neither for *Holder*, nor *Lun*, nor *Marcellus Hall*, but only concerning *Stepney* and *Shadwell*.

Sir *Edw. Herbert*. *Baniſter*, did he ſay he had before found them, and miſlaid them?—*Baniſter*. Yes.

Mr. Att. Gen. Upon your oath, what deed do you take that to be which is produced?

Mr. *Powis*. Can you read it, yea, or no?

L. C. J. Mr. *Powis*, do you think my Lady *Ivy* ſent *Baniſter* to look after deeds that he could not read? that were very pretty!

Mr. Att. Gen. What deed do you take it to be?

Mr. Sol. Gen. Let me aſk you one queſtion, Mr. *Baniſter*; Did you ever ſet your hand to any deeds that were not found at Mr. *Knowles*'s?

Baniſter. Yes I have.

Mr. *Lutwich*. Upon what occaſion did you put your hand to them?

Baniſter. Becauſe they were ancient deeds, and I was to look out where the hands were that they did concern.

Mr. Att. Gen. Pray now anſwer my queſtion; look upon it, and tell me what deed do you take it to be?—*Baniſter*. It is a deed of ſale to *Stepkins*.

L. C. J. It is ſo, you are in the right of it; and now upon your oath, where did you find that deed of ſale?

Baniſter. My hand is to it, and this is one of the deeds, I take it to be ſo, that was found in the garret at Mr. *Knowles*'s houſe.

L. C. J. He has ſaid ſo, I know not how often.

Mr. Att. Gen. He is not himſelf.

L. C. J. How can I help that, Mr. Attorney? But what he ſays, is plain.

Mr. Sol. Gen. Pray read over the note you have in your hand to yourſelf, and remember all the deeds that are particularly therein contained.

L. C. J. Let him read his note, (*which he did*) and now aſk him what you will.

Mr. Att. Gen. Is there any deed of the 16th of *April*, 6 *Edw.* VI. from *Hill* to *Stepkins*, in that note?

L. C. J. That is no fair queſtion, Mr. Attorney.

Mr. Att. Gen. With your favour, my Lord, I conceive it is; for that will make it plain that he is miſtaken.

L. C. J. I believe he is; but with your favour, it is not a fair queſtion; you are only to aſk him, whether that deed given in evidence be there?

Mr. Sol. Gen. I would aſk him one ſhort queſtion, my Lord, and I think it is a fair one.

L. C. J. Ay, in God's name, aſk what fair queſtions you will, but no leading ones.

Mr. Sol. Gen. Your witneſs is drunk, Madam.—(*To my Lady* Ivy.)

Mr. *S. Lutwich*. My Lord he does not underſtand what he ſays, that is plain.

L. C. J. Brother, all knaves are fools in one kind too.

Mr. Sol. Gen. Have you read the date of that deed?—*Baniſter*. Yes.

Mr. Att. Gen. My Lord, if you pleaſe, we will go on with our other evidence a while, and let him recollect himſelf, and conſider of it.

L. C. J. With all my heart; but I think the more he conſiders, the worſe he is; and ſo he will be to the end of the chapter.

Mr. Att. Gen. They have called to us, my Lord, for an account of this deed; we ſhall now prove that Mr. *Neale* knew of this deed before. Swear Mr. *Butler*. (*Which was done.*)

L. C. J. What is your name?—*Butler*. *William Butler*.

Mr. Att. Gen. Pray, Sir, will you tell the Court and the Jury, what diſcourſe you had with Mr. *Neale*, and what he ſaid about a deed, and when?

Butler. I never ſaw the leaſe; but as I was here at the laſt trial, when there was a verdict for this Eſtate to be my Lady *Ivy*'s; and afterwards, the 22d of *December* laſt, I had an opportunity of being with Mr. *Neale*, he being with Mr. *Bryan*, my Lady's huſband, ſince dead, at the *King's-Head* tavern, with whom I had ſome buſineſs. Mr. *Bryan* was there firſt, (I ſuppoſe it was by appointment they met) and in half an hour Mr. *Neale* came up ſtairs. After they had changed two or three compliments, they came to talk about meeting at Mr. Attorney-General's chambers in the *Temple*, to treat about their controverſy. Says Mr. *Neale*, let there be a forfeiture upon it of 50*l.* to be paid by him that fails. No, ſays Mr. *Bryan*, I will make no forfeiture, but I will certainly meet there. Says Mr. *Neale* again; And I queſtion not but to give ſuch ſatisfaction, as whereby to convince you and my Lady, that this is not her Eſtate. I ſhould be glad to hear that, ſays Mr. *Bryan:* why I hope you do not think the deeds are forged? No, ſays Mr. *Neale*, I do not think they are forged. Mr. *Knowles* offered me a long time ago, to ſhew me that deed, and I might have had it in my poſſeſſion; but I would not: for if I had, I ſhould have been the apteſt man in the world to burn it. This is all I can ſay.

L. C. J. And what is this to the purpoſe, Gentlemen? Alack-a-day, this is very thin; a ſlight diſcourſe in a tavern: How can any anſwer be given to ſuch an evidence? Tho' indeed it does not need any. Pray let not our time be taken up with ſuch trifling ſtories of a cock and a bull; go on to that which is material.

Mr. Att. Gen. Now we ſhall produce a leaſe from *Marcellus Hall* to one *Roper*, of part of this eleven acres and an half.

Clerk reads.] This Indenture made the 13th day of *November*, in the 2d and 3d years of the reigns of our ſovereign Lord and Lady *Philip* and *Mary*, by the Grace of God King and Queen of *England*, *Spain*, *France*, both the *Sicilies*, *Jeruſalem*, and *Ireland*; Defenders of the Faith, Arch-Dukes of *Auſtria*, Dukes of *Burgundy*, *Millan*, and *Brabant*; Counteſs of *Hapſburgh*, *Flanders* and *Tyrole*; between *Marcellus Hall* of *Ratcliff*, miller, of the one party, and *Richard Roper*, citizen and ſalter of *London*, of the other party, witneſſeth, That the ſaid *Marcellus Hall*, for the ſum of ſix pounds of good and lawful money of *England*, to him by the ſaid *Richard Roper* in hand paid; whereof the ſaid *Marcellus Hall* clearly acquitteth and diſchargeth the ſaid *Richard Roper*, his executors and aſſigns, and every of them, by theſe preſents; hath granted, demiſed, and to farm letten, and by theſe preſents granteth, demiſeth, and to farm letteth, to the ſaid *Richard Roper*, a parcel of marſh-ground, lying and being in *Wapping* marſh, at the eaſt end of the marſh, beginning at the weſt ſide of the well, which lieth by the way that leadeth up to the *Lynches*, called *Shadwell*, meaſured by a ſtrait line from the *Lynches*, by the weſt ſide of the well, to the *Thames* wall, and reacheth weſt to the way that leadeth up into *Ratcliff* high-way, containing by eſtimation of meaſure ſeven acres, little more or leſs, and the pond; all which marſh-land abutteth north upon the *Lynches* of the Dean and Chapter of the Cathedral Church of St. *Paul*, and ſouth upon the *Thames* wall; and alſo all the *Thames* wall belonging to the ſeven acres, with the foreland and ſoil, down to the low-water mark of the River of *Thames*; all which marſh-lands are lying in the pariſh and manor of *Stebunheath*, alias *Stepney*, in the County of *Middleſex:* to have and to hold the ſaid parcel of marſh-ground, wall, foreland and ſoil, with the appurtenances, to the ſaid *Richard Roper*, his executors and aſſigns, from the feaſt of the Annunciation of our bleſſed Lady St. *Mary* the Virgin, next coming, unto the end and term of four-and-twenty years from thence next enſuing, and fully to be completed and ended; yielding and paying therefore yearly, during the ſaid term, to the ſaid *Marcellus Hall*, his executors and aſſigns, three pounds of good and lawful money of *England*, at four terms of the year.—

L. C. J. What date is that deed of?—*Clerk*. The 13th of *November*, in the 2d and 3d years of King *Philip* and Queen *Mary*.

Mr. Att. Gen. Now we ſhall read *Stepkins*'s licenſe to *Hall*, to alien his term.

Clerk reads.] To all manner of people to whom this preſent writing ſhall come; I *Thomas Stepkins*, alias *Stipkins* of the pariſh of *Stebunheath*, alias *Stepney*, in the County of *Middleſex*, beer-brewer, ſend greeting in our Lord God everlaſting. Whereas I the ſaid *Thomas Stepkins* on the 16th of *April*, in the ſixth year of *Edward* the Sixth, have betaken eleven acres and a half of marſh-land with all the bank with the foreland and ſoil, down to the low-water mark of the River of *Thames* that he ſhould not alien or aſſign the ſaid leaſe or term of years, without the ſpecial licence or conſent Now know ye, That I the ſaid *Thomas Stepkins*, for divers good cauſes give leave and licence to the ſaid *Marcellus Hall*, to the right worſhipful Mr. Dean of the Cathedral Church of St. *Paul* with the wall, foreland or ſoil under ſuch covenants, as is reſerved and contained——

Mr. *Williams*. I would aſk Mr. *Baniſter* ſomething about this deed; look upon it, Sir.

Mr. Att. Gen. We have not done with him yet. Pray take that deed out of his hand.

Mr. Serj. *Pemberton*. You will let him give ſome account of it firſt, Mr. Attorney.

Mr. Att. Gen. You would fain confound him.

Mr. Serj. *Pemberton*. He is confounded enough already.

Mr. Sol. Gen. Now, Mr. *Baniſter*, you have conſidered of it; pray once more look upon the deed again---*(which he did,)*----Was that deed one that you ſigned then or no?

Baniſter. This is my name, but I cannot find the date of this deed in my paper. I cannot tell now whether it be one I found then or no.

Mr. Sol. Gen. Did you ſet your hand to any deeds that were found there, which you did not ſet down in your paper?

Baniſter. No, not that I know of, I do not know I did.

L. C. J. Prithee where didſt thou ſet thy hand to that deed?

Baniſter. I ſet my hand to the deeds that were found there at the houſe.

L. C. J. Did you ſet your hand to none elſe but what were found there?

Baniſter. I have ſet my hand to divers deeds beſide, but they are none of thoſe deeds that are in my paper.

L. C. J. Where did you ſet your hand to any deeds beſides?

Baniſter. To divers deeds I have ſet my hand at home.

L. C. J. Have you to any relating to the lands in queſtion?

Baniſter. I do not know that I have ſet my hand to any deeds relating to the lands in queſtion, but at Mr. *Knowles*'s.

L. C. J. To what purpoſe did you ſet your hand and name to the deeds you found at *Knowles*'s?

Baniſter. To the ſame intent to teſtify that I was at the finding of them.

L. C. J. To what end did you ſet your hand to any other deeds?

Baniſter. To the intent that I knew better where the lands did lie than ſhe did; and when my Lady found any deeds, I ſet my hand to them, and then found the places where the lands lay.

L. C. J. Thou haſt had a fair time to conſider of that deed; canſt thou ſee here to what place that deed relates, by this mark?

Baniſter. I cannot find the date of the deed in my paper.

L. C. J. But where do you think you did put your name to that deed?

Baniſter. I cannot tell whether I did it at that time or no; but this is my name.

L. C. J. I know thy name is there, man; I read it two hours ago: but did you put your hand to that as one of the deeds that you found in *September*, 1682, when you were at Mr. *Knowles*'s, or not?----*Baniſter.* I cannot tell.

L. C. J. Doſt thou believe thou didſt not?----*Baniſter.* I cannot tell.

L. C. J. Canſt thou tell the reaſon why thou didſt ſet thy hand to it?

Baniſter. Certainly becauſe I was at the finding of it; I know no otherwiſe.

Mr. S. *Pemberton.* Now pray look upon this deed *(ſhewing him another)* and ſee whether that be your name or not?

Baniſter. Yes, my Lord, I will.

Mr. S. *Pemberton.* Is that your name?

Baniſter. Yes, it is; this is one of the deeds that was found at Mr. *Knowles*'s.

Mr. S. *Pemberton.* You ſaid ſo as to the other two.

Mr. Att. Gen. But he was not ſo poſitive in it.

Baniſter. This is rat-eaten, and ſo I know it again; and there is a rat-eaten deed ſet down in my paper.

L. C. J. Let him be as poſitive as he will, he has been forſworn five times.

Mr. Sol. Gen. He was confounded with a miſtake of the deeds, he having ſet his hand to ſo many.

L. C. J. They are perjured both of them plainly; that is the truth of the matter.

Mr. Att. Gen. I hope the folly of our witneſſes in ſuch circumſtances, ſhall not rob us of our own land, and that it appears to be plainly.

L. C. J. God forbid but you ſhould have your own land; but by the Grace of God, if I can help it, you ſhall never have a foot of land by forſwearing and perjury.

Mr. *Williams.* When did you find that deed?

Baniſter. The 16th of *September*.

Mr. *Williams.* Where?---*Baniſter.* In the garret at Mr. *Knowles*'s.

Mr. *Williams.* Are you ſure of it?

Baniſter. Yes, I am ſure of that deed, becauſe it is rat-eaten.

Mr. *Williams. Knowles*, pray, do you look upon it, what ſay you to that deed?

Knowles. This is my hand, and this is one of the deeds that was found there at that time.

Mr. *Williams.* Pray read the date of that deed there.

Clerk reads.] This indenture, made the 13th day of *November*, in the 2d and 3d years of *Philip* and *Mary*---

Mr. S. *Pemberton.* That is a deed from *Marcellus Hall* to *Roper*; how ſhould that come to be at *Knowles*'s?

L. C. J. They have ſworn it.

Mr. Att. Gen. They go about to blemiſh our deeds by the folly of our witneſſes, which we cannot help. We however leave the deeds to the Jury, and let them ſee if thoſe ſeals and other things look like counterfeit.

L. C. J. Well, go on, the Jury will have the deeds with them.

Mr. Att. Gen. My Lord, we did before produce a conveyance from *Richard Hill* to *Stepkins*. It reſted not there, that conveyance had no legal execution; thereupon there was a fine and recovery by the heir of *Hill*; and what was the occaſion of that, will appear by the deed.

Clerk reads.] This Indenture made the 12th day of *November*, in the 5th and 6th years of the Reigns of our ſovereign Lord and Lady, *Philip* and *Mary*, by the Grace of God King and Queen of *England*, *Spain*, *France*, both the *Sicilies*, *Jeruſalem*, and *Ireland*, Defenders of the Faith; Arch-Dukes of *Auſtria*, Dukes of *Burgundy*, *Millan* and *Brabant*; Counts of *Haſpurg*, *Flanders* and *Tyrol:* between *Jaſper Hill*, ſon and heir of *Richard Hill*, late Citizen and Mercer of *London*, of the one party; and *Macheline Stepkins*, late wife and executrix of the laſt will and teſtament of *Thomas Stepkins*, and *John Stepkins*, ſon and heir apparent of the ſaid *Thomas*, of the other party, witneſſeth, That whereas the ſaid *Richard Hill*, father of the ſaid *Jaſper* amounting in the whole to the ſum of 200*l.* by the ſaid *Macheline*

And where variance concerning all that parcel of marſh-land unto St. *Katherine*'s, which the ſaid *Richard Hill* bought of *Cornelius Vanderdelf* for the aſſuring all that *Wapping-marſh*, the ſaid *Richard Hill* ſtands bound in an obligation of which condition, that he ſhould make by a certain day, a good, ſure, ſufficient, indefeaſible of and in all thoſe parcels of marſh-land, lying in *Wapping*-marſh; that is to ſay, all that with ſix acres of marſh, now in the tenure or occupation of one *Knevett*, or his aſſigns, and all thoſe lying in the Eaſt and in the tenure of one *Miller*; that is ſay, all the bank, containing by eſtimation three acres and an half; and all thoſe next adjoining, by meaſure ſix acres or more and two acres by eſtimation of meaſure lying in the bottom of the *Lynches*, and reacheth from the *Lynchet* to the Iſland by the pond; and alſo that parcel divided into twain ſix acres; and alſo that holds in his own hands; that is to ſay, all that parcel with the iſland and pond, containing by eſtimation of meaſure, five acres and of, and in all thoſe parcels lying on the weſt ſide of the pond, containing in the whole ſixteen acres by meaſure; all which ſaid ſixteen acres to *Gravel-lane*, the ſaid *Robert Hill* had in his own occupation reaching to *Gravel-lane*, ſometime plowed and ſown by one *Richard Clayton*, and now in the occupation of one *Cooper*, butcher, and lying on the eaſt ſide of *Gravel-lane* towards *London* fields, which was conveyed to him from one *Richard Tyrrell*; and alſo all that marſh in the tenure of one *Clayton*, butcher, one *William Cound*, butcher, ſeventeen acres and of *Edward Aſh*, four acres; and alſo all the lands, tenements, rents, houſes, ponds, fiſhings, mills, to the low-water-mark of the River *Thames*, and all trees For the appeaſing all variances and ſuits, the ſaid parties to this Indenture have fully condeſcended and agreed in form following; that is to ſay; The ſaid *Jaſper Hill*, for the ſum of 1200*l.* of lawful money of *England*, in which he acknowledgeth himſelf to be truly indebted to the ſaid *Macheline* and *John Stepkins*, doth give, grant, bargain, ſell to the ſaid *Macheline* and *John Stepkins* all the ſaid marſh-ground lying in *Wapping*-marſh, with all manner of lands, tenements forelands, ways, trees to the low-water-mark with the appurtenances lying and being in without or elſewhere within the pariſhes their heirs and aſſigns for ever, all the right, title together with all evidences and writings diſcharged of all former charges, incumbrances by the ſaid *Jaſper Hill*.---

Mr. Att. Gen. Next we ſhall ſhew that *Marcellus Hall*, that had this long leaſe, and had demiſed the ſeven acres down from *Shadwell* to *Roper*, doth on the 14th of *November*, in the 5th and 6th years of *Philip* and *Mary*, ſurrender the remaining four acres to *Thomas Stepkins*; and then we ſhall ſhew it was demiſed to *Fox*, who was the firſt builder and made *Fox's-lane*.

Mr. Sol. Gen. Your Lordſhip doth obſerve, that the licence was to aſſign the whole eleven acres and an half; but he did aſſign but ſeven.

Clerk reads.] This is dated on the 14th of *November*, in the 5th and 6th years of King *Philip* and Queen *Mary*.

To all whom this preſent writing ſhall come; I *Marcellus Hall* of *Ratcliff*, miller, ſend greeting in our Lord God everlaſting. Whereas *Thomas Stepkins* hath by his Indenture, dated the 20th day of *April*, in the 6th year of King *Edward* VI. lett to me the ſaid *Marcellus Hall* on the weſt ſide with the *Thames* wall thereto belonging, with the foreland and ſoil for one hundred and twenty and eight years: know ye that I the ſaid *Marcellus Hall*, for the ſum of 30*l.* of good and lawful money of *England* in hand paid have by theſe preſents remiſed, releaſed, and abſolutely confirmed, to the ſaid *John Stepkins*, his heirs, executors and aſſigns, all ſuch eſtate, right, title, intereſt, term of years, eſtate, property, claim and demand, which I, or any perſon to my uſe, have, or ought to have, or at any time ſhall to have in, or to four acres of marſh-ground, abutting eaſt on the green bank, or way through, ſix acres leading up to *Ratcliff* way, which way adjoineth to the weſt ſide of the lands in the occupying of *Roper*; which ſaid lands was made over with the leave and licence of the ſaid *Thomas Stepkins*, to the right worſhipful for the term of ninety-three years; and weſt on the field, in the occupying of *John* north on the *Lynches*, and ſouth of, in, or to the *Thames* wall abutting eaſt on the ſouth-weſt way, as aforeſaid down to the low-water-mark of the River of *Thames* So that neither I, my executors or aſſigns, any right, claim, demand or any part thereof but from all ſhall be utterly excluded and debarred for ever---

Mr. Att. Gen. Here is a fine levied, *Quin' Trin'* 3 *Eliz.* they had beſt aſk where that was found too! Is not that forged?

[*The Fine was read.*]

Mr. Sol. Gen. Here is a recovery alſo, and a deed to lead the Uſes: in which recovery the tenants vouch *Jaſper Hill*, who voucheth over the common vouchee. [*The Recovery was read.*]

L. C. J. Read your deed to lead the uſes.

Clerk reads.] This Indenture made the 12th day of *May*, in the fourth year of the reign of our ſovereign Lady *Elizabeth*, by the Grace of God, Queen of *England*, *France*, and *Ireland*; Defender of the Faith, *&c.* between *Macheline Stepkins* of the one party, and *Edward Buggin* Where it was concluded, fully condeſcended and agreed between the parties to this Indenture, that they the ſaid *Edward Buggin* ſhould in the term of the *Holy Trinity* recover to them by writ of *Entry ſur Diſſeiſin in le Poſt*, to be had againſt the ſaid *Macheline* and *John*, before the Queen's Majeſty's Juſtices of the Common-Pleas at *Weſtminſter*, for that time, being according to the uſe of former recoveries one hundred acres of freſh marſh, within the pariſhes, towns, fields

And it was fully agreed between the ſaid parties, that the ſaid recovery ſhould be to the uſes---

Mr. *Williams.* Mr. *Baniſter*, pray, Sir, look upon this deed, and ſee whether your name be to that deed or no? *(Shewing him the Surrender of* Hall.*)*

Baniſter. This is my name.

Mr. *Williams.* Was Mr. *Knowles*'s hand to that deed?

Baniſter. I cannot tell.

Mr. S. *Pemberton*. Did not he and you put your hands together to it?

Baniſter. I did not make it, I did not forge it.

Mr. S. *Pemberton*. No, I do not think you did, you have not brains to o it.

Mr. *Williams*. Where did you find that deed?

Mr. S. *Pemberton*. How came you to put your hand to it?

L. C. J. Is it one of the deeds of purchaſe?

Mr. S. *Pemberton*. Yes, it is; and therefore we would know, ſince Mr. *Knowles*'s name is to it, how it came there.

L. C. J. Is it the ſurrender made by *Marcellus Hall* to *John Stepkins*?

Mr. *Williams*. Yes, my Lord, it is.

L. C. J. Let me ſee it---His name, I believe, has been there.

Mr. *Williams*. Do you know any thing of the raſing of it out?

Baniſter. No, not I.

Mr. *Williams*. You, *Knowles*, were you at the finding of that deed?

Knowles. I ſet my hand to none but what I found.

L. C. J. But what do you ſay to that deed?

Knowles. I do not remember this deed at all; I cannot ſay any thing to it.

L. C. J. Was your name to it?

Knowles. Here is my name, but I do not know who put it there.

L. C. J. Is that your writing, *Baniſter?*

Baniſter. That on the backſide is.

Mr. *Williams*. Look into your note, that you may not out-run yourſelf. Why did you ſet your hand to it?

Baniſter. I ſuppoſe it was one of the deeds found there.

Mr. *Williams*. How ſhould it come there? It belonged to the purchaſer.

Mr. Att. Gen. Now we ſhall go to matter of record again. *Richard Hill*, it ſeems, before the leaſe made to *Marcellus Hall*, entered into a Recognizance in 4 *Eliz.* this is extended, and that will ſhew it to be *Richard Hill*'s eſtate.

Mr. *Powis*. Can you object any forgery of Records, pray?

Mr. Sol. Gen. Pray Sir, look upon that *(to the Witneſs)*; where did you examine that?

Witneſs. I examined this at the *Rolls*.

Mr. *Williams*. Is it a true copy, upon your oath?---*Witneſs*. It is.

L. C. J. Read it.

Clerk. This is teſted at *Weſtminſter*, 17 *Jan.* 4 *Eliz.* And here is an inquiſition taken the 6th of *April*, in the ſame year.

Mr. Att. Gen. We will read that part of the Inquiſition that concerns our queſtion; for the eaſt bound is only in queſtion now. *(It was read.)*

Mr. Att. Gen. Was this produced at the former trial, the firſt trial?

Sutton. No, I think not in *Michaelmas* Term.

Mr. Sol. Gen. Then we ſhall ſhew an Inquiſition upon a commiſſion of ſewers.

Mr. Att. Gen. The land in queſtion is every foot of it in the marſh; and that they muſt acknowledge they have no title to.

Mr. *Williams*. This is an inquiſition which they produce, taken before a commiſſion of ſewers. I deſire to know how that comes to lie in a private hand, for it is the original Inquiſition, and ought to remain with the officer.

Mr. Att. Gen. The whole intereſt of the marſh was ours, therefore it might well be left with us.

Mr. S. *Pemberton*. Under favour, good Mr. Attorney, ſuch things ſhould be kept by the Clerk to the Commiſſioners.

Mr. Att. Gen. How many trials has this been produced at?

Mr. S. *Pemberton*. With ſubmiſſion, my Lord, this that they produce being an Original, may very well come under great ſuſpicion, in regard it ought to be brought in by the officer, in whoſe cuſtody it ought to remain.

Mr. *Williams*. It is not a thing of bare intereſt between party and party, but a thing that concerns the publick, and therefore ſhould be brought in the officer's cuſtody.

L. C. J. Read it *de bene eſſe*; let us ſee what it is.

Mr. Att. Gen. My Lord, I would aſk Mr. *Sutton*, was not this produced and read before the trial in *Michaelmas*-Term laſt?

Sutton. It was produced in Court twelve years ago.

Mr. Sol. Gen. Was it allowed as evidence?---*Sutton*. Yes, conſtantly.

Mr. Att. Gen. Pray read it.

Mr. *Williams*. Pray who has had it in keeping all this while?

Sutton. My Lady *Ivy* brought it to me among her writings at firſt.

L. C. J. Read it.

Clerk reads.] The verdict and preſentment of us the Jurors, as well of all defects, annoyances, within the limits or bounds of *Wapping*, and *Wapping*-marſh, from *Graſh*-mill to the mill at *Ratcliff*, that is to ſay, the 20th of *December*, *Anno Dom.* 1572, and in the 14th year of the Queen's Majeſty's Reign that now is.

The names of the Freeholders within *Wapping*-marſh, and the number of acres contained within the ſame marſh, with all the names of the occupiers thereof.

Firſt, *John Stepkins*, Gent. Free-holder, for a parcel containing twenty-two acres, in the tenure of *Richard Ew* *Benedict* Gent.

Mr. Att. Gen. You may ſkip over a great deal, and read only that which conduces to the queſtion.

Clerk. No one can read it very well, I think. *(Reads)* On the weſt ſide of *Gravel-lane*, containing 68 acres---Is that it?

Mr. Att. Gen. No, go to the eaſt ſide.

Clerk reads.] ---Freeholders; one parcel containing ten acres, in the tenure of *John Hodges* and *John Gee*, *John Stepkins*, Gent. two parcels, containing twenty acres, in the tenure of *John Cooper*, and *John Harding*, *John Stepkins*, Gent. One parcel, containing four acres, in the tenure of *John Stepkins*. One parcel, containing twelve acres, in the tenure of *John* *Roger James*, Freeholder. Two parcels, containing ſix acres, *Robert Hemmings* and *John Stepkins*. One parcel, containing one acre and an half, *Richard Roper*. One parcel, containing ſix acres, in the tenure of *Richard Roper*.

All which parcels be on the eaſt part of *Gravel-lane*, containing ſixty acres---Then here is ſomewhat interlined and ſtruck out again.

Mr. *Williams*. This doth not concern the Church.

Mr. Att. Gen. No more it doth not, as you ſay, indeed; for they cannot claim any of the marſh. Now we ſhall ſhew a warrant three years after, from the Commiſſioners to ſurvey.

Clerk reads.] ---This is dated the 18th of *July*, in the 17th year of the moſt proſperous Reign of our ſovereign Lady *Elizabeth*, by the Grace of God, *&c.* And it is directed

To our well-beloved John Stepkins *and* John Oſborn, *Surveyors*. Whereas, the Queen's Majeſty by a commiſſion of ſewers, bearing date the 23d day of *April*, in the year of her Reign; hath authorized us to ſurvey and view from *Buttolphs-Wharf* by St. *Katherine*'s, near the Tower of *London* unto *Ratcliff*-mill not only to conſider of the decays and ruins of the ſame, but alſo to take order for the ſpeedy repairing as to our diſcretions ſhall ſeem good We, therefore, ſufficiently informed of your wiſdom and diſcretion, appoint you ſurveyors willing and commanding you, by virtue of the ſaid commiſſion to ſee whether the work be accompliſhed according to ſuch ordinances and decrees as we have appointed, and from time to time ſhall make and appoint; and to ſee who we have made expenditor for ſuch ſums of money for the payment of workmen may by your warrant be diſburſed and payed accordingly; and further, we give you power and authority to give to provide for a competent and ſalary, at reaſonable prices, all workmen boats, lighters, carts, carriages, trees, pales as to your good deſcretion ſhall ſeem meet; and for your ſo doing, this ſhall be your ſufficient warrant.

Mr. Att. Gen. We ſhall now go a ſtep farther, as I opened in the beginning, and ſhew that this was mortgaged by *Stepkins* to the Queen, and a fine was levied upon that mortgage.

Clerk reads.] This Indenture made the 4th day of *June*, in the 15th year of the Reign of our ſovereign Lady *Elizabeth*, *&c.* between the right honourable Sir *William Cecil*, Knight, Lord *Burleigh*, and Lord High Treaſurer of *England*; the right honourable and one of her Highneſs's moſt honourable Privy-Council; Sir *Gilbert Gerard*, Knight, her Majeſty's Attorney-General, for and on behalf of the Queen's Majeſty, and to her uſe, of the one party, and *John Stepkins* Whereas *William Pat* one of the tellers at and upon the determination of his account, made and ended at the 25th day of *December* is indebted in the ſum of 7928*l.* 7*s.* 11*d. ob.* And whereas our ſaid ſovereign Lady the Queen the 16th day of *June*, in the 9th year of her Reign, hath commanded the ſaid Sir *William Cecil* Sir *Gilbert Gerard*, and Sir *Thomas Bromley* to take order from time to time with ſo many of the debts owing, or that after ſhould be owing and for the ſure payment and contentation of the ſaid ſum of 7928*l.* 7*s.* 11*d. ob.* covenanteth with them the ſaid that he the ſaid *John Stepkins*, his heirs, executors ſhall and will not only ſatisfy and pay the ſaid ſum into the Receipt aforeſaid but alſo for the better ſettlement ſhall and will make, and cauſe to be made by one fine in good form of law of, and in one cloſe within the pariſh manor of *Yewel*; and one great garden And of, and in one tenement, with the appurtenances in now in the occupation of *John Stout*; and 19 acres of meadow in *Wapping*-marſh, parcel of the ſaid manor *Richard Roper*.

Mr. Att. Gen. Where is the copy of the fine?---*Sutton*. Here.

Clerk reads.] This is the final Concord, *&c. Menſ. Mich.* 14 *Eliz.*

Mr. Sol. Gen. This was afterwards re-granted from the Crown; and there is the Re-grant.

(Which being under the Great Seal, and teſted 6 Julii, Anno 7 Jacobi Regis, *was read.)*

Mr. Att. Gen. Part of this marſh was by our anceſtor conveyed to one *Eaſt*.

L. C. J. Ay, I have the note of ſuch a conveyance in my notes of the laſt trial.

Mr. Att. Gen. Mr. *Sutton*, is that a true copy?---*Sutton*. Yes, it is.

Mr. *Williams*. A copy of what? Where did you examine it, Sir?

Sutton. At the *Rolls Chapel*.

Mr. Att. Gen. It is a deed enrolled, and I hope you do not think the Record is forged, Mr. *Williams*.

Mr. *Williams*. I know not what you forge or do not forge; pray read it, let us ſee what it is.

(The Copy of a deed enrolled, dated 27 July, 3 Eliz. *was read.)*

L. C. J. Then the next thing that you produced, was a Bond, dated the 25th of *January*, 4 *Eliz.* wherein *Stepkins* was bound to *Spinola*, who was Adminiſtrator of *Vivold* and *Salvago*, upon the recognizance of *Hill* to them.

Mr. Att. Gen. We did ſo, my Lord; but that we cannot now readily find, I think: Here however is *Spinola*'s diſcharge.

Clerk. This is ſigned by me *Benedict Spinola*, and dated the 25th of *Feb.* 1561.

Mr. Att. Gen. Here is the Bond, read the Condition of it, though it is not material.

L. C. J. That is true; but it was read the laſt time, I find by my notes.

Clerk. This is a bond of 300*l.* The Condition of this Obligation is ſuch, That whereas one Recognizance, made and entered into by *Richard Hill* 3 *Dec.* in the 32d year of the late King *Henry* VIII. taken and acknowledged---

Mr. Att. Gen. There is enough, for it makes not at all to the purpoſe, but to confirm the belief of our purchaſe. Here is alſo *Jaſper Hill*'s receipt of the purchaſe-money.

Clerk reads.] This is dated the 28 of *January*, in the 13th year of Queen *Elizabeth*. Be it known unto all men by theſe preſents, that I *Jaſper Hill*, of *Wormley* have had before the enſealing hereof, of *Machetine* and *John Stepkins* for the diſcharge of a certain Statute the full ſum of 1338*l.* of lawful money of *England*, in full ſatisfaction and payment of all ſuch purchaſe-moneys.

Mr. Att. Gen. Then the 16th of *Auguſt*, 13 *Jacobi*, *Fox* conveyed to *John Stepkins*; but that is left at home.

L. C. J. Well, then there is an end of that; what do you do next?

Mr. Att. Gen. We have done with our evidence by Deeds and by Records, and now we ſhall come to our evidence by witneſſes, *Viva Voce*. And firſt we ſhall begin with Mr. *Knowles*; who will prove the value of the land by the rents, and particularly what the rents are of *Derrick Hills*.

L. C. J. Prove what you will.

Mr.

Mr. Att. Gen. Mr. *Knowles*, have you received the Dean's rents?
Knowles. For the uſe of Mr. *Neale* I have.
Mr. Att. Gen. What are the rents of the eaſt ſide of *Cock-hill?*
Knowles. About 100*l.* a year.
Mr. Sol. Gen. What are they?—*Knowles.* Houſes.
Mr. Att. Gen. All houſes?—*Knowles.* Some houſes, ſome ground-rents.
Mr. Att. Gen. What is the rack-rent?—*Knowles.* About 100*l.* a year.
Mr. *Williams.* Which houſes do you ſpeak of, Mr. *Knowles?*
Knowles. On tbe eaſt ſide of *Cock-hill.*
Mr. Att. Gen. Do you know the *Lynches?*—*Knowles.* Yes, I do.
Mr. Att. Gen. Who receives the rents of that ground?
Knowles. Mr. *Neale* did.
Mr. Att. Gen. Have you received the rents of the twenty acres?
Knowles. Yes, for Mr. *Neale* I have.
Mr. Att. Gen. Theſe three together, what are they all?
Knowles. About 2000*l.* a year.
Mr. Att. Gen. All this the Church of *Paul*'s has, beſides the lands in queſtion.
Mr. *Williams.* You ſay that part is worth 100*l.* a year?—*Knowles.* Yes.
Mr. S. *Stringer.* How much land might it contain?
Knowles. It is a matter of the length of the hall.
L. C. J. And how broad is it?—*Knowles.* Not very broad.
Mr. Att. Gen. Now then to come to the lands in queſtion; Do you know *Mariner's-ſtreet?*—*Knowles.* Yes.
Mr. Att. Gen. Who is in poſſeſſion of that, and receives the rents of it?
Knowles. Mr. *Neale.*
Mr. Att. Gen. What ſay you to *Griffin's-Alley?*
Knowles. Some of it is in mortgage; Mr. *Babington* had it, but for Mr. *Neale*'s uſe.
Mr. Att. Gen. What ſay you to the water-houſe?
Knowles. That Mr. *Neale* himſelf has.
Mr. Att. Gen. Theſe are the things in queſtion; do you know that which is called *New*———?—*Knowles.* That is Mr. *Neale*'s too.
Mr. Sol. Gen. Our leaſe of 128 years expired but in the year 1680; and we could not come at it till then, and we had it not till 1682; and that anſwereth their poſſeſſion.
Mr. Att. Gen. Now we ſhall call our witneſſes to prove it marſh-ground. Swear *Thomas Hughes. (Which was done.)*—Do you know *Wapping*-marſh?—*Hughes.* Yes.
Mr. Sol. Gen. Do you know the houſes in queſtion?
Hughes. Which houſes?
Mr. Sol. Gen. The houſes now in ſuit for?—*Hughes.* Yes, I do.
Mr. Att. Gen. How long have you known them?
Hughes. There was no houſes when I knew it firſt.
Mr. Att. Gen. Do you know *Cock-hill?*—*Hughes.* Yes.
Mr. Att. Gen. Do you know *Foxe's-lane?*
Hughes. Yes; I did know it before it was built.
Mr. Att. Gen. Did you know the houſes that lay on the eaſt ſide of *Foxe's-Lane?*—*Hughes.* What houſes there?
Mr. Att. Gen. Did you know any houſes there formerly?
Hughes. I know not what you mean.
Mr. Att. Gen. I aſk you again, do you know *Foxe's-Lane?*
Hughes. Yes; it was a bank before it was built.
Mr. *Powis.* Do you know the *Lynches?*
Mr. Att. Gen. Nay, let us aſk but one at once, pray. I will aſk you a plain queſtion; Did you know the marſh before it was built upon?
Hughes. Yes, Sir, that I did.
Mr. Att. Gen. How far did the marſh-ground go?
Hughes. To *Cock-Hill* Eaſtward, as far as the broad bridge; Weſtward, as far as *Foxe's-Lane.*
Mr. Att. Gen. Was all that marſh-ground?
Hughes. The River of *Thames* did flow round about it, and there were bogs, trees and buſhes, and ſuch things.
Mr. S. *Lutwich.* Did you know the place where *Ratcliff* mill ſtood?
Hughes. According to report I did.
Mr. S. *Lutwich.* Ay, where was that?—*Hughes.* Juſt at *Bell-wharf.*
Mr. S. *Lutwich.* Upon which ſide of *Cock-hill?*
Hughes. In *Shadwell Hamlet.*
Mr. Att. Gen. That is right.
Mr. *Powis.* Was that like the other end of the marſh?
Huges. The River came in there wholly.
Mr. S. *Lutwich.* At high flood does the water come in there at this time?
Hughes. It did at every tide high and low formerly, now it is dam'd up.
L.C.J. Did the tide come up to that you call *Foxe's-lane?*—*Hughes.* Yes.
L.C.J. Then that makes an end of the queſtion: It cannot be as you ſay.
Mr. Att. Gen. How ſo, my Lord?
L. C. J. How could it be an overſhot-mill? How could the mill be turned but with the tide?
Mr. Att. Gen. Their evidence makes it appear ſuch by the leaden trough, which is an inſtrument belonging only to an overſhot-mill?
L. C. J. Tell not me of the leaden trough, Mr. Attorney; look you upon the ſurvey you produced, and take notice of the laſt paragraph, and there you will find the words, *Prox' adjacent' cuidam tenemento, &c.* what make you of that?
Mr. *Att. Gen.* Pray, my Lord, let it be read.
L. C. J. I will in the mean time aſk your witneſs a queſtion. Friend, thou ſeemeſt to be a man that underſtands ſomething. Thou ſayeſt *Foxe's-lane* was a bank before it was built, and the tide before that time came up to that bank, both high and low. Now ſuppoſe there had been a mill in that ground, how ſhould it have been driven?
Hughes. I will tell your Honour: My Lord, by report, and I ſuppoſe it may be true, the mill ſtood all the tide of flood, and when the flood was at high water, there was a dam which kept it in, and it went out again at ebb-tide, and ſo the mill was drove.
L. C. J. There is your overſhot-mill gone then, Mr. Attorney.
Mr. Att. Gen. If ever ſeven or eight acres of ground can be the appurtenances of a mill, I ſhould much wonder.
L. C. J. Mr. Attorney, I can tell you of a mill over againſt this place, which I myſelf, and we all can remember. All the eſtate about it was in the *Traps* family, he was a Gentleman of our houſe; all the water that drives that Mill, and two or three Mills that ſerve that ſide of the river, is taken in as the tide comes in, and is pent in as he ſays by a dam; and when they open that, the Mill turns back again. For I would fain have all theſe things, that ſeem to be dark, cleared by the way as they go. I will ſuppoſe all the Records you have read to be right, and that it is called *Ratcliff-Mill*, and then there is the *Mill bank*, and the *Hilly-bank*, and the *Hilly-way*; it is plain then, there was a *Mill-bank*, or a *Hilly-bank*, or whatever you call it. It ſo falls out that the thing now in queſtion is made plain upon your own evidence, there was really ponds and gutters, and thoſe things that were to ſatisfy the Mill. This Mill comes to be plucked down, and the ponds and all the ſluices come now to be built upon: this is not like your Marſh-ground that is on the weſtern part of the bank, but it is a parcel of meare or marſh, as the pond and the reſt ſtifled up by thoſe things, that till ſuch time as the Mill was taken away were receptacles for to pen up the water that came in with the tide. What is the meaning of thoſe words in the ſurvey that I ſpoke of before, and the ſeveral tenements and orchards, and ponds, and ſewers, *&c.* and all thoſe things? Would you have it that this ſhould all point to the ſcite of the Mill, as though all the boundaries ſhould extend to the eaſt-end of the Mill?
Mr. S. *Stringer.* That was the reaſon why I aſked but now, how big the whole was?
L. C. J. And will, what you would have, Mr. Attorney, a ditch or two, ever anſwer the words in the ſurvey?
Mr. Att. Gen. Nor will all their words amount to divers cloſes of ground, as this muſt make in the whole.
Mr. Sol. Gen. Their twenty acres elſewhere anſwers all they can claim.
L. C. J. But this you yourſelf ſay is the *Derricks-hills*, in the ſurvey; and you do take it, as ſoon as the Mill was pulled down in one place, it was ſet up in another.
Mr. Att. Gen. After he had taken our long leaſe he erected one, we ſay, upon our ground; for he had pulled down the old Mill, and lett that to *Carter.*
Mr. Sol. Gen. My Lord it is plain, that the old Mill and the new Mill were not upon the ſame ground, from *Carter*'s leaſe.
L. C. J. Mr. Solicitor, you indeed agree among yourſelves that it is plain, but alas! the fact is quite contrary.
Mr. S. *Maynard.* My Lord, we do make our argument for the Defendant's title as your Lordſhip does apprehend it. The boundaries towards the eaſt is made the Mill and *Ratcliff-Town.* This place that contains ſeven acres, though it had paſſages for the water, is not the Mill, and it can never be, that ſo much ground can be reckoned to be lands belonging to the Mill: it is the Mill itſelf that is the eaſt bound.
L. C. J. No, it is the Mill and the Mill-bank, Brother.
Mr. S. *Maynard.* With ſubmiſſion, my Lord, it is *Ratcliff-Mill.*
L. C. J. Is there no Mill-bank in any of the deeds?
Mr. S. *Maynard.* Not that I remember.
L. C. J. At the peril of my diſcretion be that, Brother.
Mr. S. *Maynard.* Take it to be ſo as your Lordſhip ſays, that there is mention of a Mill-bank, that cannot lie eaſt, for it lieth in a little pond.
L. C. J. Good Brother let us not puzzle that which is as plain as that the ſun ſhines. The controverſy is about all the weſt part of *Foxe's-lane.*
Mr. Att. Gen. No, it is the eaſt bound that we contend for.
L. C. J. Mr. Attorney, if you will miſtake the point, I cannot help it, I aſſure you I do not. Pray take notice of it, it is called 130 acres in your Act of Parliament.
Mr. Att. Gen. Yes, my Lord, 130 acres.
L. C. J. Now then the eaſt of your land by your own ſhewing is Mill-bank; the eaſt of Mill-bank is the Mill, whereas the weſt part is St *Katherine*'s, ſo all your deeds and records ſay; but the eaſt part of the land is Mill-bank.
Mr. S. *Maynard.* No, my Lord, *Ratcliff-Mill.*
L.C.J. But I ſay, Ay, Brother. Then how broad doth *Foxe's-lane* extend?
Mr. Att. Gen. 'Tis reckoned 30 foot in *Carter*'s leaſe, I think.
L. C. J. That is a leaſe that I perceive there is ſome controverſy about, therefore I do not ſo much mind that: it is a perch of land, I think, in ſome of your evidences.
Mr. Att. Gen. Where *Foxe's-lane* is, is the four acres that were ſurrendered; now that being the weſt bound of the eleven acres, where then are the other ſeven?
L. C. J. Read the deed-poll again, the particulars and bounds only.
Clerk. [*Reads.*] All thoſe my four-and-twenty acres and an half—
Mr. Att. Gen. The eaſt bound your Lordſhip ſees is the Mill: now your Lordſhip makes an objection, that if it were as we ſay, an overſhot Mill, it could not have been driven——
L. C. J. Do not, pray, make any ſilly objection for me, and then think to anſwer it. I tell you I do ſay, that it is impoſſible there could be any Mill there but a Tide-Mill: the thing is as plain, Mr. Attorney, as any thing in the world can be; go on with your evidence.
Mr. Sol. Gen. Pray ſwear *John Somerly.*——[*Which was done.*]——How long have you known the place in queſtion?
Somerly. I have known it about 27 or 28 years.
Mr. Att. Gen. Do you know where the Mill ſtood, or was reported to ſtand?
Somerly. I know where it was reported to ſtand, but I never knew the Mill myſelf, it was demoliſhed before my time.
Mr. Att. Gen. Where was it reported to ſtand?
Somerly. As it was reported, it ſtood about half the length of the hall off the bank, rather leaning to the river of *Thames* than the highway.
Mr. Att. Gen. Where was the way to the Mill?—*Somerly.* At *Cock-hill.*
L. C. J. That your own evidence ſay, was on the weſt-ſide of the Mill.
Mr. Att. Gen. Did you know *Shadwell?*
Somerly, I know that that is called *Shadwell.* Do you mean the Well?
Mr. Att. Gen. Yes; how far is the Well from *Cock-hill?*
Somerly. Half the length of the hall.
Mr. *Williams.* How far is it eaſt of *Foxe's-lane?*
Somerly. Truly I cannot well tell.

L. C. J.

L. C. J. The queſtion is, whether that be the well that is mentioned in the evidences?

Somerly. I never knew any other well; I paid for filling of it up.

Mr. *Williams.* What was it? Was it not a pond formerly?

Somerly. It was a well.

Mr. Att. Gen. What was it called?

Somerly. *Shadwell* it was called, I knew no other name it had; and that well was wharfed about, and there was a piece of wood about ſix foot long put into it, and it was on the ſide of the hill; a Cooper had it in his poſſeſſion, and he us'd to put his hoops into it——

Mr. Att. Gen. Do you remember the ditch that run under the *Lynches?*

Somerly. I remember there was a ditch that run a long way; there were three or four bridges over it.

Mr. *Williams.* Was that a wide ditch?

Somerly. It had planks to go over, and it was a deep ditch.

Mr. Att. Gen. When you knew it, did cattle feed there?

Somerly. Not in my time.

Mr. Sol. Gen. When you firſt knew that well, was it reputed an ancient well?---*Somerly.* I knew it not till I came to buy it.

Mr. Att. Gen. What do you know of the raiſing of *Fox's-lane?*

Somerly. I lived there 26 years ago, and in the time ſince I lived in it, it is raiſed the length of my ſtick and more: for when the tide came in ſtrong, it uſed to drive ſtones and planks in at the windows. There was a Waterhouſe erected upon *Wapping-wall*, and they went to lay pipes along the ſtreet, but they could not lay them there, for they found great pieces of timber, and other things in the ground that hindered it; and upon that they raiſed the ground.

Mr. *Williams.* Was not there a dam made at the end of *Fox's lane* to keep out the tide?---*Somerly.* I never knew of any.

L. C. J. Was not *Fox's-lane* reputed an ancient way?

Somerly. I ſuppoſe they were continually paving it to raiſe it higher and higher.

Mr. Att. Gen. When you knew it firſt, was it higher than the marſh?

Somerly. It was all built when I came thither. It is ſix yards higher at one end than the other.

Mr. Att. Gen. Swear *John Holmes.*——[*Which was done.*]——Do you know the houſes in queſtion, between *Foxe's-lane* and *Cock-hill?*

Holmes. Yes.

Mr. Att. Gen. How long have you known it?

Holmes. I have known the place a matter of 28 years or more.

Mr. Att. Gen. Did you know it before it was built?

Holmes. No, I did not take notice of it, to ſay notice.

Mr. Att. Gen. Do you know that place that is called *Shadwell?*

Holmes. No.

Mr. Sol. Gen. What do you know of the raiſing of *Fox's-lane?*

Holmes. I never did know of raiſing the lane.

Mr. Att. Gen. Not at all?

L. C. J. Was it not all the time you knew it a common paſſage?

Holmes. Yes, a common highway.

L. C. J. Shew, if you can, that there was any highway from North to South, but *Fox's-lane.*

Mr. Att. Gen. Do you know *Cock-hill?*

Holmes. That is quite off from it.

L. C. J. Let me aſk you a queſtion. Suppoſe you were to go for the purpoſe from *Shadwell* down to the river of *Thames*, would you go to *Cock-hill* or *Fox's-lane?*

Holmes. If I had occaſion to go down to *Pelican-ſtairs*, then I would go to *Fox's-lane*; but if I were to go to *Bell-wharf*, I would go to *Cock-hill.*

L. C. J. That is quite another way.

Mr. Sol. Gen. It is ſouthward of *Cock-hill*, where the Mill ſtood.

Mr. Att. Gen. That adjoined juſt upon the way.

Mr. Sol. Gen. Doth not *Cock-hill* lead to the *Thames?*

Holmes. *Cock-hill* is the firſt beginning of the going down to *Bell-wharf.*

Mr. Sol. Gen. Swear *Eleanor Barefoot* and *Mary Day.* [Eleanor Barefoot *was ſworn.*] Do you know *Fox's-lane?*

Barefoot. Yes, I know it very well.

Mr. Att. Gen. How long have you known it?

Barefoot. Threeſcore and almoſt ſix years.

Mr. Att. Gen. Then you knew it before it was built?---*Barefoot.* Yes.

Mr. Att. Gen. Did you know the old Mill?---*Barefoot.* Who, Sir?

Mr. Att. Gen. Do you remember who firſt built there?

Barefoot. I cannot tell.

Mr. Att. Gen. Pray, when you knew it firſt, what was it, and who's?

Barefoot. It was a Marſh-ground from *Cock-hill* to *Fenner's-field*, it was counted and known to be Mr. *Stepkins*'s; he was a great Freeholder, and Owner of all the ground up to *Eaſt-Smithfield.*

L. C. J. How? Why is not the *Lynches* between *Cock-hill* and St. *Katherine's?*---*Barefoot.* The upper ground was only belonging to the Dean of St. *Paul*'s.

L. C. J. Do you remember that which is now called *Fox's-lane?*

Barefoot. Yes.

L. C. J. Was it a lane at that time?---*Barefoot.* Yes, it was.

Mr. Att. Gen. Do you remember how the water came in there?

Barefoot. Yes.

Mr. Att. Gen. Did it come up to the bank?

Barefoot. At high tides it came over, ſo that none could paſs.

L. C. J. But at common tides?

Barefoot. It came at common tides till it was raiſed.

L. C. J. But it was an uſual paſſage for Carts and Carriages?

Barefoot. Yes.

Mr. Att. Gen. How was the Mill driven that was there?

Barefoot. There was a Mill in my time that went with the tide, and all the water that came down from that Mill came into a pond, and ſo to the Mill-dam, and ſo drove this Mill.

L. C. J. Which Mill doſt thou ſpeak of? Didſt thou know *Ratcliff-Mill?*

Mr. Att. Gen. Did you know *Cock-hill Mill?*

Barefoot. Yes, that I ſpeak of.

L. C. J. And how was it driven, doſt thou ſay?

Barefoot. It was driven by the water that came from the river in a ſluice.

L. C. J. It came out of the *Thames?*---*Barefoot.* Yes; with the tide.

L. C. J. How did it run?---*Barefoot.* It had a great huge ſluice.

Mr. *Williams.* Was that in the *Lynch*-ditch, or other way?

Barefoot. It ran into a pond.

Mr. Att. Gen. Where did that pond ſtand?

Barefoot. In *New Gravel-lane.*

Mr. Att. Gen. Where was the head of the pond?

Barefoot. It went out with the tide.

Mr. *Williams.* Where?---*Barefoot.* Between the ſtreet and the mill.

Mr. Att. Gen. How near was the pond to *Fox's-lane?*

Barefoot. A quarter of a mile off.

Mr. *Williams.* Weſt of *Fox's-lane?*---*Barefoot.* Yes.

Mr. Att. Gen. Do you know *Green-bank?*---*Barefoot.* Yes.

Mr. Att. Gen. How far is that from *Fox's-lane?*

Barefoot. Half a mile off.

Mr. Att. Gen. Did you know the well called *Shadwell?*

Barefoot. Yes, I did.

Mr. Sol. Gen. On which ſide of *Fox's-lane* did *Shadwell* ſtand?

Barefoot. It was between the mill and *Broad-Bridge*; eaſtward of *Broad-bridge.*

Mr. Att. Gen. How far was it from the mill?

Barefoot. A pretty way.

Mr. Att. Gen. How far do you think?

Barefoot. About 40 or 60 foot: the well was between the mill, I ſay, and *Broad-Bridge*; *Fox's-lane* ſtood weſt.

L. C. J. When you knew *Fox's-lane* firſt, what was it between the *Lynches* on the north, and the *Thames* on the ſouth?

Barefoot. A place for Carts and Horſes to go.

Mr. Att. Gen. And you ſay it was all marſh-ground from *Cock-hill* to St. *Katherines?*---*Barefoot.* Yes, it was all a low ground.

Mr. Att. Gen. Whoſe ground was it counted to be?

Barefoot. Mr. *Stepkins*'s.

Mr. Att. Gen. Had the Dean ever any thing to do there?

Barefoot. The upper-ground was the Dean of *Paul*'s, but the lower-ground was Mr. *Stepkins*'s.

Mr. *Williams.* Was there a bridge over the *Lynch* ditch at the end of *Fox's-lane?*---*Barefoot.* There was a bridge and a cart-way.

L. C. J. Do you know it was marſh-ground on the eaſt-ſide of *Fox's-lane?* Did it ever lie under water?

Barefoot. At high tides and ſuch as that it was over-flowed.

L. C. J. But at common tides did it uſe to go over *Fox's-lane?*

Barefoot. I cannot tell that truly, it is now raiſed very high, it was much lower; but I am ſure the tide ſometimes came beyond.

Mr. Att. Gen. When the water was in the great pond, did not it come by the *Lynch* ditch?---*Barefoot.* It came out of the *Thames.*

L. C. J. Do you remember any way that led up to the *Lynches* by the well?---*Barefoot.* The *Lynches* did not belong to Mr. *Stepkins*; there was the mill.

L. C. J. But anſwer me, was there any way that went up to the *Lynches* by the well?

Barefoot. There was no paſſage to go through but at *Fox's-lane.*

Mr. Att. Gen. Was there not a way at *Cock-hill?*

L. C. J. That is farther eaſt than the mill.

M. Att. Gen. *Shadwell* is the bounds of our land.

L. C. J. But where is that? That is the queſtion, Mr. Attorney. I remember what the woman ſaid indeed the laſt time, if there were as many wells as there were panes in the glaſs-window here, that was the right well. But that will not decide the controverſy.

Mr. Att. Gen. Swear *Auſtin Cope.*——[*Which was done.*]——Do you know *Cock-hill?*---*Cope.* Yes, I do.

Mr. Att. Gen. Did you not know a mill that was at *Ratcliff?*

Cope. There was one at *Bell-wharf.*

L. C. J. How long ago is it, that you remember it?

Cope. Threeſcore years ago.

L. C. J. How was that mill driven?---*Cope.* With the tide.

Mr. Att. Gen. Where did the tide come in?

Cope. At *Frying-pan ſtairs.*

Mr. Att. Gen. Whither did it go?

Cope. It went into the Dam, and ſo drove the mill. There was an iron-mill built by one *White* twenty years after.

L. C. J. How far did the tide go up from *Ratcliff-mill* weſtward?

Mr. Att. Gen. As near as you can remember, what was it that ſtopped the tide?

L. C. J. Ay, how far did the tide go before it ſtopped?

Cope. Almoſt as far as *New Gravel-lane.*

L. C. J. Did the tide come up as far as *Fox's-lane?*

Cope. It flowed over at ſome tides.

L. C. J. What did it at uſual and common and ordinary tides?

Cope. It never came ſo high.

Mr. Att. Gen. How high did it come then?---*Cope.* Hard by it came.

Mr. Att. Gen. How near?

Cope. Within forty foot upon reaſonable tides.

Mr. Att. Gen. And did that help to turn this mill?

Cope. Yes; it went to the Dam, and ſo it drove it.

L. C. J. Where was your way from north to ſouth?

Cope. At *Fox's-lane.*

Mr. Att. Gen. Was there a bridge there, over which the carts went into the lane, under which the water did run?---*Cope.* Yes, there was.

L. C. J. What is it that lies beyond the mill?

Cope. *Ratcliff-Town.*

L. C. J. Which was further eaſtward, *Cock-hill* or the mill?

Cope. *Cock-hill.*

L. C. J. So it is by your own map; and then where can the mill-bank be but *Fox's-lane?*

Mr. Att. Gen. *Shadwell* is our bounds.

L. C. J. Robin Hood upon *Greendale* ſtood; therefore this muſt be your land: that is all the argument I can make of it. Your boundaries do make it as plain as the noſe in a man's face.

Mr. Att. Gen. Swear Mr. *Holwell.*---[*Which was done.*]---How long have you known this place, the lands in queſtion?---*Hol.* Not above a year.

L. C. J. He is your Surveyor, I think.

Mr. Att. Gen. He is ſo, my Lord. Pray, you *Cope*, which way did the water go?----*Cope.* Weſtward.

L. C. J. But which way did you uſe to go to the river from the *Lynches?*

Cope. We ſometimes went the lower way, and ſometimes the higher way.

L. C. J. Which was the higher way?----*Cope. Ratcliff-Highway.*

L. C. J. And which was the lower way?

Cope. Through *Wapping* and *Shadwell: Shadwell* is the lower way.

L. C. J. Thou talkeſt of the north-weſt way; but if you were to go directly from north to ſouth, which way would you have gone?

Cope. Down *Cock-hill*, or down *Broad-bridge.*

L. C. J. Where is that?---*Cope.* Beyond *Cock-hill.*

L. C. J. Whereabouts is it?---*Cope.* Within a little of *Fox's-lane.*

L. C. J. When you went down *Cock-hill*, upon which hand did you leave the mill?

Cope. If I went the lower way, I left the mill on the left-hand.

L. C. J. But when you went the higher way down *Cock-hill?*

Cope. Then we left the mill behind us.

L. C. J. What doſt thou mean by behind thee?---*Cope.* I left it north.

L. C. J. That could never be, man.

Mr. Att. Gen. Yes, my Lord, he is right.

L. C. J. But I ſay he is not right, Mr. Attorney, for *Cock-hill* is north of the mill.

Mr. Att. Gen. Cope, do you know *Fox's-lane?*---*Cope.* Yes, very well.

Mr. Att. Gen. Is it raiſed?---*Cope.* Yes; eight or nine foot.

Mr. Att. Gen. What was the reaſon of its being raiſed?

Cope. It was not fitting for carts to go over.

L. C. J. Why ſo?---*Cope.* The Water came upon it.

Mr. Att. Gen. And then to come to the admeaſurement, taking in the place in queſtion, it makes juſt 130 acres, which is our number, and no more.

L. C. J. Then you will leave the Dean nothing.

Mr. Att. Gen. Yes, he has 2000*l.* a-year.

L. C. J. Where?

Mr. Att. Gen. In the eaſt, beyond this place.

L. C. J. Why, would you have any of the land that belongs to the mill?

Mr. Att. Gen. We claim this as marſh-land; which they have nothing to do with, and the number of acres will not be anſwered without it. Mr. *Holwell*, have you admeaſured the marſh?----Mr. *Hol.* Yes; I have, Sir.

Mr. Att. Gen. From whence did you begin?---*Hol.* From *Hermitage-Dock.*

Mr. Att. Gen. Within what bounds?

Hol. That which they call the *Lynches* and the marſh to St. *Katherine*'s from the well?

Mr. Att. Gen. And how much doth it make?

Hol. Beſides the well and the *Lynches*, I find it ſomething above 130 acres.

L. C. J. Somewhat above, how much pr'ythee?--*Hol.* Not an acre above.

Mr. *Will.* Pray, Sir, how many acres lies eaſt of *Gravel-lane.*

Hol. Beſides the well and the *Lynches*, I can make but fifty acres and an half.

L. C. J. Where did you reckon up the whole?

Mr. Att. Gen. To make up the 130 acres he took in the mill and all.

L. C. J. That is very well.

Mr. Att. Gen. Why, my Lord, it is no more than 130 acres, and ſo much we muſt have.

L. C. J. Look into the ſurvey that you produced, and ſee what that ſays; Beſides all---

Mr. Att. Gen. Thoſe lie eaſtward of the mill.

L. C. J. Pray, did you meaſure the wall?

Hol. Wapping wall is 20 acres.

Mr. Att. Gen. If they will conſent, the Jury ſhall have the ſurvey with them.

Mr. *Will.* With all our hearts, let them have it.

L. C. J. Gentlemen, both ſides conſent, you ſhall have the ſurvey with you; but without that conſent you could not have had it, it not being under ſeal.

Mr. Att. Gen. Then we deſire our laſt verdict may be read. Mr. *Sutton*, was it a verdict upon full evidence?---*Sutton.* Yes, Sir.

Mr. Att. Gen. How many hours did it laſt?---*Sutton.* Five or Six.

Mr. Att. Gen. Was there a view in it?---*Sutton.* There was ſo.

L. C. J. Read it.---*(Which was done)*---Mr. *Holwell*, how much, pray, is the land between *Fox's-lane* and the mill?

Hol. Below the *Lynches* I find it to be ſeven acres and an half.

L. C. J. Can you expect then that all thoſe words of gardens, orchards, *&c.* ſhould be anſwered under ſeven acres and an half? Beſides, the firſt and ancient reſervation of rent was 10*l.* a-year; after, it was increaſed to 16*l.* a-year, and it doth appear the mill turned to ſo little account, that it was pulled down, and ſo the land was to anſwer the rent; which, for a ground-rent upon a Church-leaſe, in thoſe days, was very great. Have you done now?

Mr. Att. Gen. We have done for the preſent, my Lord.

L. C. J. What ſay you to it then for the Plaintiff, Gentlemen?

Mr. S. *Stringer.* May it pleaſe your Lordſhip, and you Gentlemen of the Jury; if we ſhould give no further evidence at all than what we have already given, but leave it upon this, I dare affirm it plainly appears that they have no title at all to this land. As to their laſt piece of evidence I would firſt give an anſwer to that, and that is their verdict; and that which I would obſerve upon it, and ſay to it, is this; it was a verdict obtained upon forged Deeds: Deeds found, as is pretended, and as you have heard from their two ſpecial witneſſes, in a very extraordinary manner, found in a garret. But by what art prepared, and that they are forged, I queſtion not but we ſhall give you ſatisfaction. But beſides, as to their admeaſurement, it ſeems as they would have it, 130 acres is the queſtion about the extent of the marſh. So much they claim; and we ſhall bring two Surveyors that will give you an account upon their oaths, that between *Fox's lane*, which we ſay is the weſt boundary of our land, and the eaſt of theirs, and *Hermitage Dock*, where the marſh ends, there is above 130 acres; and ſo they do not want their number. For all the evidence that they have given out of Records, we agree them to be as they ſay; and by that agreement ſhall do ourſelves no harm at all, for they all do confirm our aſſertion. They place the eaſtern bound of the marſh at *Ratcliff-Town*; now at *Fox's-lane* doth *Ratcliff-town* begin. The art has been to confound the Cauſe by puzzling boundaries, when it is a plain, apparent miſtake thy run upon; and indeed I may very well ſay, a wilful one too. They would have us confine all to a mill and a little ditch, when there are at leaſt ſeven acres always enjoyed with it, and all called the mill; which had a pond, gardens, orchards, tenements, *&c.* And now there are very large drains neceſſarily made, to keep the water from annoying the Inhabitants, and to carry it away. But for a further evidence of our title, we ſhall firſt prove, that upon a bill exhibited in the *Exchequer* by Mr. Attorney General, againſt *Stepkins* their anceſtor, to know what incroachments had been made, what belonged to the Dean of *Paul*'s, and what to Mr. *Stepkins*, are fully ſet out. There it is proved, that the bounds of the marſh were *Wapping-wall*, alias *Fox's-lane.* The marſh was continually overflown with water; but now in our ground there was a great many ditches and places to keep the water for the ſervice of the mill. When we came to build upon our ground, which was 15 *Jacobi*, (then it began) then he brought an action, and did pretend that we did incroach the wall ſomewhat into the marſh; there we had a verdict upon a view, and after a non-ſuit upon full evidence. There was likewiſe a Bill exhibited in Chancery againſt *Stepkins* the father; wherein the bounds are ſet forth, and he in his anſwer particularly enumerates the boundaries. And it has been conſtantly the reputation of the place, that this was the Dean's lands, ſurveyed as the Dean's lands, ſold in the late times of uſurpation as the Dean's lands. The firſt thing, my Lord, which they produced, and that we did then, and do now controvert, is *Carter*'s leaſe: This, they ſay, was found in the garret; and they bring two witneſſes for it: But how they have behaved themſelves! What confuſion there is in their evidence! You ſee---

L. C. J. Brother *Stringer*, if you have any evidence to give, pray give that firſt, and leave your remarks till the laſt; you ſhall then ſay what you will; but firſt give your evidence.

Mr. S. *Stringer.* My Lord, we ſhall purſue your direction: We ſay, upon *Fox*'s building, *Stepkins* ſurmiſing that the wall belonged to him, comes and brings an action of ejectment againſt *Fox*'s tenants for this wall, and upon trial the verdict went againſt him. Then there was another action brought, and he was non-ſuited upon that. Afterwards there was a bill preferred againſt him, and in his anſwer he confeſſeth that his wall-marſh bounded upon *Fox's-lane.* Here are the Bill and Anſwer,

(Which were read.)

As likewiſe Copies of two Records, one in the Common-Pleas; *the other in the* King's-Bench.

Hill. 12 Jacobi *Ejectment*; George Boſwell, *Plaintiff, againſt* Tho. Fox, *Defendant*; *not guilty, pleaded a verdict for the Defendant.*

Mich. 14 Jacobi, *Ejectment*; William Sorrel, *Plaintiff, againſt* Tho. Fox; *Not guilty pleaded, and the Plaintiff became Nonſuit.*

Sir *John Trevor.* My Lord, we have this further piece of evidence; we have here a leaſe made by *Stepkins*, of ſeven acres of lands, weſtward of *Fox's-lane*, which divides the marſh from the mill-ditches, and there is a covenant, that if he recover any part of the wall, marſh-wall, the tenant ſhall have the advantage of it, and increaſe his rent.

(*Which Leaſe bearing date*, 16 Aug. 13 Jac. Anno Dom. 1615, *was read.*)

Mr. *Williams.* This was in time between the non-ſuit and the verdict.

Mr. S. *Stringer.* My Lord, as I did open it, there was an information exhibited by Mr. Attorney Gen. *Noy*, 7 *Car.* I. againſt our tenants and theirs, and upon that information there were examinations of witneſſes, and all the bounds of both parties particularly ſet out; which make it all as plain and clear as can be. This cannot be ſet up to ſerve a turn; it was in 7 *Car.* I. ſo long ago; and when that ſhews the wall to be the inheritance of the Dean of *Paul*'s, it anſwers all their pretence of a leaſe----

L. C. J. Look you, Brother, that cannot be given in evidence, and I will tell you why; if it were an information againſt *Stepkins* himſelf, he being the party under whom they claim, no doubt it were evidence; but it is againſt the tenants of the one, and the tenants of the other; who only could ſupport their own tenancies, but they could not know their landlords particular titles, and then this cannot be evidence to bind their inheritance.

Mr. S. *Stringer.* We ſubmit it to you, my Lord. Then we ſhall offer you a ſurvey. In the year 1649, this was expoſed to ſale as Church-lands, and a ſurvey taken, and found to be the inheritance of the Church of *Paul*'s; and as ſuch ſold for 9500*l.* and enjoyed by the Purchaſers till the Reſtoration.

Mr. *Williams.* Yes, and to that very perſon ſold from whom they ſay they had theſe leaſes which they have produced: That is, to *Winterburn*, whoſe Executor *Knowles* was, as he ſays; and if he had ſuch a leaſe, which then had been forty years in being, would he have given ſo much money, or ventured to purchaſe it as the inheritance of the Church?

Mr. S. *Stringer.* Here is the ſurvey then taken.

Mr. Att. Gen. We oppoſe the reading of your ſurvey, becauſe it had not any authority to warrant it.

L. C. J. Nay, Mr. Attorney, tho' there was no ſufficient authority, yet ſuch things have always been allowed as evidence. You cannot but remember it was done in the caſe of *Finſbury Rotten-Row*, as they call it, *Whitecroſs-ſtreet.*

Mr. Att. Gen. Then let them read the commiſſion it was made upon.

Mr. S. *Pemberton.* We have none; there were many things done then of this nature, without commiſſion under ſeal.

L. C. J. Ay, they did them by orders from Committees. Read it.

(*It was read, dated* Dec. An. 1649.)

Mr. S. *Stringer.* Now we will ſhew the deeds of purchaſe, which was by deed enrolled.

Dated 22 Nov. An. 1650. *for* 9540*l.*

Mr. S. *Stringer.* My Lord, becauſe they pretend this to be an overſhot-mill, as they call it; though it be plain it could not be by the place, yet we have three tide-millers that we would trouble you with a little: but firſt here are ſome others, *Bland*, *Marr*, and *Leyburn*, who

who will give an Account of it.—*(They were ſworn.)*—*Bland*, Do you know the Houſes in queſtion?——*Bland.* Yes.

Mr. *Williams.* How long have you known them?

Bland. Thirty Years.

Mr. S. *Pemberton.* Pray, what is the common Reputation whoſe the Lands were?—*Bland.* It was always taken to be the Dean's Lands.

Mr. *Williams.* Who were the Tenants?

Bland. Mr. *Whitwick* and Mr. *Winterburn.*

L. C. J. Prithee, canſt thou tell what was taken to be the Eaſt Boundary of *Wapping*-marſh?—*Bland. Fox's-Lane.*

L. C. J. Was that the Reputation, upon your Oath, in all your Time?

Bland. Yes, ever ſince I knew it.

Mr. *Williams. Bland*, Pray, do you know the Pond?

Bland. The Ponds were filled up; but there were Ditches in my Time.

L. C. J. How near were the Ditches to *Fox's-Lane?*

Bland. Within ten Foot.

Mr. *Williams.* What was the uſe of thoſe Ditches?

Bland. The Water came in at *Bell-wharf*, and filled up the Ditches with the Tide, and ſo it went back again.

Mr. S. *Stringer.* Can you tell who purchaſed theſe Lands of the State in the late Times?——*Bland. Whitwick* and *Winterburn.*

Sir *John Trevor.* Swear *William Kemp* and *Curtlett.* *(Which was done.)*

Mr. *Williams.* Hark you, Mr. *Curtlett*, we would aſk you a Queſtion. My Lord, your Lordſhip obſerves, there is a Well called *Shadwell*, that is at the Eaſt End of their Marſh. We ſhall ſhew where that Well is: There was a Well very lately juſt by *Wall-marſh*, hard by the Place where the Church is now built, which was called *Shadwell*, and from which the Church has its Name. *Curtlett*, do you know *Fox's-Lane?*

Curtlett. Yes, I do.

Mr. *Williams.* How long have you known it?

Curtlett. I have known it ſixty Years.

Mr. *Williams.* When you firſt knew it, whoſe Land was it?

Curtlett. I am ignorant of the original Title, or the derivative Title, I know not whoſe it was, or is.

Mr. S. *Pemberton.* But whoſe was it reputed to be? That we mean.

Curtlett. Sometimes it was reputed Mrs. *Moor*'s, ſometimes *Winterburn*'s, ſometimes one's, ſometimes another's.

Mr. *Williams.* Do you remember the Mill that was in this Ground in Queſtion?—*Curtlett.* Yes, very well.

Mr. *Williams.* How was that Mill driven?

Curtlett. The Water came in at *Bell-wharf*, Eaſtward, out of the *Thames*, into the Pond, and ſo run beyond *Broad-bridge*, and vented itſelf into divers Ditches; and when the Tide went out, it returned back again, and employed the Mill.

Mr. *Williams.* How far went the Ditches?

Curtlett. Some of them to *Fox's-Lane*; and one principal Ditch turned up half way the Lane, that People were forced to have Boards and Planks to go over it.

L. C. J. The Thing is very plain; had it been, as they ſay, an Over-ſhot Mill, this Proviſion that was made of Water for it, for aught I ſee, would have drowned all the Ground round about it.

Curtlett. When I was a Boy, we uſed to ſwim in that Place that was near *Shadwell*, in the Eddy; there I have ſeen the Water as it went out, and the Mill wrought with it as it went back again.

L. C. J. Was there not a Way, when you knew it firſt, from North to South?—*Curtlett.* I cannot well tell.

Mr. Att. Gen. Was there not a Way from *Ratcliff-High-Way*, at *Cock-hill*, to the River of *Thames?*

Curtlett. There was a common Way for Carts and Horſes down to the *Ballaſt-wharf*, and there was a great vacant Place——

Mr. Att. Gen. Pray, let me aſk you, Did you ever hear theſe Lands reputed to be *Stepkins*'s when you knew them firſt?

Curtlett. We have heard talk of that Gentleman.

Mr. Att. Gen. How long ago?

Curtlett. I have not heard of him this twenty Years.

Mr. Att. Gen. Have you above twenty Years ago?

Curtlett. If I did hear of him, I do not believe then it was in his Poſſeſſion; I cannot tell whoſe Title is beſt: You have, I ſuppoſe, both of you better Witneſſes than I, Conveyances and Deeds.

Mr. Att. Gen. He is a wiſe Witneſs, he will not ſwear whoſe it is.

L. C. J. He is ſo, Mr. *Attorney*; I wiſh yours were ſo too.

Mr. *Williams.* Pray, what was it beyond *Shadwell*, and how near was *Shadwell* to *Marſh-wall?*

Curtlett. Shadwell was on the further Side, near *Fox's-lane.*

Mr. *Williams.* To the Eaſt or Weſt of *Fox's-lane?*

Curtlett. To the Weſt.

Mr. *Williams.* Did you know the Well that is called *Shadwell?*

Curtlett. I know there was ſuch a ſmall Spring.

L. C. J. Did it lie Eaſt of *Fox's-lane*, or Weſt, do you ſay?

Curtlett. Weſt, it lay.

Mr. *Williams.* Pray, did the Place where you uſed to ſwim come up as far as the Wall?——*Curtlett.* Oh, no.

L. C. J. I believe that was within the *Thames* only.

Mr. *Williams.* How near have you ſwam to *Fox's-lane?*

Curtlett. It was in the *Thames*, in an Eddy, there the Water went underneath the Mill.

Mr. Att. Gen. In whoſe Ground was that Well that you call *Shadwell?*

Curtlett. I cannot tell in whoſe Ground it was.

Mr. Att. Gen. Was it in the *Lynches*, or in the Marſh-ground, upon your Oath?—*Curtlett.* I cannot tell indeed whoſe Ground it was in.

Mr. Att. Gen. Did it riſe very high?

Curtlett. It was out of the high Ground where the Church is built.

Mr. S. *Lutwich.* Did you ever hear of any Well but what lay between *Fox's-lane* and the Mill?

Curtlett. Sir, I can only give an Account where that Well lies that was called *Shadwell*, where the Church is now.

Mr. Att. Gen How many Wells have you known?

Curtlett. None but that, Sir.

L. C. J. He does not know as many as there are Panes of Glaſs in the Window, Mr. Attorney.

Mr. *Williams.* And this, he ſays, lay Weſt of *Fox's-lane*; and there is your *Shadwell* Bounds for you!

Mr. Att. Gen. I aſk you again, that Spring which you mentioned, did it lie in the Dean and Chapter's *Lynches*, or no?—*Curtlett.* I tell you I know not whoſe the Ground was; the Church ſtands there now.

Mr. S. *Lutwich.* Did it lie in *Upper Shadwell?*

L. C. J. He anſwers as plain as any Man can, it was where the Church now is.

Mr. *Williams.* Where is *Kemp?* Do you know the Houſes in queſtion?

Kemp. The Houſes in *Shadwell* I do know, between *Bell-wharf* and *Fox's-lane*; I knew them before they were built as they are now; there were ſome ſmall Houſes built here and there all along. There was a Pond and Ditches to receive the Water of the Tide; but at *Broad bridge* eſpecially, there were Houſes along to the northward; among the reſt, Mr. *Craven*'s Houſe, who had a large Orchard and Garden.

L. C. J. Where was that?

Kemp. Eaſtward of *Fox's-lane*, and ſeveral other Houſes there were.

Mr. *Williams.* Whoſe Inheritance was it?

Kemp. Mrs. *Moor* was my Maſter's Landlady, and *Shadwell* was reputed her Land and Ground.

Mr. *Williams.* She was Leſſee under the Church.

Mr. S. *Pemberton.* Did you know the Cuts and Ditches in that Ground?

Kemp. Yes, Sir.

Mr. S. *Pemberton.* How far went they Weſtward?

Kemp. The Ditch ran all in one till it came to *Broad-bridge*, where it parted to the Northward and the Weſtward.

L. C. J. How near *Fox's-lane?*

Kemp. Within a Dozen or twenty Yards of *Fox's-lane.*

Mr. Att. Gen. What Sort of Ground was it? Was it not Marſh-ground?

Kemp. A Man that builds Boats in Winter-time put his Shallops into the Pond, otherwiſe it was very good Ground to the Northward; there were very many good Houſes built, and ſince Mr. *Neale* had to do with *Shadwell*, they have built in Mr. *Craven*'s, and built a Water-houſe, and two other Houſes there.

L. C. J. Read the Survey again, that mentions *Craven*'s Houſe there. *(Which was done.)*

Kemp. That was bending Northward that Way.

Mr. *Williams.* It is Part of the ſeven Acres now in Queſtion.

L. C. J. Do not you contend for the Brew-houſe?

Mr. Att. Gen. For the Water-houſe we do.

L. C. J. Is not the Water houſe built upon Part of *Craven*'s Ground?

Kemp. Yes, my Lord, it is.

Mr. *Williams.* When did you know this firſt?—*Kemp.* Fifty Years ago.

Mr. *Williams.* Was this Ground Orchards or Gardens then?

Kemp. Several Places of it were Gardens and Orchards; ſome Places had Houſes, chiefly to the Northward, ſome good Houſes and Orchards, eſpecially Mr. *Craven*'s.

Mr. Att. Gen. Do you ſpeak of the hilly or the low Ground?

Kemp. The middle Ground chiefly, that that lay Northward.

Mr. Att. Gen. Did you know the *Lynches*, the hilly Ground?

Kemp. Up higher to *Ratcliff*-high-way, I did.

Mr. Att. Gen. Did you know the Ditch that came under the Bottom of the *Lynches?*——*Kemp.* The Stream did run in ſeveral Places, but the Ground was good Ground, Northward eſpecially.

Mr. Att. Gen. Were there any Houſes built on the South-ſide of that Ditch?—*Kemp.* There were a great many built between the Ditch and the *Thames*, between *Bell-wharf* and *Fox's-lane.*

Mr. Att. Gen. What, fifty Years ago?

L. C. J. Your own Survey ſays ſo.

Mr. *Williams.* Call *Daniel Hams.*—Swear him. *(Which was done.)*—Do you know the Mill and Lands in queſtion?

Hams. I knew it when it was a Mill.

L. C. J. How long is it ſince you firſt knew it?—*Hams.* Forty Years.

L. C. J. Prithee, what Kind of a Mill was it?

Hams. A Ground-ſhot Mill; ſhe took in Water at *Bell-wharf*, and it ran towards the Weſt to *Fox's-lane*, in ſeveral Branches and Ditches.

L. C. J. How! A Ground-ſhot Mill, ſayſt thou? Why, theſe Gentlemen ſay it was an Over-ſhot Mill.

Hams. My Lord, it could be no Over-ſhot Mill, for the Water will not riſe high enough to drive ſuch a Mill; it ran in ſeveral Ditches to preſerve it from riſing to overflow the Ground. Beſides, my Father, who was a Mill-wright himſelf, told me he had known it three-ſcore Years, and knew it always a Ground-ſhot Mill: He told me of all the Mills about *London*, what they were.

Mr. Att. Gen. Pray, how old was your Father when he told you ſo?

Hams. He had known them, he ſaid, ſixty Years, and he has been dead twenty Years.

Mr. Att. Gen. Why the Mill was removed; he could not know it ſo long.

L. C. J. I know no Proof of it but your Deeds.

Hams. My Lord, there it was, he ſaid.

Mr. Att. Gen. Was there not a Pond and Ditches?

Hams. There muſt be Ditches to receive the Water as it came in; but ſtill the more the Tide came in, that filled up the Ponds; and as it went back again, it drove the Mill.

Mr. *Williams.* What Profeſſion are you of, pray?

Hams. I am a Mill-wright.

Mr. Att. Gen. Pray, do they make uſe of a Trough in ſuch a Mill?

Hams. They do for an Over-ſhot Mill.

Mr. Att. Gen. Here is a Trough of Lead in their Leaſe. Do not they uſe a Trough in an Under-ſhot Mill?

Hams. No, if it be by the Tide a Ground-ſhot Mill, there is no Neceſſity of a Trough.

Mr. *Williams.* We have a great many Witneſſes to this Point. Swear *Grindy.*——*(Which was done.)*——Are you a Mill-wright?

Grindy. I am only a Miller.

Mr. *Williams.* Did you know the Mill in queſtion?

Grindy. I cannot remember it, Sir.

L. C. J. How long have you known the Place?

Grindy. Thirty or forty Years: But I had no Acquaintance with that Mill they ſpeak of; but I know it is impoſſible for any Over-ſhot

Mill

Mill to be there: For I kept Part of a Tide-mill myſelf, and have done ſo this forty Years; and I know the Water muſt riſe at leaſt ten, twelve, or fourteen Foot higher than it needs in a Tide-mill. For we take in our Water as the Tide comes in, and we have a Pair of Gates that are hung with hinges at the top, which open as the tide comes in; but the water, as it goeth out, ſhuts it again, and that keeps the water to ſtand three or four hours in ſome mills, and then we have only guts that belong to the wheel, and when we draw up the gates, the water goes out. We have no water that comes above the ſhaft, which is half the heighth of the wheel, which is ſixteen foot high. To talk of an over-ſhot mill, the water muſt riſe ſo high as to go over the whole marſh.

L. C. J. And muſt drown all the town and country too. It is plainly ſo, Mr. *Attorney*, talk as long as you will.

Mr. Att. Gen. Friend, I aſk you but one ſhort, plain queſtion: I would know, can they uſe a leaden trough with thoſe Tide-mills, as you call them?

Grindy. We can uſe none, nor do we make any ſuch thing.

Mr. Att. Gen. Would not the ſprings in the *Lynches* carry an over-ſhot mill?

Grindy. Sir, I have ſeen the place all about many times; and I will lay any man 20*l.* to 20*s.* that all the ſprings thereabouts ſhall not produce a quarter enough water.

Mr. *Williams.* Where is *George Care?* Swear him—[*Which was done.*]---Do you know *Fox*'s-*lane?*—*Care.* Very well.

Mr. *Williams.* How long have you known it?

Care. Eight-and-fifty years.

Mr. *Williams.* Did you know *Shadwell*, the well ſo called?

Care. That I did, Sir.

Mr. Williams. Where ſtood it, pray?

Care. At the upper end of *Fox's-lane* as we go weſtward, and juſt at the ſide of the Church-yard there is one now, and brick'd over head, where they uſed to fetch water: I never knew any other.

Mr. *Williams.* Was that called *Shadwell?*

Care. I never knew any other but what I tell you of.

Mr. S. *Stringer.* Pray, what was uſually taken to be the eaſt-bound of *Wapping-marſh?*

Care. The weſt ſide of *Fox's-lane* was called *Marſh-wall*, or *Wall-marſh*, and that was the boundary to *Stepkins*'s lands; and eaſtward was always the lands of the Dean of *Paul*'s, and I have known it this eight-and-fifty years; nay, I was the firſt that ever built an houſe in *Fox's-lane.*

Mr. Att. Gen. Do you know the *Lynches*, or the high ground northward?

Care. I know it not by that name.

Mr. Att. Gen. This Well you ſpeak of, did it not riſe out of that ground?

Care. It was by the Church-yard that is now.

Mr. Att. Gen. You have claim'd the inheritance of it.

Mr. *Williams.* Sir, we hope we ſhall not need to be taught which is our inheritance; where is Mr. *Marr?* We ſhall now, my Lord, anſwer the admeaſurement made by her Surveyor *Holwell.* Pray, will you, Mr. *Marr*, tell the Court how many acres it is?

Marr. The land which is counted *Wapping-marſh*, which is bounded on *Fox's-lane* eaſt, on the Dean's land weſt, upon *Graſh-mill*, *Well-cloſe*, *Nightingale-lane*, &c. if we take it to the upper ground, doth contain 130 acres; but take in that which is in queſtion too, and it makes 141 acres.

Mr. *Williams.* Did you meaſure it too, Mr. *Leyburn?*

Leyburn. I did ſo too, Sir; and it is as he ſays.

L. C. J. How much is it?

Leyburn. I took the whole, from St. *Katherine*'s to *Fox's-lane*, and it makes 130 acres beſides the upland and foreland, and the like between *Graſh-mill* and *Wall-marſh-wall:* it is at leaſt ſo much; it is, I think, ſomewhat more, the ditches being undetermined.

L. C. J. Well, what is it all this while you keep my brother *Gregory* for?

Mr. *Williams.* If your Lordſhip pleaſe, we have only a ſhort queſtion to aſk Mr. Baron *Gregory*; if he pleaſe to be ſworn—[*Which was done*]—— Where is Mr. *Knowles?* Sir, you were pleaſed to ſay that the writings were carried to Mr. *Neale*'s Counſel in *Gray's-Inn*, and that that writing was among them?—*Knowles.* They were ſo, and I believe it was among them.

Mr. *Williams.* My Lord, Mr. Baron *Gregory* had the peruſal of the writings.

L. C. J. But, Mr. *Williams*, my Brother *Gregory* was not named to be the Counſellor in *Gray's-Inn.*

Knowles. No, one *Gage*, or ſome ſuch name.

L. C. J. I ſuppoſe it was to Mr. *Cage*'s chamber, that married *Okey*'s widow.

Mr. S. *Stringer.* I believe it was, and I am ſorry we have kept Mr. Baron *Gregory* ſo long. *Knowles*, pray, did you know they were with Mr. Baron *Gregory?*

L. C. J. Did you know that they were with my Brother *Gregory?*

Knowles. No, my Lord, that I remember.

L. C. J. Well, Brother, we cannot help your ſtaying now; but remember you had an offer made you at firſt, and you are puniſhed for refuſing it. Go on, Brother *Stringer.*

Mr. S. *Pemberton.* My Lord, that which we were ſurprized with the laſt Trial, was the newneſs of theſe deeds to us. It look'd to us to be ſo ſtrange a thing, ſo amazing a thing to us, that we knew not how to give an anſwer to it. We have ſince conſidered of theſe things, and your Lordſhip doth ſee what account they themſelves have given of them; and what an improbability it is that theſe deeds ſhould be found, as they ſay. Here was a poſſeſſion which we have proved under the Dean of *Paul*'s leaſe for ſo long; this they would ſtrip us of; theſe deeds they have trumped up. It made us look into it more warily, and we cannot conceive it probable, or any thing likely, that the Deed of Purchaſe, whereby this land is pretended to be purchaſed into the family of the *Stepkins*'s, ſhould be found in the hands of the Dean of *Paul*'s Leſſee, who likewiſe purchaſed it of the State, as the inheritance of the Dean of *Paul*'s. How could the Deed of Purchaſe from *Hill* be in our Leſſee's houſe?

Mr. Att. Gen. It was not, that is a miſtake.

Mr. S. *Pemberton.* Good Mr. Attorney, do not interrupt me. We muſt rely upon it, that they ſwore it the laſt time, and that the Deed of Inheritance was made four days before our Deed, on purpoſe to warrant the trick. Here is likewiſe a ſurrender made between *Hall* and *Stepkins* produced. How ſhould the Dean's Leſſees come to have that Deed of ſurrender? But to ſatisfy your Lordſhip in this matter, we ſhall give a full and fair evidence that theſe deeds are forged.

Mr. *Bradbury.* My Lord, we have had a violent ſuſpicion, that theſe Deeds were forged. But we ſuſpect it now no longer, for we have detected it, and will ſhew as palpable, ſelf-evident forgery upon the face of theſe deeds as ever was. I deſire to ſee the Deed of the 13th of *November*, in the 2d and 3d years of *Philip* and *Mary*, from *Marcellus Hall* to *Roper:* and that of the 22d of *December*, in the ſame years, from *Marcellus Hall* to *Carter*, I deſire to ſee too. Your Lordſhip ſees the uſe of theſe deeds. The one is grafted upon our leaſe from Dean *Ecknam*, where it is recited, that the mill is demoliſhed, and a new one erected in another place (ſays their deed); and upon that they ſet up the notion of an over-ſhot mill, and all the puzzling matter brought into this cauſe. But I dare undertake to prove them plainly forged.

Mr. Att. Gen. That is an undertaking indeed.

Mr. *Bradbury.* It is an undertaking indeed to detect the Defendant's artifice; but I will venture upon it, and ſhall demonſtrate it ſo evidently, that Mr. Attorney himſelf ſhall be convinced they are forged.

Mr. Att. Gen. Come on, let us ſee this demonſtration.

Mr. *Bradbury.* The Deeds have brought that evidence upon their own faces, that is 1000 witneſſes.

Mr. *Williams.* Prithee open the exception.

Mr. *Bradbury.* If your Lordſhip pleaſe to look upon them, the ſtile of the King and Queen in both run thus: The one is, This Indenture, made the 13th day of *November*, in the ſecond and third years of the reigns of our ſovereign Lord and Lady *Philip* and *Mary*, by the grace of God, King and Queen of *England*, *Spain*, *France*, both *Sicilies*, *Jeruſalem*, and *Ireland*, Defenders of the Faith, Archdukes of *Auſtria*, Dukes of *Burgundy*, *Millan* and *Brabant*, Counts of *Haſpurg*, *Flanders* and *Tyroll.* The other is, This Indenture made the 22d day of *December* in the ſame year. Now in *November* and *December*, ſecond and third of *Philip* and *Mary*, it was impoſſible for any man in the world to draw a deed in this form that thoſe two writings are—

Mr. Att. Gen. Is that your demonſtration?

L. C. J. Pray, let him go on, methinks it is very ingenious.

Mr. *Bradbury.* My Lord, I had the hint from my Lord *Coke* in his firſt Inſtitutes; not as to this particular ſtile, for I know he is miſtaken there, but for the detecting of forgeries in general.

L. C. J. It is very well; pray go on.

Mr. *Bradbury.* My Lord, at that time King *Philip* and Queen *Mary* were, among other ſtiles, ſtiled King and Queen of *Naples*, Princes of *Spain* and *Sicily*; they never were called King and Queen of *Spain*, and both the *Sicilies* then; and laſtly, *Burgundy* was never put before *Millan.* Now to prove all this that I ſay, I have here all the Records of that time, which will prove their ſtile to be otherwiſe. *Firſt*, We ſhall ſhew the Acts of Parliament of that time. The ſitting began the 21ſt of *October*, in that year, which was before their Deeds, and ended the 9th of *December* after. We ſhall firſt read the titles of the Acts of Parliament, and you will find them juſt as I have opened them. Read the Statute-Book.

Clerk reads.] Acts made at a Parliament begun and holden at *Weſtminſter*, the one-and-twentieth day of *October*, in the ſecond and third years of the reign of our moſt gracious Sovereign Lord and Lady *Philip* and *Mary*, by the Grace of God, King and Queen of *England*, *France*, *Naples*, *Jeruſalem* and *Ireland*, Defenders of the Faith, Princes of *Spain* and *Sicily*, Archdukes of *Auſtria*, Dukes of *Millan*, *Burgundy* and *Brabant*, Counts of *Haſpurg*, *Flanders* and *Tyroll:* and there continued and kept until the diſſolution of the ſame, being the ninth day of *December* then next enſuing.

Mr. *Bradbury.* Here in the Acts made by the publick Council of the Kingdom, the ſtile is in the ancient manner. And your Lordſhip obſerves theſe no ſmall differences. Here firſt *Spain* is left out in the enumeration of the kingdoms, and ſo *Sicily* and *Naples* is inſtead of them. In the Deeds, *Spain* is put in before *France*, and the *Sicilies* made a kingdom too. *Secondly*, Here in the ſtile of the Act they are called but Princes of *Spain* and *Sicily*, that in the Deeds is quite left out. And then in the Acts of Parliament, *Millan* is put before *Burgundy*; in the Deeds *Burgundy* before *Millan.* And how this great alteration of the ſtile ſhould come to be put in a Miller's leaſe, is ſtrange. We have next an account of all the fines of *Hillary* Term, which was the next Term following; for their firſt Deeds happen to be in *Michaelmas* Term, and then the Parliament ſate too. (*Many of which were read.*)

Mr. *Bradbury.* Here are likewiſe the Fines of the *Eaſter*-Term following, which ſhew that ſtill the old ſtile continued in all the publick Records. And if we could as eaſily have brought all the enrolments of Deeds, that would prove the ſame. (*The Fines of* Eaſter *Term read.*)

Mr. *Bradbury.* Now, my Lord, we ſhall ſhew when the ſtile turned, that was in *Trinity*-Term after. (*The Fines read.*)

Mr. *Bradbury.* But I cannot ſee how theſe Deeds could be truly made at that time, when they ſtand ſingle, and none like them can be ſhewn, except they come from the ſame forge that theſe do. I cannot believe the Miller alone, or he that drew his leaſes for him, could ſo long before propheſy what manner of ſtile ſhould hereafter be uſed.

Mr. *Williams.* Your Lordſhip has heard our Deed of the 10th of *December*, in the ſame year, read already: but we having here the Ledger-Book of the Church of St. *Paul*'s, which cannot be made for a turn, but was written at that time; we deſire the ſtile may be read there.—— (*Which was done.*)——But to go a little further, to ſatisfy your Lordſhip that they are very likely to be forged, we ſhall give ſome evidence that this is not an unuſual thing with ſome people concerned in this cauſe. The witneſſes will name them to you, and give you an account of it. Swear this Lady and Sir *Charles Cotterel.* (*Which was done.*)

L. C. J. Well, what is it you call theſe perſons to?

Sir *John Trevor.* To ſpeak plain, my Lord, we call them to give an account of my Lady *Ivy*'s forging a Mortgage from one Sir *William Salkhill* for 1500*l.* of a houſe in St. *Martin's-lane*, to which forgery Mr. *Duffett*, that Lady's huſband, was privy, and what benefit he ſhould have by it, you will hear. Sir *Charles Cotterel*, pray, will you tell what you know of my Lady *Ivy* in this matter?

Sir *Ch. Cotterel.* My Lord, that which I have to ſay is this; my Lord, I am tenant to my Lady *Salkhill*, Sir *William Salkhill*'s widow, in a houſe in St. *Martin's-lane*, and was ſo to her huſband a year and a half before he died. The houſe hath been built backward, and the garden ſide they kept to themſelves; but all the houſe that was firſt built, I took, and have it ſtill.

My Lady *Ivy* did come to the houſe about three months before Sir *William* died, parting from her huſband Sir *Thomas Ivy:* ſhe came thither as a refuge; where ſhe had been before, and was received very kindly. He died, as I ſaid, about three months after, and my Lady then deſired to know how accounts ſtood between Sir *William* and her about moneys he had lent her, and ſupplied her with. And upon the account ſhe appeared to owe Sir *William* 96*l.* ſhe then took 4*l.* more out of my Lady *Salkhill*'s money, and told her, now, Madam, I owe you 100*l.* She had been entertained as a gueſt there without paying any thing for it, and at his death ſhe continued with my Lady *Salkhill* three quarters of a year after. And being there (as ſhe pretended), in great kindneſs to me, ſhe perſuaded my Lady and me, that the leaſe of my Lady's houſe ſhould be turned over to me, in truſt for a debt of fourſcore pounds that was owing to me by Sir *William Salkhill.* Said I to my Lady *Salkhill*, Madam, I am in no doubt of my money, I pay as much rent as this in a year and more, I can pay myſelf that way; pray let me not meddle with any ſuch thing, Mr. *Duffett* will be perſuaded I intend to cheat them if I ſhould. But ſtill my Lady *Ivy* was at it, and prevailed upon my Lady *Salkhill* to preſs me to it. At laſt, upon their importunity, ſaid I, if it be neceſſary for my Lady's ſervice, let it be done what you think fit. She therefore gave direction to Mr. *Sutton*, and he came to me, and I directed him to draw a writing to turn over the houſe to me as a ſecurity. He aſked me how much my debt was? Fourſcore pounds, ſaid I. Said he, I ſhould ſee my Lord of *Saliſbury*'s leaſe to my Lady, for he muſt take out ſome things to draw this by. He did ſee it, and took as much by note out of it as he thought fit, to make the other by. Then a writing was drawn, this was in *June* 1670, or 1671, I am not certain particularly which; but ſhe brings this writing, and my Lady *Salkhill* ſigned it by her deſire; and my Lady *Ivy* and Mr. *Sutton* were both witneſſes to it. About a year after I heard that ſhe ſet on foot a Mortgage of her own upon this houſe from Sir *William Salkhill.* I wondered at it, becauſe when the account was made up, ſhe appeared to be in Sir *William*'s debt; and I told thoſe that told me of it, I would believe it when I did ſee it. I was then informed the writing was at *Malmeſbury.* She after went out of town, and comes back again in a little while, and this writing, as I heard, was ſhown to ſeveral perſons of my acquaintance, that came to me and told me they had ſeen it; but ſaid I, ſo have not I, but when I ſee it I will believe it. At laſt Serjeant *Weſt*, who was a relation of mine, I married his aunt, one day brought over this writing to me; and told me he had got this writing at laſt, and leave from my Lady *Ivy* to let me ſee it. I looked upon it, and there I did ſee at the bottom, where the ſeal was, *William Salkhill*, and then I turned to look upon the witneſſes names. No, ſays he, you muſt not ſee that, who are witneſſes to the Deed; for my Lady *Ivy* made me promiſe, before ſhe let me have it to ſhew you, that you ſhould not ſee the witneſſes names. Then ſaid I again, I have ſeen enough to give me ſatisfaction: I was a little the more confirmed that the thing was not a reality but fiction, and ſo I told him. My Lady ſaw that would not paſs; ſhe offered, provided Mrs. *Duffett*, my Lady's daughter, might have the advantage of the houſe, to releaſe the matter.

L. C. J. Pray, Sir, for how much was the pretended Mortgage?

Sir *Charles Cotterel.* For 1500*l.* that Sir *William Salkhill* owed her; which I thought ſomewhat ſtrange, ſeeing, as I ſaid, ſhe owed Sir *William* ſo much at his death. At laſt I came to produce my writing, (for ſhe told me I might give Mrs. *Duffett* a right to the houſe). Now I had not read over the writing made me; but now when I came to look upon it, inſtead of a Mortgage for ſecuring my debt, mine was a Deed of Sale from my Lady *Salkhill*, whereby the houſe and the leaſe from my Lord of *Saliſbury* were ſold me for fourſcore pounds; at which I was a little amazed. My Lady was then pleaſed to ſay I was a cheat, tho' I had no hand in it, nor indeed would have had any thing at all done; but upon my Lady *Ivy*'s importunity, and my Lady *Salkhill*'s, I gave direction only for a Mortgage.

L. C. J. What was it that *Sutton* took out of my Lord of *Saliſbury*'s leaſe?

Sir *C. Cot.* He was to take notes to draw a Mortgage of that leaſe by.

L. C. J. He got the notes tho', for aught I perceive, to draw another Mortgage by. A very trick, it ſmells rank of the Knave.

Mr. S. *Stringer.* Pray, Sir *Charles*, did you ever pay any money by my Lady's order?

Sir *C. Cot.* I did lend my Lady *Ivy* 50*l.* ſhe being in diſtreſs for money, afterwards it was made up 100*l.* About *February* 1671, it was made up 1250*l.* and by agreement among them my Lady *Ivy* did relinquiſh that ſaid Mortgage ſhe had thus ſet on foot: and there was a Deed Tripartite made between me of the firſt, my Lady *Ivy* of the ſecond part, and ſome Truſtees for Mrs. *Duffett* of the third part, whereby the reverſion was given to Mrs. *Duffett*, and my Lady confirm'd it, and gave my Lady *Salkhill* a Bond of 1000*l.* in which Colonel *Gravener* was bound for her, that ſhe ſhould not trouble my Lady about the houſe; yet notwithſtanding did ſhe afterwards write to Mr. *Duffett*, as I have heard, that ſhe would ſet it on foot again, and ſhe ſhould have half of what ſhe had recovered.

L. C. J. The Inheritance of the houſe, it ſeems, is in my Lord of *Saliſbury.*

Sir *C. Cot.* Yes, my Lord; Sir *William Salkhill* had the original leaſe from my Lord of *Saliſbury.*

L. C. J. What direction did you give *Sutton* about it?

Sir *C. Cot.* To make a Mortgage only to ſecure fourſcore pound.

L. C. J. And what did he make?

Sir *C. Cot.* An abſolute Deed of Sale.

L. C. J. Was there no proviſo in it, to be void upon payment of money?

Sir *C. Cot.* No, nothing but an actual Sale for ſo much money.

L. C. J. You ſay my Lady *Ivy* afterwards did relinquiſh her pretended Mortgage; pray had ſhe nothing for it?

Sir *C. Cot.* Nothing that I know of; ſhe joined in that Deed Tripartite.

Mr. *Williams.* What ſhould diſpoſe her to give Mrs. *Duffett* 1500*l.* if it were really owing her?

L. C. J. Is that Mortgage here among your writings, Mr. Attorney?

Lady *Ivy.* Indeed, my Lord, I would have brought it, if they had given the leaſt notice of what they now talk of.

Mr. Att. Gen. Sir *Charles Cotterel*, do you know that my Lady *Ivy* forged that Deed?

Sir *C. Cot.* Not I; but it did appear to me to be no true Deed, upon what I found and knew.

Lady *Ivy.* You muſt give an account for what you have ſaid here——

L. C. J. Nay, Madam, pray do not be in a paſſion: he has ſworn what he has ſaid here.

Lady *Ivy* If he doth ſwear it, he is forſworn.

L. C. J. Nay, Madam, you muſt be more moderate in the Court?

Mr. *Williams.* My Lady thinks ſhe has occaſion to be angry, but it may be we ſhall give her more exerciſe for her paſſion before we have done. Pray, ſwear that Lady, Mrs. *Duffett.* Will you acquaint my Lord and the Jury, what you know has been done by my Lady *Ivy*, or by her direction, in making and altering of Deeds.

Mrs. *Duffett.* My Lord, I did ſee Mr. *Duffett* forge and counterfeit ſeveral Deeds for my Lady *Ivy*.

L. C. J. Do you hear what ſhe ſays, Mr. Attorney?

Mr. Att. Gen. Yes, my Lord, we ſhall give an account of her anon.

L. C. J. Truly, I hope I miſtook her, and did not hear right what ſhe ſaid. Pray, Miſtreſs, ſpeak it over again, and conſider well what you ſay.

Mrs. *Duffett.* I ſay, my Lord, I did ſee Mr. *Duffett* forge and counterfeit ſeveral Deeds for my Lady *Ivy*. The firſt thing that I do remember was in the Trial between her huſband and ſhe; Mr. *Duffett* did by her order counterfeit a bond from him to ſome third perſon for 1000*l.* and ſeveral letters pretended to be written from Sir *Thomas* to my Lady *Ivy* were counterfeit. The next thing that I remember: Mr. *Duffett* was writing upon a parchment; I aſked him what he was writing? He anſwered me, He was counterfeiting one *Glover*'s leaſe, by which my Lady would get many hundreds of pounds, and for which he ſhould have 500*l.* I deſired him to conſider what he did, for before that time he had been accounted a very honeſt man. Some time after that, my Lady *Ivy* did upon pique to my mother, my Lady *Salkhill*, ſet a-foot a Mortgage ſhe pretended to have of the houſe in *St. Martin's-lane* for 1500*l.* from my father. She did once tell me ſhe had ſuch a Mortgage, as ſhe pretended real, but that it was drowned in a trunk of writings coming from *Malmeſbury.* Said I, my mother and Sir *Charles Cotterel* will not believe it, if you do not let them ſee it. I am ſatisfied as to my concern in it, and would not have you proceed in it, for ſhe pretended ſhe did it for my advantage. But afterwads Mr. *Duffett* and ſhe did agree to make a writing, in my ſight, of a Mortgage.

L. C. J. Was my Lady *Ivy* by when the writing was made, as you ſay?

Mrs. *Duffett.* She was by, giving him order how to make it, and what Ink he ſhould uſe to make it look old; and they forced me to make the Ink, and to fetch ſaffron to put in it to make it look old.

Mr. S. *Stringer.* Now will be the time to ſhew my Lady's letters.

L. C. J. Miſtreſs, I would aſk you one queſtion by the way, whether while theſe things were doing at any time, any body did come in and give you any interruption?

Mrs. *Duffett.* My Lord, Mr. *Duffett* and my Lady made me oftentimes ſtand at the door (for we were but lodgers) that no one might come and diſturb them, and I never remember any that came in thither but one Mr. *Sutton* an Attorney, my Lady's Attorney.

L. C. J. Did he ſee any of this done?

Mrs. *Duffett.* I cannot ſay he helped to do any thing, for when he came in, they ſometimes ſent me out to ſee that no body ſhould come upon them; and ſo what he did, I cannot ſay. But he was let in when Mr. *Duffett* was counterfeiting for my Lady *Ivy*.

L. C. J. When was this; about what time?

Mrs. *Duffett.* Of the day, my Lord?

L. C. J. No, how long ago is it?—Mrs. *Duf.* It might be about 70, or 71.

L. C. J. You are my Lady *Salkhill*'s daughter, I think, and married *Duffett?*

Mrs. *Duffett.* I did ſo, my Lord, I am her daughter.

Mr. *Stringer.* Pray, what did they do to the Deeds they made, to make them look like ancient true Deeds?

Mrs. *Duffett.* For the making of the outſides look old and dirty, they uſed to rub them on windows that were very duſty, and wear them in their pockets to creaſe them, for ſome weeks together, according as they intended to make uſe of them.

Mr. Att. Gen. My Lord, as it happens, we have that Deed ſhe talks of, called *Glover*'s leaſe, here.

L. C. J. Ay, I ſuppoſe you have ſuch a Deed; it is a famous Deed in *Weſtminſter-Hall.*

Mr. Att. Gen. Here it is, we deſire ſhe may look upon it. [*Which ſhe did.*]

Mrs. *Duffett.* As for this Deed, I cannot ſwear this is the Deed, there have been ſo many made by them. But he did counterfeit a Deed that he told me was one *Glover*'s leaſe.

Mr. *Williams.* Miſtreſs, you were going on to tell how they did uſe their Deeds they made. Pray tell us how they uſed to lay them in the Balconies, and all you know of the art.

L. C. J. Ay, how was it?

Mrs. *Duffett.* When they had been rubbed upon the window to make them look dirty, and they were to paſs for Deeds of a great many Years ſtanding; it was uſed to lay them in a balcony, or any open place, for the rain to come upon them and wet them, and then the next ſun-ſhine day they were expoſed to the ſun, or a fire made to dry them haſtily, that they might be ſhrivelled.

L. C. J. Is your huſband dead or alive?—Mrs. *Duffett.* Dead, Sir.

Mr. Att. Gen. How long has he been dead?

Mrs. *Duffett.* I was not at his death with him, he died beyond ſea.

L. C. J. Was your huſband alive when Mr. *Johnſon*'s Buſineſs was?

Mrs. *Duffett.* Yes, he was.

L. C. J. Yes, I know he was in Court; tho' I aſked the queſtion, I remember all that buſineſs.

Mrs. *Duffett.* I was ſubpœna'd in at that time, but my Lady *Ivy* would not let me ſwear.

L. C. J. Pray, Miſtreſs, what had your huſband for his pains?

Mr. *Williams.* Had he any ſhare of the money lent by Sir *Charles Cotterel?*

Mrs. *Duffett.* My Lady *Ivy* gave him in my ſight 200*l.* of Sir *Charles Cotterel*'s money.

Mr. *Williams.* Do you know any body elſe that had any of that money?

Mrs. *Duffett*. The Attorney had 200*l*. of the ſame money too.

L. C. J. What Attorney do you mean?----Mrs. *Duffett*. Mr. *Sutton*.

L. C. J. Had he ſo, how came he to deſerve it?

Mr. *Dobbins*. Pray, Madam, what do you know of counterfeiting any ſeals?

Mrs. *Duffett*. Mr. *Duffett* once had the impreſſion of a ſeal in his hand, with which he ſaid he was going to one Mr. *Dryden*, to have it counterfeited; but I do not remember what the ſeal was.

Mr. *Williams*. When the deeds were written, how did he uſe to put the names to them?

Mrs. *Duffett*. I have ſeen my Lady herſelf write ſome great Letters of the names firſt upon other papers, which Mr. *Duffett* could not ſo well hit, and he has writ the reſt.

Mr. *Williams*. Can you tell the names?

Mrs. *Duffett*. Truly, I do not remember what names.

Mr. *Williams*. We have another witneſs who will give you an account of ſome Letters of my Lady's, which we ſhall deſire to be read. Swear Mrs. *Elizabeth Rycott*. (*Which was done.*)

Mr. Att. Gen. She talks of *Glover*'s leaſe.——

L. C. J. She ſays, ſhe doth not know whether that be the deed, there were ſo many forged, Mr. Attorney. But ſhe ſwears thus, my Huſband did forge a writing he called *Glover*'s leaſe.—

Mrs. *Duffett*. She had two or three mortgages forged.

Mr. *Williams*. Come, Miſtreſs, where had you theſe Letters?

Mrs. *Rycott*. I had theſe Letters from Mr. *Duffett*.

Mr. *Williams*. Pray, where had you theſe bottles?

Mrs. *Rycott*. This is the ink I ſaw Mr. *Duffett* write for my Lady *Ivy* with, at Mrs. *Lee*'s Houſe, at the table in the kitchen.

L. C. J. Who did he write for?

Mrs. *Rycott*. For my Lady *Ivy*; I did not know what they were that were written, but he ſaid they were forged; and with ink out of theſe bottles he ſaid he could make new-written writings look like old ones very ſoon.

Mr. *Williams*. Did you ever ſpeak with my Lady *Ivy*? Do you know her hand?

Mrs. *Rycott*. I do not know theſe Letters to be her hand; but Mr. *Duffett* gave me them as her Letters.

Mr. *Williams*. Sir *Charles Cotterel*, pray, will you look upon them; you know my Lady *Ivy*'s hand.

Sir *Charles Cotterel*. I do ſo---they are all of a hand, and I think they are my Lady's: I believe it truly.

Clerk reads.] This is ſigned *T. I.* [*All the Letters were read.*]

Mr. *Williams*. Your Lordſhip ſees one of theſe Letters tells Mr. *Duffett*, ſhe intends to ſet Sir *William Salkhill*'s mortgage on foot, and he ſhould have half what ſhe recovered. If it were a true mortgage, why ſhould ſhe have give him half?

L. C. J. They were very great together, that is plain; they were very familiar. What were Mr. *Duffett*'s merits towards my Lady, I cannot tell. Will you go on? It is late.

Mr. *Williams*. This is all we ſhall offer at preſent, 'till we have occaſion further from them.

L. C. J. Well, what ſay you to this, Mr. Attorney?

Mr. Att. Gen. If they have done----

L. C. J. They have, they ſay.

Mr. Att. Gen. Then may it pleaſe your Lordſhip, and you Gentlemen of the Jury, I ſhall begin to anſwer their evidence about the firſt. They have produced ſome argumentative evidence out of many Records, to convict our deeds of forgery. In truth, if they had not bragg'd of this very thing, it had been a ſhrewd objection, becauſe we could not have been prepared to have given an anſwer to what we could not have foreſeen we ſhould have been accuſed of. But upon their boaſts they have put us upon the ſearch as well as they, and we can give as good an account of it. They tell you they had their hint from my Lord *Coke*; but that hint has led them into a great error; for he is miſtaken himſelf in the computation of this time, as he is in a great many other things.

Mr. *Bradbury*. I know he is miſtaken; but I depend not upon his remarks of that time. I ſaid only, I had the general hint about detecting forgeries from thence.

Mr. Att. Gen. But yet for all your confidence of the demonſtration, your foundation fails: For, my Lord, to ſettle the fact, we ſhall ſhew that the King of *Spain*, *Charles* V. who was likewiſe Emperor, reſigned his Crown the 25th of *October*, in the 2d and 3d years of *Philip* and *Mary*. It is true, the Parliament-Rolls, in the title of them relating to the firſt day of the ſeſſion, there the ſtile that was uſed at firſt could not be altered. But the fact of their being the King and Queen of *Spain*, was ſo notorious to all the World, that we ſhall ſhew you in multitudes of the Rolls of that year, the ſtile was as in our deeds; ſo that the uſe might be various: But that will not prove our deeds forged. It may be, the Courts of Law might not take notice of it, as to alter the ſtile 'till *Trinity* term; though we have not ſearched ſo far among them, but in the common conveyances which are upon Record in the Rolls, there it is altered. And as to the time of their becoming King and Queen of *Spain*, we have an Hiſtory that tells you the very day when the King reſigned, which was the 25th of *October*.

L. C. J. I tell you, Gentlemen, methinks Mr. Attorney has been very fortunate to-day, in giving very ſatisfactory anſwers to two objections: Firſt, they would quite deſtroy Mr. *Neale*'s title to this land, by a piece of evidence that they had never had, but that Mr. *Neale* had bragged of it; and that was the ſurvey, which, with much confidence of the victory, was produced: and yet, when it was ſo, to me it ſeemed the ſtabbingeſt enemy the defendant's Cauſe had; but that you are to have with you, and muſt judge upon it. Now he tells you again, Mr. *Neale* has been a blabb of his tongue, and could not keep the ſecret to himſelf, but muſt brag that the deeds were forged, for the ſtile of the Queen's reign is changed; and by this bragging they have ſmoked the buſineſs, and can ſhew Records for it. But now inſtead of Records, the up-ſhot is a little louſy Hiſtory. Can that be an anſwer to thoſe great numbers of Records brought by the other ſide? Is a printed Hiſtory, written by I know not who, an evidence in a Court of Law?

Mr. Att. Gen. My Lord, beſides that, which we muſt ſubmit to your Judgment, whether, upon ſuch a point of fact in a foreign Country, to be done ſuch a day, a foreigner's Hiſtory, not printed for this purpoſe, ſhall be a ſort of evidence; but I ſay, beſides that, here is a Gentleman, Mr. *Clerk*, that ſearched the Roll, and he will tell you what they are in this point.

Mr. *Clarke*. I did ſearch in the Rolls, and find many in that year like theſe. And my Lord *Coke* is utterly miſtaken; he ſays it was not altered 'till the 4th and 5th years of *Phil.* and *Mary*.

L. C. J. I care not what my Lord *Coke* ſays, but what the Records ſay, let us ſee them.

Mr. *Clerk*. I ſaw a great many in that year.

L. C. J. Lord, Gentlemen, what do you make of us, to keep us here with I do not know what! Mr. Attorney, he tells us that Mr. *Neale* was ſo great a blockhead to brag of this, and ſo we were prepared for an anſwer; but all the anſwer is, my Lord *Coke* is miſtaken, and there are many Records, but we have none of them, *Præmoniti*, *Præmuniti*. If he did brag ſo, and you knew it, and would not bring records to wipe off the objection, it is ten times worſe than if it had been anſwered only with the unexpectedneſs of it.

Mr. *Bradbury*. My Lord, I dare affirm that there are none of the Rolls of that year ſo, till after *Eaſter*-Term—

L. C. J. Lord, Sir, you muſt be cackling too; we told you your objection was very ingenious, but that muſt not make you troubleſome; you cannot lay an egg, but you muſt be cackling over it. The objection is now upon them, let them anſwer it if they can. Have you any of the Records here?

Mr. Sol. Gen. We have not, it ſeems, my Lord.

L. C. J. Then this muſt paſs unanſwered, and muſt be left to the Jury.

Mr. Sol. Gen. But, my Lord, they have gone a little farther in this caſe, and indeed farther than becomes them, I think, to lay aſperſions upon my Lady *Ivy*, as if ſhe were frequently guilty of forgery. And for that Sir *Charles Cotterel* ſwears, that ſhe did pretend ſhe had a mortgage of a houſe in St. *Martin's-lane* for 1500*l.* and this mortgage, he ſays, he was told of by ſome that did ſee it; whereupon he did likewiſe deſire to ſee it; and without ſeeing of it, he declared, he would never be ſatisfied of the reality of the thing: and thereupon Mr. Serjeant *Weſt* brought it him, and he ſaw it, but was not permitted to ſee the witneſſes names, and thereupon he was more diſſatisfied than before about it. But if Sir *Charles Cotterel* had given any the leaſt intimation of ſuch a thing, now we would have gratified them with a ſight of it in Court, where he ſhould have had his full view; for my Lady has it ſtill, and it is a true mortgage, and for a real conſideration. But he ſays this is releaſed, and ſhe did that, as is ſuppoſed, to ſuppreſs any inquiry after it. But with reverence to Sir *Charles Cotterel*, the fact is otherwiſe. My Lady *Salkhill* pretended to a debt from my Lady *Ivy*, for nine years diet for four Perſons; and the reckoning being made according to my Lady *Ivy*'s quality, was made ſo high, that it paid off the mortgage: But ſhe has the deed ſtill—

L. C. J. But what ſay you to the deed of ſale, and my friend *Sutton*'s notes out of the leaſe; and the debt of 96*l.* and 4*l.* but a little before acknowledged by my Lady *Ivy*—

Mr. Sol Gen. My Lord, in anſwer to that, we ſay, he has been pleaſed to give it a great deal of garniture; and as he is maſter of the ceremonies, to adorn the ſtory with abundance of flouriſhes of his own kindneſs and intereſts----

L. C. J. Mr. Sollicitor, you are not to judge of that, whether it be flouriſh only or ſubſtance; the Court and the Jury are the Judges of that, and truly I think it very material to the Cauſe; I aſſure you I do; let the dirt be taken off as it can, it ſticks very much; I muſt ſpeak my mind.

Mr. Sol. Gen. When I am over-ruled, I acquieſce in the Judgment of the Court.

L. C. J. Pray, Sir, apply yourſelf to anſwer the evidence.

Mr. Sol. Gen. So I do, my Lord, as well as I can. The next witneſs is this Gentlewoman, Mrs. *Duffett*; ſhe ſwears, that ſhe ſaw her huſband, Mr. *Duffett*, counterfeit many deeds, ſhe does not particularize them: And here have been likewiſe ſeveral Letters read, that did import a tranſaction and correſpondence between my Lady *Ivy* and him.

L. C. J. Pray, Mr. Sollicitor, remember ſhe ſwears ſhe ſaw that leaſe of *Salkhill*'s, and that called *Glover*'s leaſe.

Mr. Sol. Gen. My Lord, this witneſs that ſwears this, is not only a Perſonun fit to be believed, but is contradicted by a Record; and for that, my Lord, it ſtands thus: Mr. *Johnſon*, as is well known, had his trial for the matter about which ſhe now ſwears: for Mr. *Johnſon*, on the behalf of Alderman *Ireton*, undertook to pay 500*l.* to Mr. *Duffett*, to procure ſomebody to ſwear the deed, called *Glover*'s leaſe, to be forged. Upon this there was an information exhibited in this Court againſt Mr. *Johnſon*, for ſubornation; and upon full evidence *Johnſon* was convicted for his endeavour. And the Record of that conviction we have here, and deſire to have produced and read.

L. C. J. And I tell you, Mr. Sollicitor, that is no evidence in this Caſe.

Mr. Sol. Gen. Why, pray, good my Lord, did not they here juſt now ſwear her?

L. C. J. But the Information put in by Mr. Attorney *Noy*, pray, remember, was not ſuffered to be read, becauſe not againſt any of the Parties, but third Perſons.

Mr. *Sol. Gen.* But pray, my Lord, give me leave to apply it to the objection here made in our caſe, to the credit of our deeds. They ſay it is ſuſpicious, becauſe my Lady *Ivy* uſed to forge deeds; and particularly *Duffett*, they ſay, did once forge for her *Glover*'s leaſe. Now to anſwer that, we come to ſhew that my Lady *Ivy* did not forge *Glover*'s leaſe; but there was indeed an art uſed to perſuade *Duffett* to ſwear it forged, when indeed it was not; for which trick *Johnſon*, that was the agent, or inſtrument, was convicted; and that conviction is, I think, a good evidence that it was not forged.

L. C. J. None in the world, Mr. Sollicitor; and that from the very evidence that has been given in this Cauſe this day: For it is plain, if you will believe this woman, (and I yet ſee no Cauſe to the contrary) that ſhe was coming into the Court to have ſworn the truth, which would have perhaps cleared *Johnſon*; but my Lady *Ivy* would needs keep her away. Now if *Duffett* were ſo great a rogue as to forge, he would not ſtick to ſwear, to protect that forgery: And then how eaſy a thing was it, had *Johnſon* been the greateſt Saint in the World, to have got him convicted upon what *Duffett* came to ſwear againſt him; though, had ſhe come then in, *Duffett* would have appeared one not at all fit to be credited.

Mr. Sol. Gen. My Lord, I have then one thing more to offer; I cannot tell indeed whether it be material, for it ſeems I have been ſo unhappy as to offer ſome things that have not been thought material.

L. C. J. You have ſo indeed, Mr. Sollicitor, I muſt ſpeak the truth; there have been ſeveral things offered as evidence, which in another Cauſe and Place, would not, I am ſure, have been offered.

Mr. Sol. Gen. My Lord, I ſubmit what I offer for my Client to the judgment of the Court. But that which I would ſay now, is this: We have here the huſband's oath concerning this matter, that this woman who now takes upon her to ſwear theſe forgeries and things, told him ſhe could have 500 *l.* if ſhe would ſwear againſt my Lady *Ivy*.

L. C. J. Is that evidence againſt the wife?

Mr. Sollicitor. He is now dead, it ſeems; but here is his oath.

L. C. J. Pray, conſider with yourſelf, could the huſband have been a witneſs againſt the wife about what ſhe told him upon an information for that offence of ſubornation?

Mr. Sol. Gen. No, my Lord, I think not.

L. C. J. Could the wife be an evidence againſt the huſband for the forgery?---*Mr. Sol. Gen.* No, my Lord, ſhe could not; and yet ſhe ſwears it upon him here.

L. C. J. That is not againſt him, man; he is out of the caſe, but againſt my Lady *Ivy*; and how can the oath of the huſband be evidence here?

Mr. Att. Gen. Cryer, call Mr. *Gibſon*, to give an account of this Gentlewoman.

Mr. Sol. Gen. Suppoſe, my Lord, that both huſband and wife were brought as evidence againſt my Lady *Ivy*, were that good?

L. C. J. Certainly that were very good.

Mr. Sol. Gen. Why then, my Lord, one of them ſays, that ſhe ſaw ſuch and ſuch things done by Lady *Ivy*, and by him for her; and the other ſays, ſuch things were not done, but ſhe confeſſed ſhe could have 500 *l.* to ſwear they were done: Shall not this evidence be admitted to contradict the other?

L. C. J. Why, good Lord! Gentlemen, is the philoſophy of this ſo witty, that it need be ſo confidently urged? Is it good Logick, that becauſe they both were good witneſſes againſt my Lady *Ivy*, therefore either of them is a good witneſs againſt the other? Shall the huſband's oath be read againſt the wife, to fix a crime upon her? Sure you do not intend this ſhall paſs for argument, but to ſpend time.

Cryer. Here is *Gibſon* now, Sir.

Mr. Att. Gen. Swear him. *(Which was done.)*

Mr. Sol. Gen. We are not now, my Lord, examining what *Duffett* ſwore about forgery or not forgery; but is not this confeſſion of hers an argument againſt the credit of her teſtimony, who now ſays, ſhe ſaw my Lady *Ivy* do ſo and ſo, when ſhe has confeſſed ſhe could have money to ſwear againſt my Lady *Ivy*.

L. C. J. But, Mr. Sollicitor, if you will not apprehend the queſtion, I cannot help it; Is it not the huſband that ſwears againſt the wife?

Mr. Att. Gen. Do you know that Gentlewoman there, *Gibſon?*

Gibſon. I have heard of her.

L. C. J. Nay, be not angry, Mr. Sollicitor; for if you be, we cannot help that neither. The Law is the Law for you as well as me.

Mr. Sol. Gen. My Lord, I muſt take the Rule from you now.

L. C. J. And ſo you ſhall, Sir, from the Court, as long as I ſit here; and ſo ſhall every body elſe, by the Grace of God. I aſſure you I care not whether it pleaſe or diſpleaſe; we muſt not have our time taken up with impertinent things; for I muſt ſay, there have been as many offered in this Cauſe to-day, as ever were in any Cauſe that ever I heard; and if all be not as ſome would have it, then they muſt be in paſſion preſently. The Court gives all due reſpects, and expects them.

Mr. Att. Gen. Have you any acquaintance with that woman?

Gibſon. I have ſeen her a great while ago.

Mr. Att. Gen. What do you know of her? What reputation is ſhe of?

Gibſon. I know nothing of her reputation; I know ſhe was Mr. *Duffett*'s wife.

L. C. J. And ſo do we, ſhe tells us ſo: What then?

Gibſon. I have ſeen her a-bed with Mr. *Frogmorton*, and ſhe told me ſhe had then a frog in her belly.

Mr. *Williams.* It ſeems then by having this Gentleman ſo ready, they were aware of this too: I ſuppoſe Mr. *Neale* bragg'd of this too, or elſe the guilty conſcience put them upon preparing for it. But yet I think they do us no great harm by it.

Mr. Att. Gen. You will give our evidence an anſwer I ſuppoſe by and bye: But we will go on to the reſt of yours. As to the bill and anſwer in the year 1629, in that of *John Stepkins*, it is ſaid, he makes the bounds eaſtward to be *Fox's-lane*; but it is plain, he that gives in that anſwer was not acquainted with the tranſactions of the Eſtate before his own time. And if you conſider the time of that anſwer, there was near fourſcore years then paſt ſince the leaſe made, and ſo long it had been out of the family, rendering a pepper-corn rent; and ſo the profitable intereſt was only the four acres ſurrendered to him by the tenant, before the licence to aliene: and it appears not that he had any notice of the reverſion. But I obſerve in the anſwer there is one paſſage remarkable; that there was a way, time out of mind, that did part this land, and that which was reputed the Dean and Chapter's land. Now that doth not tie it up to make *Fox's-lane* that ſame way, but only ſays generally, there was an old way, which muſt be underſtood of the way down from *Cock-hill* to *Bell-wharf:* So that I take it, that this is no concluſion upon us. Nor upon the ſame ground is that leaſe made 13 *Jacobi*, by *John Stepkins*, where he abutts his land upon that wall which is called *Wall-marſh-wall*, and covenants to have the rent increaſed, if any thing beyond that be recovered; for there was near threeſcore years to come then of this leaſe, and he had no pretence of title to conteſt it at that time; and ſo the verdicts are all anſwered that way, the leaſe expired not till the year 1680.

Mr. Sol. Gen. Then, my Lord, for the ſurvey that they produce of the late times, by order of the Committee of Parliament for ſale of Church-lands, how that ſhould give a title, I do not underſtand. It is the firſt time I ever heard of a particular of Dean and Chapter's lands to be an evidence, when at that time there was no Dean and Chapter. But that which is a clear anſwer to it is this: *Winterburn* who had the leaſe from the Church, did alſo claim under *Marcellus Hall*, who had a leaſe for ninety years: that in time expired in the year 1640. That intereſt being then determined, he gets theſe put into the ſurvey (which it was his intereſt to do) as the inheritance of the Church, which would gain him a fee-ſimple upon his purchaſe, he concealing the long leaſe, and they being ſo long in poſſeſſion; whereas otherwiſe he could only have an Eſtate for years: and it appears all the deeds were in his cuſtody at that time. For the other witneſſes that ſpeak to the Wall, that we muſt leave to the Jury's conſideration, upon the balance of the evidence. For, with ſubmiſſion, my Lord, taking the evidence as it ſtands together, if that leaſe of *Marcellus Hall* be a good leaſe, theſe ſeveral conveyances we produce are ſupported, and do explain that: He ſurrenders four acres, which are the lands that are afterwards conveyed to *Fox*, which is mentioned in the deed of his ſurrender to be the green *Hilly-Bank*, and that was the boundary of the four acres; but what becomes of the other ſeven acres and an half; they have given no account of it hitherto. But ſurely, my Lord, upon that firſt ſurvey, I take it, there is a ſtrong evidence concurring with our aſſertion: For that ſaith, the ſouth boundary of the Dean's *Lynches* is *Wall-marſh*. Now then, if there be ſeven acres to go forward from thence, that juſt reacheth up to *Cock-hill*; and all the other bounds plainly concur with ours: and upon the peruſal of the ſurvey, which it is conſented to on both ſides the Jury ſhall have with them, I believe they will be ſatisfied our bounds and that agree. Upon the whole evidence I ſubmit it for the Defendant. We have done, my Lord.

Mr. Att. Gen. Only I would aſk Mr. *Sutton* a queſtion; whether the bill and anſwer now given in evidence, were not given in evidence at the laſt trial?---*Sutton.* Yes, it was.

Mr. Att. Gen. And yet the verdict went for us then, as I hope it will now.

L. C. J. Have you all done, Gentlemen? Will you ſay any thing for the Plaintiff?---Mr. *Williams.* No, my Lord, we will leave it to your Lordſhip and the Jury.

L. C. J. Then, Gentlemen of the Jury, this evidence has been very long: I think the trial has held us as long as any cauſe that ever happened in *Weſtminſter-hall*, of this nature; I mean, except one, theſe many years. I think we meet with but one in all our Books, that held near ſo long: That indeed was rather ſomething longer, the famous Cauſe of *Colt*, in this Court; but beſides that, I never heard of a Cauſe of this length before.

But, Gentlemen, it is a Cauſe of value, and a Cauſe of great weight and conſideration: It hath depended in the evidence of it upon abundance of circumſtances, ſo that it may be impoſſible for me to remember all the evidence that hath been given. But as near as I can, I will give you what aſſiſtance I am able, in recollecting what has been ſaid on both ſides. Some of you I have obſerved have taken notes, and that will ſave me and you ſome trouble: I will give you a ſcheme fairly of that which is the queſtion. And it will be very much more eaſy to you, becauſe you have had a view of the matter, than can be thought I can make it by any direction of mine.

The queſtion in ſhort is, Whether ſeven acres and a half of land, now built upon to a very great value, as the witneſſes ſay, 2000 *l.* a year, lying on the eaſt ſide of the lane, that is called by the name of *Fox's-lane*, betwixt that and the mill, called *Ratcliff-mill*, be part of the marſh that formerly belonged to the Family of the *Stepkins*'s? or whether or no that be not part of the Dean and Chapter of *Paul*'s Inheritance? If it belong to the Dean and Chapter of *Paul*'s, then the iſſue is with the Leſſor of the Plaintiff: but if it be the Inheritance of the *Stepkins*'s; and part of the marſh-land, and was ſo according to the ancient boundaries, then the iſſue is with the Defendant.

The Plaintiff comes and ſhews for his title, *firſt*, that this was all along enjoyed under the Church of *Paul*'s leaſes. *Knowles*, who formerly did receive the rents of the very thing in queſtion, till (77), before this queſtion, ſays, in his teſtimony, he received them in the right, and on the behalf of Mr. *Neale*, who claims by leaſe from the Dean of St. *Paul*'s.

That is not ſufficient to maintain his title, but they come and ſhew the original; and in point of time, 5 *H.* VIII. they ſay that one Dean *Collet* made a leaſe of the lands in queſtion, for 45 years. And to prove this, a Book is produced to you, wherein there is a ſhort Entry made, which takes no notice at all of any thing more, but that there was ſuch a leaſe of a mill in *Shadwell*, with the appurtenances. But upon their producing that Writing, it is found to be a Paper-Writing; and there was an objection, and a material one, made upon the face of the thing itſelf: For there were two places that ſeemed to be ſuſpicious, as made directly to humour an evidence of ſuch a leaſe in 5 *H.* VIII. having Dr. *Collet*'s name inſerted, who happened to be Dean of *Paul*'s at that time: Whereas *Nowell* was originally the name that was ſet there, with the ſame hand that the other part of the writing was. Thereupon it came to be enquired into, how it came to paſs that *Nowell*'s name was ſtruck out, and *Collet*'s put in? That ſeemed to inſinuate, as if this was contrived on purpoſe to ſhoar up an evidence, and humour the time. For it could not be imagined that *Nowell* ſhould come to be Dean when that leaſe was made, who was not Dean till ſo long after, in Queen *Elizabeth*'s time, as I take it. Now had this objection met with this Book alone, it would have made the evidence lame, and they would have been thought to have ſet an ill leg forwards. But to take off that, they come after and ſhew a parchment ſcroll, which takes notice likewiſe of ſuch a leaſe: And their Officer, *Spencer*, ſays he has ſeen that ſcroll many years, and ſo it could not be a new thing for this purpoſe: It is an old rental, or ſome ſuch thing; in time, in ſome ſhort time after, where is mention made of a leaſe by Dean *Collet*, 5 *H.* VIII. for 45 years, which humours the time exactly, and ſupports the credit of the other evidence. This is that they give as an anſwer to that objection. It might be a miſtake as to the name, but this will ſhew that it was not a contrived matter for this purpoſe.

The next piece of evidence they go to, is 5 *Ed.* VI. and for that time they come and produce leaſes, thoſe that are at leaſt in law evidences of leaſes; and thoſe are the Church-Books, ancient Books that have been always read and allowed for evidence. And thereby they ſhew that one Dr. *May*, then Dean of St. *Paul*'s, *viz.* 23 *Feb.* 5 *Ed.* VI. did lett the lands in queſtion to *Joan Hall* and *Marcellus Hall*; and he lett it as the Dean and Chapter of *Paul*'s lands, for 45 years, at the rent of 10 *l.* a-year.

Then they tell you in the 2d and 3d of *Phil.* and *Mar.* 10 *Dec.* one Dean *Fecknam* takes notice of the former leaſes, and letts it to *Marcellus Hall*, and that is for 90 years; wherein there is the old rent taken notice of, and ſome increaſe made; and there is in that leaſe a covenant to repair the mill, and that has given a riſe to ſomething that makes part of the preſent queſtion, which they that are for the Defendant, call a licence

cence to remove the mill. You, Gentlemen, will have the deeds with you, and are to judge of them.

The leaſes from 5 *H.* VIII. to this Dean *Fecknam* are only leaſes made for years; and by reaſon of theſe leaſes for years, and the long leaſe which they pretend to, the Defendant's Counſel inſiſt upon it, that they could not be let in to controvert the Plaintiff's title; for the laſt leaſe for 128 years, from *Stepkins* to *Hall*, expired in time but in the year 1680.

Now ſay the Plaintiff's Counſel, (and they produce that which is very material in the Caſe) 5 *Aug.* 1636, this was then lett to one *Mary More*, the relict of one *Adrian More*, formerly the aſſignee of the leaſe that came from Dean *Fecknam* to *Marcellus Hall*. And there, inſtead of continuing it a leaſe for years, he letts to *Mary More*, in conſideration of the former leaſes, and turns it into an Eſtate for three Lives. So far then was the Dean of *Paul*'s from apprehending himſelf to be but Leſſee for years, that he takes upon him to create freeholds, which only he that has the inheritance can do.

They go on further, and tell you, that in 1640, the ſame Dean of St. *Paul*'s, ſhe having ſold her intereſt to one *Whitwick* and *Winterburn*, there is a new Eſtate made to them for three Lives. Theſe continue in poſſeſſion under that leaſe, till Mr. *Neale* purchaſed in their intereſt: and his Grace of *Canterbury*, then Dean *Sancroft*, he made another leaſe to the ſaid Mr. *Neale* for three Lives; and there is a great increaſe of rent, 80*l.* during the life of one of the former ſurviving Lives, and then to 100*l.* Then comes the leaſe made to the now Leſſors of the Plaintiff, by this reverend Divine that is here, now Dr. *Stillingfleet*, the preſent Dean of St. *Paul*'s at yearly 240*l.* And this is the ſubſtance of the evidence firſt given by the Plaintiff, for his title which is underneath that laſt leaſe of Dean *Stillingfleet*, which they ſay is a good title: and in caſe it doth appear that the lands are the inheritance of the Dean of *Paul*'s, it is not controverted by the Defendants, but that the Plaintiff muſt have a verdict for him.

But ſay they which are for the Defendants, this is not their inheritance, but the Defendant's: and to prove their objection, they produce abundance of deeds, of which, as well as I can, I will give you a punctual and particular account. For with all the faith and fidelity I can, I will give you the ſubſtance of what has been ſaid on both ſides.

Firſt, It is not to be doubted, for it is beyond all contradiction plain, there were 130 acres of marſh-lands, lands covered with water, which one *Vanderdelf*, a *Dutchman*, undertook to drain, and had an Act of Parliament made, *anno* 27 *H.* VIII. to encourage him for his endeavours to drain it, giving him the one half. That Act of Parliament is produced, and it is there ſaid to be 130 acres.

Now you are to take notice of the boundaries of this marſh-land, as making the ſtate of this queſtion. The Act of Parliament bounds the marſh upon the *Hermitage*, or ſuch a mill called *Graſh-mill*, upon the Weſt. It is bounded on the high-way leading to *Ratcliff*, on the North, which is called *Ratcliff* high-way to this day: It is bounded to the river *Thames* on the South; and it is bounded upon the Town of *Ratcliff* towards the Eaſt.

Afterwards, in *H.* VIII's time, comes in *Richard Hill*, who was owner of ſome part of this marſh (*Vanderdelf*'s moiety), and he in time, 23 *H.* VIII. became indebted to one *Salvago* and another, and there he comes and acknowledges a Statute to them for their debt. And (becauſe I would have you have all things before your view that were done at one time) in the ſame year there is a mortgage made of the lands of *Richard Hill*, (among which, they for the Defendant apprehend, are comprized the lands in queſtion, as marſh-land, to *Salvago*, for the payment of their money) and in that mortgage the ſame words are made uſe of for the boundaries, as are in the draining Act. This, to derive their title, they produce to ſhew, that there was ſuch an ownerſhip, and ſuch a mortgage.

Then they tell you, that in 37 *H.* VIII. the ſame *Richard Hill*, he goes and divides ſome part of theſe lands, that is to ſay, eleven acres and an half, and that he conveys away by leaſe for 34 years to *Marcellus Hall*; whom I name the more particularly, becauſe it is a name that has been much canvaſſed, and gives a countenance to the title on both ſides. Now in that deed, whereby this is thus conveyed to *Marcellus Hall*, there is no notice taken particularly of the eaſtern boundary to be the mill, or the mill-bank, or the hilly-bank. Now, ſay they, the mill was juſt upon the point, hard by that place that is called now by the name of *Cock-hill*; and ſo that boundary doth take in the thing in queſtion, the ſeven acres and a half, becauſe that deed takes notice of the mill, hilly-bank, or way.

In the next place, they offer you this for evidence, that in 6 *Ed.* VI. the ſame *Richard Hill*, for 130*l.* ſells his land to *Thomas Stepkins*. And when it comes to convey the inheritance to him, it is laid to be under the ſame boundaries as are mentioned there, bounded on the hilly-bank or mill-bank, eaſtward. Now, ſay they, that ſheweth plainly, that ſtill the mill was the thing that was intended to be the boundary; and there being ſeven acres and an half of land between the mill and the weſtern bounds, thoſe ſeven acres cannot be conſtrued to extend to a mill with the appurtenances, but rather it is to bound upon the mill and include the lands, than to have the lands go with the mill.

They proceed further and ſay, that *Thomas Stepkins*, the ſame year, did for 50*l.* lett this to *Marcellus Hall*, for 128 years, at a pepper-corn rent, which leaſe expired but in 1680, and till now we could not come to litigate that matter, becauſe he had made ſuch a leaſe. But then I am to take notice by the way, and ſo muſt you into the bargain; there is another boundary made there, abutting on the Well there, called *Shadwell*, and the way leading from *Shadwell* to the *Lynches*.

After this they come to tell you further, that *Marcellus Hall*, 22 *Dec.* 2 and 3 *Phil.* and *Mar.* lett a leaſe to *Carter*, and that was for 20 years. Now you are to take notice, that in this leaſe of *Carter*'s, there is notice taken of a mill, and about an acre of land thereunto belonging, very carefully put in; and that, ſay they, ſheweth that your boundary could not extend to ſo much as ſeven acres.

And to back that evidence, they ſhew you a certain ſurvey, taken in Queen *Elizabeth*'s time, concerning the manor of *Stepney*, which you are by conſent to have with you; and you will do well to conſider it well in your peruſal of it.

And now comes the main deed. Say the Defendant's Counſel, it falls out that you are but Leſſee under *Marcellus Hall*, who was Leſſee under us, and was obliged in a particular covenant, that he ſhould not lett any part of this land without the licence of our anceſtor *Stepkins*, who made him ſuch a long leaſe. But it happened he had a mind to lett ſome part of this land to the Dean of *Paul*'s, from whom he had a leaſe of the mill. And accordingly he had a licence from *Stepkins* ſo to do; which, ſay they, is the reaſon why they come to lay claim to our land. This they take notice to be in time, 16 *Nov.* 2 and 3 *Phil.* and *Mar.* when I muſt tell you by the way, that the firſt leaſe, pretended by them to be made to *Marcellus Hall*, is the long one, 6 *Ed.* VI. by *Thomas Stepkins*; ſo that *Marcellus Hall* came to be Leſſee under the Dean and Chapter, before he had any authority or intereſt from *Stepkins*, nay before he had any leaſe from *Hill*.

Mr. Att. Gen. My Lord, if your Lordſhip pleaſes to remember, *Marcellus Hall* did firſt take by leaſe from *Richard Hill*, in 37 *H.* VIII.

L. C. J. Pardon me, Mr. Attorney, I did not miſ-repeat it; I ſay, he firſt had a leaſe from the Dean and Chapter.

Mr. Att. Gen. That was of the mill only—

L. C. J. That is conteſted, and the very giſt of the queſtion; Mr. Attorney, how much is comprehended in that leaſe?

But to go on with the Defendant's evidence. Then in *Nov.* 2 and 3 *Phil.* and *Mar.* is the deed to *Roper*, of which I ſhall have occaſion to ſay more anon.

In 5 and 6 *Phil.* and *Mar.* comes *Jaſper Hill* the Son of *Richard Hill*, (the firſt owner of the land, and that entered into the Statute to *Salvago*) he makes a conveyance to *Macheline Stepkins*, *Thomas*'s widow, and *John Stepkins*, his heir, mother and ſon; upon which, afterwards there is a ſurrender made by *Marcellus Hall* to *John Stepkins*, ſon and heir of *Thomas*, of four acres; which ſay they was not aſſigned with the other ſeven to the Dean of *Paul*'s.

Then in 3 *Elizabeth*, purſuant to the conveyance made by *Jaſper Hill* to the *Stepkins*'s, there is a fine and recovery ſuffered; and 4 *Elizabeth*, a deed to lead the uſes of that fine which are to *John Stepkins* and his mother, and the heirs of *John*. But ſtill, in all theſe deeds and conveyances, there is mention made of the mill, mill-bank, or hilly-bank, or hilly-way, to be the boundaries; and likewiſe of *Shadwell*.

After that, they produced a bond, wherein *Spinola* is bound to *Stepkins* to take off the Statute entered into 32 *H.* VIII. by *Richard Hill*.

Then 14 *Elizabeth*, they produce a commiſſion of ſewers, where notice is taken of the ſeveral land-holders of *Wapping*-marſh, who were liable to make ſatisfaction for any want of repairs or defects in the marſh. There *Roper* is taken notice of as a tenant, and one *James* and *Stepkins* too: and they do infer from hence, that *James* and *Roper*'s land is part of this, and was under *Stepkins*, and is enjoyed to this day under the title of the *Stepkins*'s.

They go on further, and tell you, that 15 *Eliz. Stepkins* became indebted to the Crown, by taking a teller's debt upon him, and had a mind to ſecure the debt, and therefore conveys his land to the then Treaſurer, Attorney-General and Sollicitor-General, to ſecure a great ſum of money; and this land they would have to paſs among the reſt.

Afterwards, 17 *Eliz.* the commiſſioners ſit again, and there is a Return made of all thoſe that were land-holders, the ſame named before.

Then 7 *Jacobi*, was there a re-grant out of the Crown made to *Stepkins* of all his land. Wherein, generally ſpeaking, the bounds of the lands belonging to *Stepkins* are called the *Mill-bank*, *&c.* This muſt, ſay they, of neceſſity take in the lands in queſtion, otherwiſe it is impoſſible that ſhould be the boundary. And they make uſe of this further argument: Say they, we have taken a ſurvey of all the lands, thoſe in queſtion and the other marſh-lands, from *Hermitage-dock*, alias St. *Katherine*'s, even to this mill; and it doth juſt humour the number of Acres in the Act for draining *Wapping*-marſh; that is to ſay, it makes juſt 130 acres. All which, they ſay, plainly belongs to the *Stepkins*'s.

They then come to examine their living witneſſes, and they have produced them in this order as I name them: their witneſſes have been as they are in my paper. One *Hughs*, and *Somerly*, and *Holmes*, and *Barefoot*, and *Cope*, and *Holewell*. And the ſubſtance of what they ſay is this: The old woman, *Barefoot*, ſays, ſhe has known the place in queſtion theſe threeſcore and odd years; ſhe remembers well the ſituation of it, and that the water drove another mill firſt, and did not come near to *Fox-'s-lane* by a quarter of a mile, but run more to the North. And this land, ſhe ſays, was always reckoned to be *Stepkins*'s, and ſhe never knew any one have any thing to do there but they. And in as much as there was ſome diſcourſe concerning a well; ſhe ſays, ſhe doth remember there was a well between *Fox's-lane* and the mill, and that was half a mile off *Fox's-lane*, and was called *Shadwell*. She remembers it ſo well, that if there were as many wells as there are panes in the glaſs window before you, that was the right well, and there was no other well called *Shadwell*, but that.

Then *Hughs* tells you, he remembered the land before it was built upon; that at common ordinary tides the water uſed to come up to *Fox's-lane*, and at high tides over it; but the land has been raiſed much higher ſince that.

Then *Cope*, he gives an account of his knowing it above threeſcore years ago; and he in general ſays, he did not know how far weſtward the water went that drove the mill; but *Fox's-lane*, he ſays, was the way from North to South, weſtward of the mill, and he knew not any way eaſtward of the mill but *Fox's-lane*; for *Cock-hill* is eaſtward of the mill. And much like to this was the teſtimony of the other witneſſes; which being done, they concluded with the evidence of the ſurveyor *Holewell*, about the admeaſurement. And this, as I remember, or can recollect, is the ſubſtance of the Defendant's evidence, before the Plaintiff's reply.

And then as to that which was offered by the Defendants, as evidence of the boundaries, the Plaintiffs give this anſwer; and it is that which will be the pinching queſtion in this Cauſe to all eternity: Whether or no, *Mill-bank*, or *Mill-hill*, or the *Hilly-way*, or whatſoever elſe it is called in their old Deeds, be not that which is now called *Fox's-lane*.

Say they, *firſt*, by your own evidence, (that ſame ancient ſurvey that you produced, and which, by conſent, you Gentlemen of the Jury are to have with you) there is notice taken of 130 acres that belong to the marſh; there is notice taken of the *Lynches*, as belonging to the Dean and Chapter of *Paul's*. But then in the laſt paragraph of the back-ſide of the leaf, (ſo we call the ſecond ſide, for diſtinction ſake) you will find this taken notice of; which ſaid marſh doth bound on

on the lands hereafter mentioned on the East. And what are the lands thereafter mentioned? These you will find; *Item*, holden by the Dean and Chapter of *Paul*'s, one messuage, called *Derrick-hills*, another tenement called so and so, and several orchards, gardens, ponds, *&c.* and a water-mill thereunto belonging. So that there was on the East part of the marsh-land, orchards, gardens, a messuage, a tenement, waters, ponds, fishings, and a mill, and several other things. Now, if in case the Eastern boundaries of the marsh came up to the mill you speak of, how comes it to pass that you yourself, in your own survey, make the Eastern bounds to be upon these lands, and all these belonging to the Dean and Chapter of *Paul*'s? And when they come to read the particulars of what belonged to the Dean and Chapter, that survey bounds to the Dean and Chapter's land upon the marsh-land. You that have been upon the view, may the better understand it; and you see the Eastern part of the mill was the waste ground, and made a lane to carry down ballast, as the witnesses say. This doth just humour all the old boundaries.

Nay, to shew that this is really so, they say, that in time, in the year 1615, there was an action commenced before my Lord Chief Justice *Coke*, when he sate in this Court, wherein this controversy arose. *Fox*, who was as well tenant to the Dean and Chapter of *Paul*'s, as he was to *Stepkins*, he comes, and he builds upon that old wall, called *Wall-marsh-wall*, which begot a contest betwixt *Stepkins*, who was the ancestor of my Lady *Ivy* and this *Fox*; and upon that contest this was the question, Whether there had been any incroachment upon the marsh? Not but that the wall was reckoned, even by *Stepkins*, to be the boundary, though running, as *Stepkins* said, twenty foot into the East part of the marsh; and there *Stepkins* was non-suited. Afterwards it came into the Common-Pleas, and there was a verdict, whereby it was settled, that the whole wall belonged to the Dean and Chapter of *Paul*'s.

But afterwards Mrs. *Moor*, the Lessee of the Church, would not be quiet with this, but exhibits a bill against *John Stepkins*, and others, and to settle the boundaries, because he pretended incroachments upon his ground: they therefore require him to ascertain the matter upon his oath. He in his answer confesseth, he had heard of the verdict before-mentioned, but knew nothing of it himself; but when he comes to set forth the boundaries, he is so far from taking notice that the boundaries take in the lands in question, that he tells you there was an ancient bank, which was the ordinary bounds between his land and the land of the Church; and this is a high-way a common high-way. But it was true, as he believed, they had incroached, though such a verdict and nonsuit were obtained by them. Not that ever he pretended to any thing on the Eastern part of that passage or bank, called *Fox's-lane*; but he pretended to twenty foot on the Western part of it, as an incroachment.

They say further too, that notwithstanding all this, *John Stepkins* was not so confident of his title to even those twenty foot on the West part; but that he comes and makes a bargain with another man: I will lett you this East part of the marsh-land, and if I recover any of the wall, you shall pay such a rent for it; but if not, you shall hold it as you did before. So jealous he was of his title, even to that which he thought was incroached upon.

And they fix it thus, to humour and explain the particulars mentioned of orchards, ponds, gardens, *&c.* for here were a great many sluices and cuts for the water to be received in, and so all may well be comprehended under the name of a mill with the appurtenances; and that they say goeth a great way in the question. You are to consider of it, Gentlemen.

Then they further shew, that whereas the other side surmise the boundary to be *Shadwell*, which they would have to be placed a great way higher, by the place called *Cock-hill*; here comes an old man that tells you, he knew the place sixty years ago and above, and there was no other well called *Shadwell*, but that which was where the Church now stands, and that is on the West part of *Fox's-lane*. Now I must tell you, upon the evidence it is pretty strong, because he gives such an account of it that it was bricked over, and a common well to all People, which must make the thing very notorious; and he never heard of any other well called *Shadwell*. It is true, there might be a spring on the one side of this ground in question, and the other; you have heard the evidence on both sides, I must leave it at large to you.

Then to make the thing more plain, they offer to you that this was a tide-mill, and not as the Defendant pretends, an overshot-mill; and that is notoriously plain it is so, and it is against sense it should be otherwise. Here was one that wrought at the mill, and his father before him, sixty years; nay, it appears that to have water to drive an overshot-mill in that place must drown the whole level, because it must be raised so much higher than the wheel; and if so, that stands higher than the place, were it raised never so high, of late called *Fox's-lane*. But there were tides that came within twenty foot of it; and you must give me leave to tell you, I understand so much of it, that a tide-mill is never suffered to have the water just swim up and back again; but they have cuts to retain the water a while, that it may go the easier off. And so the great number and length of the cuts and ponds, and ditches here, were but only receptacles and basons to receive the tide, which did not rise (as they tell you it should not) above half the wheel. The nature of the thing itself speaks against what they would have it to be; and to strengthen the argument, they have called five or six, or more witnesses, that have known it all along so to be: And yet this I apprehend, the other side take to be their most material point to make it marsh-ground.

But the Counsel for the Plaintiff say this further to you: They have a survey taken in *Oliver*'s time, which they produced, but were opposed by the Counsel of the other side; and I must confess I did wonder to hear the objection, that it was strange this should be surveyed as Dean and Chapter's lands, in a time when there were no Deans and Chapters; whereas it was surveyed as that which was so, while there were such things as Deans and Chapters, and it was in order to be sold as such. And upon my word, if the lands of the Dean and Chapter's Inheritance were no bigger than the Defendant would have them, there was a good round sum paid to the State for the mill only. But alas! you have a witness that tells you (there being in the survey mention of one *Craven*), that there was a *Craven* on the East part of the ground, that had a large orchard and garden, and ground.

And upon this purchase made by *Winterburn*, who was Lessee of the Church, the Plaintiff's Counsel do raise a very considerable argument, that this was the Church's Inheritance: For, say they, Why should *Winterburn*, that had a lease in being, which would have continued him to be sure in possession, and that too before all these houses were built, (for they talk all the fine houses were built since the King came in) give 9500*l.* for the Inheritance under the title of the Dean and Chapter, if he knew (as he must if he had the long lease in his possession, and so *Knowles* swears he had) it was not theirs; and he himself had a lease for thirty years to come, under a trivial rent of a pepper-corn. Especially considering that those times sold lumping penny-worths of other People's lands.

But then they come to the last point of evidence, and that you must very narrowly observe and weigh. Say they, because you depend so much upon *Carter*'s lease, which takes notice of such and such boundaries; and also that of *Roper*, which you pretend to be made at such a time, these, we say, are forged. And for it they give this evidence.

The first part is a natural, legal evidence, and a proper evidence in things of this nature, to detect a forgery; an evidence that we learn out of our Books of Law, and it is an argumentative one. If you produce deeds made in such a time, when, say you, such titles were used, and such prefaces made to them in their preambles, when indeed there were no such titles used at that time, that sheweth your deeds are counterfeit and forged, and not true deeds. And there is *Digitus Dei*, the finger of God in it; that though the design be laid deep, and the contrivance sculk, yet Truth and Justice will appear one time or another: and though they may put some gull upon Justice for a while, yet it will in time be discovered, to the confusion and shame of the undertakers. Say they, you have taken wonderful care to have both deeds carry the same flourish at the top of each of them, you call *Philip* and *Mary* King and Queen of *Spain*, and both *Sicilies*; and you put *Burgundy* in the ducal stile, before *Millan*: This is the language of both deeds, but that sheweth them not to be true deeds, that carrieth forgery in the very face of it; for *Philip* and *Mary* never came to write themselves King and Queen of *Spain* and *Sicily*, till *Trinity* Term, in the second and third years of their Reigns; whereas your deeds bear date in *November* before. Till *Trinity* Term *Naples* was a Kingdom, and they were but Princes of *Spain* and *Sicily*. And besides, they used always before that time, to put *Millan* among the Dukedoms first before *Burgundy*.

For instances and proofs of this objection, they shew you the titles of the Acts of Parliament in that year, in *October*, *November*, and *December*; they shew you the fines levied in *Hillary*-Term, and *Easter*-Term, and *Trinity*-Term; till which Term the Records of the Kingdom, of Fines and Recoveries, bore all the old stile; and so do the Conveyances enrolled and not enrolled of that time. And with great bravery they challenge the Defendant's Counsel to shew any one Conveyance or Record (except those of your own making) that is otherwise. And as a further evidence they say, we have some leases entered in our Books, and so not calculated for this purpose, which have no other than the old stile of the King and Queen.

And in truth this is a material evidence to prove these to be forged deeds: and it is made the more material by this circumstance, which Mr. Attorney was pleased to mention; and that is, the notice they had from Mr. *Neale*'s bragging of this very objection to their deeds, and yet they should not come prepared to give it an answer. And I must deal plainly with you, that very one thing makes it an objection of very great weight and moment.

But still, say they, besides all this evidence we shall go a step further, and evince the likelihood that these deeds should be forged; for your client, the Defendant, is apt to forge deeds. And to prove that, we produce this evidence.

First of all, Sir *Charles Cotterel* gives you an account of a long story which doth not only reach the Defendant, my Lady *Ivy*, but it looks very bad upon my Friend *Sutton* too; who, if Sir *Charles Cotterel* swears true, is a very knave. Now Sir *Charles Cotterel*, though he does not swear he saw her forge the mortgage she pretended to from Sir *William Salkhill*, yet he gives a shrewd evidence to make it untowardly suspicious: For he tells you, upon Sir *William*'s death, my Lady *Ivy* was so far from pretending to any debt from Sir *William*, that upon accounts stated between my Lady and her, she was indebted to Sir *William* 96*l.* which upon her parting from her husband, and being under great want, Sir *William* had lent her, besides his relieving her otherwise: And, says Sir *Charles Cotterel*, I was present when she took 4*l.* more of my Lady *Salkhill*'s money, and then acknowledged herself to owe my Lady 100*l.* After this, my Lady *Ivy*, without the seeking or intreaty of Sir *Charles Cotterel*, comes to him, and, says she, Does not my Lady *Salkhill* owe you money? Yes, said he, she does, fourscore pounds; but I live in her house, and can soon eat it out in rent. But, says my Lady *Ivy*, she has a mind you should have the house made as a security to you. Good now, how comes my Lady *Ivy* to be so concerned for Sir *Charles Cotterel*'s security, when he was not concerned for himself? Nay, and why should she be so earnest to have him have a security upon that house, which, if it were true, was mortgaged before to herself? If her mortgage were a true one, this practice carrieth no great face of honesty or virtue in it, I must needs say; I must crave leave to make that observation by the way. Ay, but into the bargain, when Sir *Charles Cotterel* yielded to her importunities, Mr. *Sutton* is the man that must be intrusted to draw the Writing, and to that purpose must see my Lord of *Salisbury*'s lease, who is the head landlord. What needed that? I suppose it was recited in my Lady *Ivy*'s mortgage before: But he must take notes out of it, forsooth, to make over the lease and house as a security to Sir *Charles Cotterel* for 80*l.* and when it is brought as such, knowing no otherwise, Sir *Charles Cotterel* takes it; and they two, my Lady *Ivy* and *Sutton*, are witnesses to it. What it proved afterwards you hear, an absolute deed of sale; and yet all this while my Lady *Ivy* (who, as Sir *Charles Cotterel* understood it, was indebted 100*l.* to Sir *William Salkhill*) has a debt of 1500*l.* owing from Sir *William*, by mortgage to her on the same house.

Sir *Charles Cotterel*. My Lord, I am ready to make it all good.

L. C. J. First of all, I say, it was not well done, if there were such a security for 1500*l.* to persuade Sir *Charles* to accept the house as a security for his fourscore pounds, without telling him of the prior mortgage. Then it is strange, she should acknowledge herself

indebted 100*l.* upon her taking the four pounds from my Lady *Salkhill*, if ſhe had ſo great a ſum owing her. And what a ſlovenly anſwer is that given by the Counſel for my Lady *Ivy*, that ſhe and others were called upon for nine years diet? Whereas Sir *Charles Cotterel* ſwears, ſhe owned herſelf upon the account indebted 100*l.* and there was no bartering for diet; but that ſhe had gratis for three quarters of a year after Sir *William*'s death, as ſhe had it ſeveral times before.

And now, while it is in my memory, I would remind you of one thing more before we come to the other witneſſes, there is a thing that to me cramps this buſineſs very home upon my Lady *Ivy*: How comes it to paſs my Lady *Ivy* ſhould be ſo wonderful kind to my Lady *Salkhill*'s daughter, as to part with 1500*l.* ſo ſecured, to have the houſe ſettled upon her, without any conſideration in the World that I can hear of? That is ſuch a melting piece of kindneſs, that they would do well to find out ſome ſlam to authorize it. It ſeems upon Sir *Charles Cotterel*'s deſire to ſee this pretended mortgage, and its being brought him by my Brother *Weſt*, who is now dead, ſhe was wonderful careful that he ſhould not ſee the witneſſes to it, it was ſo precious and tender a thing: But, alas! it is all melted down and gone of a ſudden, without any conſideration at all whatſoever; and ſhe can readily join with Sir *Charles Cotterel* to ſettle this upon Mrs. *Duffett*, the Lady *Salkhill*'s daughter, and enter into bond not to diſturb the enjoyment.

Then there comes another evidence, and that is the Gentlewoman Mrs. *Duffett*, who it ſeems they would have to be a looſe ſort of creature; but methinks ſhe has a good round oath upon her tongue: for ſhe does directly ſwear that ſhe was preſent, and ſaw Mr. *Duffett* her huſband forge that very mortgage Sir *Charles Cotterel* ſpeaks of; that my Lady *Ivy* directed it, and gave her order to put ſaffron in the ink to make it look old; that ſhe ſaw him writing in a parchment, which he told her was *Glover*'s leaſe, and other things, and all for my Lady *Ivy*. Nay, ſhe tells you my Lady *Ivy* was ſo extraordinary an artiſt at the managing of ſuch an affair, that this maſter-workman, *Duffett*, was not ſo dextrous at it as ſhe; for he could not write the firſt great Letters of the names that were to be put to the forged deeds, but ſhe did that herſelf, and the reſt he did. How far ſhe is to be believed, I muſt leave to you; you hear what is objected againſt her about the frog in her belly; and I do not know what; whether that will take off the credibility of her teſtimony, I leave to you. She doth give a very free and large account how they uſed to order their matters to make the ink look old, (as I ſaid) they put ſaffron in it; then they rubbed the outſides of the deeds in dirty windows, and after that uſed to lay them in a balcony for the rain to come upon them in the nights, and to dry them in the ſun, or by the fire, to ſhrivel them up. And this ſhe ſays was their method, and proceſs they uſed. All which the Plaintiff's Counſel urge, to ſhew the probability that theſe deeds of theirs are forged.

Then they tell you, which is yet ſomewhat more to ſtrengthen her evidence, there is a woman, that though ſhe ſpeaks out of Mr. *Duffett*'s mouth, and that can be no evidence againſt my Lady *Ivy*, yet ſays, ſhe received from him a parcel of Letters, which are ſworn by Sir *Charles Cotterel* to be all of my Lady *Ivy*'s own hand-writing; which Letters have been read to you: and they ſhew a great familiarity between my Lady *Ivy* and Mr. *Duffett*, a great care and concern for the promotion of this *Duffett*, the Gentlewoman's huſband; and of ſome deeds that were likely to be thought new and ſuſpected. And ſhe tells him at the latter end of one, that ſhe is ſollicitous till the trouble be over: But ſhe was reſolved to ſet on foot Sir *William Salkhill*'s mortgage, and if that thing did go well, he ſhould have half.

That ſupports the credibility of the woman's teſtimony: But beſides that, there is another thing that looks very untoward, becauſe Mrs. *Duffett* doth directly ſwear, that out of the 1000*l.* paid my Lady *Ivy* by Sir *Charles Cotterel*, 200*l.* was paid and given to her huſband, and Mr. *Sutton* forſooth had 200*l.* more: For what ſervice, I wonder, muſt my Lady *Ivy* be ſo liberal to Mr. *Sutton* and Mr. *Duffett*? Let Mr. *Sutton* ſhuffle and rouſe himſelf as he pleaſeth, it will ſtick upon him; and I muſt confeſs it looks untowardly, his getting my Lord of *Saliſbury*'s leaſe to pick notes out of it, and then to have ſuch a mortgage trumped up in this manner. It is very rank, I aſſure you.

This is the ſubſtance of the evidence that has been offered by the Plaintiff, to prove and induce you to believe theſe deeds forged.

Now, in anſwer to this, they on the other ſide would offer, that Sir *Charles Cotterel*'s evidence is a ſurprize upon them. They ſay they have ſuch a Writing, and ſuch and ſuch Deeds, *Glover*'s leaſe, and *Salkhill*'s mortgage; but they are not prepared to give ſuch an anſwer as they would have done, had they had notice. Here has been likewiſe great ſtruggling and ſtriving to have the verdict read to overthrow Mrs. *Duffett*'s teſtimony; but that cannot be allowed to be given in evidence between theſe parties. Then they would have read her huſband's oath, he being dead: but that is no point of evidence at all neither; for in caſe the man were alive, it would not be evidence what he ſhould have heard his own wife ſay. If both of them indeed had been heard together, and teſtified againſt my Lady *Ivy*, it had been good evidence; or they both might have teſtified for her. But by the Law the huſband cannot be a witneſs againſt his wife, nor a wife againſt her huſband, to charge them with any thing criminal, except only in caſes of high-treaſon. This is ſo known a common rule, that I thought it could never have borne any queſtion or debate.

This is the ſubſtance of the evidence on both ſides, as near as I can recollect it; ſave only that which indeed I ſhould have mentioned before, the Defendant had produced an exemplification of a verdict obtained the laſt *Michaelmas* Term. To which they for the Plaintiff anſwer, We were not then prepared to anſwer your deeds, which were very new, ſurprizing and unexpected to us: We have now given new evidence that we never gave then, and it was a verdict obtained by ſurprize: We now ſhew our boundaries better than we could then; and ſo that they make to be the reſult of the whole matter.

Now upon the main, after this very long evidence, though the Caſe has been darkened as much as ever any Caſe could be endeavoured to be; and though the event of it be a matter of conſiderable value, yet the matter of fact is as clear as the ſun at noon-day; and a plain point of fact it is, and muſt depend upon. If we do admit all their deeds to be good deeds, without any conſideration of the forgery, *pro* or *con*, yet if the mill-ponds, ditches, orchards, gardens, &c. can be taken to be ſeven acres; then the boundaries upon the mill or hilly-bank, which may well be *Foxe's-lane*, that will anſwer both the deeds of the Plaintiff and of the Defendant, and though never ſo many houſes be built upon it, it will ſignify nothing in the Caſe. And that it is ſo, whereas the Defendant's ſurveyor ſwears, that 130 acres will not be made up without the lands in queſtion; the Plaintiff has brought two ſurveyors, that ſwear there is full 130 acres, and more, without them. So you have two ſurveyors on the one ſide, and one on the other; and you yourſelves have viewed it.

After this long evidence, Gentlemen, you have had as good an account of the ſubſtance of it, as I can by my notes and memory recollect. If any of the Gentlemen that are of the Counſel for the Plaintiff, or for the Defendant, do think I have omitted any thing that is material, on either ſide, they have free liberty to remind the Court of it. You are the Judges of this fact, whether this land do of right belong to the Plaintiff or to the Defendant: And I leave it to your conſideration.

After which, the Jury withdrew to conſider of their Verdict, and the Court aroſe. That Evening the Jury gave in a private Verdict before a Judge; and appearing the next morning at the Bar, were called over, and demanded if they did abide by the Verdict they had given the night before; to which they anſwered, Yes: which being declared by the Secondary to be for the Plaintiff, the Jury were diſcharged.

Then a motion was made by the Plaintiff's Counſel, that ſeveral deeds produced by the Defendant, that were detected of forgery, might be left in Court, in order to have them purſued, and convicted of the forgery. The Court, upon debate of the matter, and the Plaintiff's Counſel declaring they would proſecute an Information of forgery, the deeds of the 13th of *November*, and the 22d of *December*, 2 and 3 *Philip* and *Mary*, were ordered to be left with the Clerk of the Crown till further Order, and in the mean time the Plaintiff to have Copies of them from the Clerk; and by Rule of Court a Trial at Bar is ordered in *Michaelmas* Term.

In Trinity-Term there was an Information againſt Lady Ivy, *for forging and publiſhing the ſaid two Indentures, as follows.*

Rex *verſus* Ivy.

Information againſt the Lady Ivy, *for forging and publiſhing two Indentures,* Trin. 36 Car. Secund. Rot. 48.

ſſ. QUod Theodoſia Bryan, de, &c. alias dict' Theodoſia Ivy, de, &c. vid. die anno, &c. Vi & Armis, &c. apud Weſtm. in Com. Midd' ex ſuo propr. capite & imaginatione ſubtilit' falſo & fraudulent' fabricavit & fecit & fieri & fabricari cauſavit quoddam falſum factum continen' Materiam ſequen' videlicet, *This Indenture made the* 13th *Day of* November, *in the 2d and 3d year of the Reign of our Lord and Lady,* Philip *and* Mary, *by the Grace of God, King and Queen of* England, Spain, France *and* Ireland; *Defenders of the Faith, Arch-Dukes of* Auſtria, *Dukes of* Burgundy, Milan, *and* Brabant; *Counts of* Haſburgh, Flanders *and* Tyrol: *Between* Marcellus Hall *of* Radcliff, *miller, on the one Part, and* Richard Roper, *Citizen and Salter of* London, *of the other Part, witneſſeth,* &c. prout per pred' falſum & controfact' factum plenius liquet & apparet Quodq; pred' Theodoſia Bryan alias dict' Domina T. Ivy poſtea, ſcilicet die, anno, &c. apud, &c. ſcient' ſubtilit' & falſo pred' falſum & fabricatum factum publicavit & publicari cauſavit ut verum factum pred' Marcelli Hall ſigillat' & deliberat' p. prefat' M. H. ubi revera eadem T. B. alias dict' Domina T. I. adtunc & ibidem bene ſcivit & intellexit dictum factum fore falſum controfact' & fabricat' Anglice *Forged*, & non fuiſſe factum pred' M. H. nec p. ipſum ſigillat' & deliberat' Et ulterius pred' Coron' & Attorn' dicti Dom' Regis pro eodem Domino Rege dat' Cur' hic intelligi & informari quod eadem T. B. alias, &c. die & anno ſuprad' &c. vi & armis, &c. apud, &c. ex ſuo proprio capite & imaginatione ſcient' ſubtilit' falſo & fraudulent' fabricavit & fecit & fieri & fabricari cauſavit quoddam al' falſum factum continen' materiam ſequen' videlicet, *This Indenture, made,* &c. prout per pred' ult' mentionat' falſum & controfactum factum plenius liquet & apparet Et pred' T. B. alias, &c. poſtea ſcilicet die anno ſuprad', &c. apud, &c. ſcient' ſubtilit' & falſo pred' falſum & fabricatum factum ult' mentionat' publicavit & publicari cauſavit ut verum factum pred' M. H. ſigillat' & deliberat' per prefat' M. H. ubi revera eadem T. B. alias, &c. adtunc & ibid. bene ſcivit & intellexit dictum ult' mentionat' factum fore falſum controfact' & fabricat' Anglice *Forged*, & non fuiſſe factum pred' M. H. nec per ipſum ſigillat' aut deliberat' Ad grave dampn' ejuſdem G. B. in contempt' dicti Domini Regis nunc Legumq; ſuar' in malum & pernitioſum exemplum omn' al' in tali caſu delinquen' ac contra pacem dicti Domini Regis nunc Coron' & Dignitat' ſuas, &c.

XXXVIII. The Trial of *William Diſney*, Eſq. by the King's Special Commiſſion of *Oyer* and *Terminer*, held at the *Marſhalſea* in *Southwark*, on *Thurſday*, *June* 25, 1685. for High-Treaſon.

A SPECIAL Commiſſion of *Oyer* and *Terminer* for the County of *Surrey*, being appointed for the trying of Mr. *Diſney*, before the Lord Chief Juſtice of *England*, and other his Majeſty's Juſtices; he was brought before the King's Commiſſioners at the *Marſhalſea*, in *Southwark*, on *June* 21, in order to his Trial upon an Indictment for High-Treaſon: "For printing and publiſhing a moſt vile and traitorous Paper "againſt his moſt ſacred Majeſty and his Government, intituled, *The* "*Declaration of* James *Duke of* Monmouth, *and the Noblemen, Gentlemen,* "*and others now in Arms*, &c." And being arraign'd thereupon, he pleaded Not guilty, and deſir'd he might have Counſel granted him, but was denied; the Court telling him it was not allowable in capital Caſes: yet upon his farther requeſt, he had leave to make uſe of what Books he thought fit to prepare for his defence, and allowed till the 25th.

On *Thurſday* the 25th, he was brought to his Trial; when the Meſſenger depoſed, that having a Warrant for the apprehending of *William Diſney*, Eſq. he took ſome files of Muſqueteers, and two or three Gentlemen to his aſſiſtance; when approaching to the houſe of one *Tyrrel*, a Gardener in the pariſh of *Lambeth*, on *Monday June* the 15th, 1685, between twelve and one of the clock in the morning, he broke into the apartment of Mr. *Diſney*; where entering his chamber, he found the priſoner in his ſhirt, who crav'd his breeches: but the Meſſenger replied No, ſaying, if he had a Night-Gown he might put it on. Immediately after viewing his breeches, there was found a dagger in his pocket, and alſo ſome other things, likewiſe a brace of piſtols, and a great hanger in the nature of a Scimeter.

His maid *Mary Allett* was ſuppoſed to be in bed with him, by reaſon her cloaths were upon his bed: his daughter about eleven years of age or thereabouts was in another part of the room a-bed alone. The Meſſenger farther depoſed, that getting into the Printing-houſe, he there found the Forms (as Printers call them) of the traitorous Declaration in the Printing-room, there being by computation about 750 of them printed on one ſide, and about five of the ſaid traitorous Declarations perfect. Upon the Meſſenger's queſtioning how they came there, he pretended ignorance.

The evidence appearing very plain, and he making little or no defence for himſelf, was found guilty of High-Treaſon; ſentenced to be drawn, hanged, and quarter'd; which was accordingly done at *Kenningtom-Common* in the County of *Surrey*, on *Monday* the 29th of *June*, 1685, and his quarters ſet upon the City-gates.

A true and full Account given by the Miniſter of St. George, *concerning the Behaviour and laſt dying Speech of* William Diſney, *Eſq.* June 29*th*, 1685.

BEtween nine and ten of the clock in the morning, I was ſent for by the High Sheriff of *Surrey*, to officiate as Ordinary at the execution of the priſoner at the *Marſhalſea*. Before he was brought out, a neighbouring Miniſter and I (upon the Sheriff's motion) went into the room where he was; when the reverend Parſon (having ſeen him the night before) aſk'd him whether he had conſidered of thoſe things which he had formerly offer'd him; and did very pathetically preſs him that he would give glory to God, by a full and ingenuous confeſſion of his crime, intimating to him the fatal conſequences that might have followed, if he had perfected that evil work: how many men's lives might have been loſt in the quarrel; whoſe blood he was ſo far guilty of, as he contributed to the increaſe of the rebellion, by his printing the traitorous paper (or words to the ſame effect). To which the priſoner anſwer'd (with ſome ſigns of diſcontent) to this purpoſe; that he hoped (ſpeaking to the Miniſter) he did not come to preſs him to unburden himſelf now: that he had nothing to ſay that might bring any perſon into trouble, and his time was ſhort, ſo he deſired not to be troubled about any ſuch matter; ſo that few words paſſed ere we parted. Finding him reſolved not to make any diſcovery, I only told him, I did intend to meet him at the place of execution, and he thanked me.

When he came to the gallows, and was in the cart, I came to him and aſked him, how he deſired to improve thoſe few moments of his life that were yet to come? He anſwer'd, in prayer. I aſked him, Will you pray for yourſelf, or ſhall I pray for you? He anſwer'd, I will pray, and deſire you to pray for me. Whilſt the executioner was preparing the rope, I ſhewed him the Bible, ſaying, Sir, what comfortable ſentence do you remember out of this word of God for your preſent uſe? He anſwer'd, Jeſus Chriſt came into the world to ſave ſinners, of whom I am chief. And then he proceeded in general terms to acknowledge himſelf a great ſinner againſt God; but affirm'd that he had made his peace with God, that he had confeſs'd his ſins with humility and fervency, and had begg'd God's pardon; and did not doubt but God had for the merits of his Son Jeſus Chriſt pardon'd all his ſins, and he was now under very comfortable hopes that he ſhould ſoon be happy, not upon the account of his own merits, but the merits of Jeſus Chriſt. I told him this was very good, if his hopes were well grounded. He replied, His hopes were grounded on the Scriptures, which aſſured him that Chriſt died to ſave ſinners. Whereupon I recounted to him ſome other gracious promiſes of God to true Penitents; as that of *Ezekiel*, *If the wicked man turneth away from his wickedneſs, and doeth that which is lawful and right, he ſhall ſave his Soul alive*, &c. After which he made his addreſs to God in prayer, that he would forgive him all his ſins, and ſanctify this his affliction to him; and prayed God to bleſs the King, and that he may be merciful and kind to his ſubjects, as well as juſt to his enemies: he farther obſerved, how gracious God was to him in giving him this admonition, (as he call'd it) for God might have taken him off by ſome ſudden death, or deprived him of his ſenſes; And then (he ſaid) it muſt have been worſe with me, but now God hath given me time to bethink myſelf; ſo that, though the dolour and the ſhame of this death, having ſo many ſpectators (upon whom he look'd) may ſomewhat diſcompoſe me, yet I have peace and comfort within. Afterwards he deſired me to pray with him, which I did briefly, according to his mind and preſent example: and cloſing with the Lord's Prayer, he anſwered every petition deliberately, and calmly: he declared that he lived in, and did now die in the Communion of the Church of *England*, which he repeated again in theſe words, the Proteſtant Church of *England*. After Prayer, I aſked him, whether he would ſing ſome part of a Pſalm? He anſwer'd No. Then I aſk'd him, whether he had any thing more to do or ſay? He anſwer'd, I have nothing more but to return you thanks for your care of me. And I pray God bleſs you and hear your prayers for me, and mine for you, and our Saviour Chriſt for us both. And ſo I left him going to his long home.

This, according to the beſt recollection of my thoughts, is the ſum, and, as near as I can remember, the words that paſs'd between Mr. *Diſney* and me.

Andrew Weſton.

XXXIX. The Trial of Sir *Edward Hales*, Bart. for neglecting to take the Oaths of Supremacy and Allegiance, with his Plea thereto, upon the King's diſpenſing with the Stat. 25 *Car.* II. and the Opinion of the Judges thereupon, 1686.

Paſchæ, 2 *Jac.* II. In the *King's-Bench.*

Arthur Godden *Plaintiff, in an Action of Debt of* 500*l. grounded upon the Act of* 25 Car. II. *for preventing Dangers from* Popiſh *Recuſants.*

Sir Edward Hales, *Bart. Defendant.*

THE Plaintiff declares, That the Defendant, after the firſt day of *Eaſter-Term* 1673. *ſc.* 28 *Nov.* 1 *Jac.* II. at *Hackington* in *Kent*, was admitted to the office of a Colonel of a Foot-Regiment.

That being a military office, and a place of truſt under the King, and by authority from the King.

And the Defendant held that office by the ſpace of three months, next after the 28 *Nov.* 1 *Jac.* II.

And from thence, till the time of this action begun, he was, and ſtill is an inhabitant and reſident of the pariſh of *Hackington.*

And the Plaintiff taking it by proteſtation, that the Defendant within three months next after his admiſſion into the ſaid office of Colonel, did not receive the Sacrament in manner as the Act directs, but neglected to receive it;

Avers, that the Defendant did neglect to take the Oaths of Supremacy and Allegiance, either in the *Chancery*, or in the *King's-Bench*, or at any Quarter-Seſſions in *Kent*, or in the place where he was reſident, either the next Term after his admiſſion to his ſaid office, or within three months after.

And that the Defendant after ſuch neglect, *ſc.* 10 *Mar.* 2 *Jac.* II. at *Hackington* in *Kent*, did exerciſe the ſaid office, and ſtill doth, contrary to the Statute of 25 *Car.* II. * for preventing dangers from *Popiſh* Recuſants.

Where-

* 25 *Car.* II. *cap.* 2. *An Act for preventing Dangers which may happen from* Popiſh *Recuſants.*] For preventing dangers which may happen from *Popiſh* Recuſants, and quieting the minds of his Majeſty's good Subjects, be it enacted, *&c.* That every perſon that ſhall bear any office, civil or military, *&c.* or ſhall have command or place of truſt from or under his Majeſty, *&c.* within the Realm of *England*, *&c.* ſhall perſonally appear in the Court of *Chancery*, or of the *King's-Bench*, or at the Court of Quarter-Seſſions in that County where he ſhall reſide, within three Months next after his admittance into any of the ſaid offices, and there, in open Court, take the ſeveral Oaths of Supremacy and Allegiance, and ſhall alſo receive the Sacrament of the Lord's Supper, according to the uſage of the Church of *England*, in ſome Pariſh-Church, upon ſome Lord's-day, immediately after Divine Service.

And

Whereupon the Defendant at *Rocheſter*, at the Aſſizes held 29th *Mar.* 2 *Jac.* II. was duly indicted for ſuch his neglect, and for executing the ſaid office contrary to the ſaid Statute.

And thereupon duly convict, as by the Record thereof appears; whereupon the Plaintiff became entitled to this 500 *l.* as forfeited by the Defendant.

The Defendant pleads, that the King within the three months, in the declaration mentioned, and before the next Term or Quarter-Seſſions, after his admittance to the ſaid office, and before his ſuit began, *ſc.* 9 *Jan.* 1 *Jac.* II. by his Letters Patent under the Great Seal, and here produced in Court, did diſpenſe with, pardon, remit and diſcharge (among others) the Defendant from taking the ſaid oaths, and from receiving the Sacrament, and from ſubſcribing the declaration againſt Tranſubſtantiation or teſts in the Act of 25 *Car.* II. for preventing dangers from *Popiſh* Recuſants, or in any other Act, and from all crimes, convictions, penalties, forfeitures, damages, diſabilities, by him incurred by his exerciſing the office of Colonel.

Or by the Act intituled, *An Act for the preſerving of the King's Perſon and Government, by diſabling Papiſts from ſitting in either Houſe of Parliament*: Or by the Acts made in the firſt or third years of King *James* I. or the Acts made 5 *Eliz.* or 23, or 29, or 35 *Eliz.*

And the King, by his Letters Patent, granted, that the Defendant ſhould be enabled to hold that office in any place in *England*, or *Wales*, or *Berwick*, or in the Fleet, or in *Jerſey* or *Guernſey*, and to receive his pay or wages;

Any clauſe in the ſaid Acts, or in any other Act notwithſtanding, & *non obſtante*, that the Defendant was or ſhould be a Recuſant convict,

As by the ſaid Letters Patent doth appear.

Whereupon the Defendant prays judgment of the Court, whether the Plaintiff ought to maintain this action.

The Plaintiff demurred generally to this Plea.

The Defendant joined in demurrer.

The queſtions are two, 1. Whether the Defendant ought to have pleaded this pardon and diſpenſation to the indictment, or whether he may not plead it in bar to the action?

2. Admitting he may plead it to the action, whether it be a good bar, and whether the King by his prerogative may diſpenſe with the Statute?

Mr. *Northey*, who argued for the Plaintiff, held that the Defendant may not be permitted to plead this matter in bar of the action, becauſe he ought to have pleaded it to the indictment; and he having not pleaded it then, the Law will conſtrue it to be waving of it, as the caſe in *Brook*'s *Abridgment*, Charter of Pardon, 15. That in caſe of an indictment for murder, one that has pleaded Not guilty, cannot plead the pardon after, unleſs dated ſince this plea of not guilty. So 3 *Crooke* in a *Fieri Facias*, if the Defendant appears, and has a releaſe, and does not plead it, he has loſt the benefit of it, and ſhall not be releaſed by *Audita Querela*: now the Defendant ſhall not be permitted to plead it againſt the Plaintiff, no more than he could have pleaded it againſt the King; for this action is in the nature of an execution upon a judgment, and may be likened to this caſe; an adminiſtrator *de foins non*, by 17 Car. II. is enabled to ſue forth an execution upon a judgment, recovered by an executor of the firſt teſtator, and the Statute doth put the adminiſtrator in the ſame caſe as the executor was; and the Defendant in that caſe can alledge no other matter againſt the adminiſtrator, than he could have done againſt the executor, neither can he avoid this execution by any plea that he might have pleaded to the firſt action. And if this Defendant ſhall be received to plead this plea now, he will falſify the indictment, that was found againſt him; for if the offence be pardoned, he ought not to have been indicted: but admit this Defendant may well plead this plea, yet I hold it no bar to the Plaintiff's action.

I do allow that the King may diſpenſe with ſeveral penal Laws in ſome caſes, but that prerogative of the King is bounded, ſo that with ſome Statutes he cannot diſpenſe, wherein the ſubject is intereſted, as in 4 *Inſtit.* (135) So the King cannot licenſe a man to make a nuiſance or commit a murder, as 11 *Henry* VII. 11, 12. And that this is an Act wherein all the ſubjects have an intereſt, I humbly ſubmit to the Judgment of the Court.

The King cannot diſpenſe with the Statute 31 of *Eliz. chap.* 6. againſt Simony, nor with the Statute 17 *Edw.* VI. 1. againſt buying and ſelling of offices, as appears by the 1 *Inſtit.* 12. *a.* 30. *Inſtit.* 154. 20. *Crooke* 385. *Hobart* 75. 1 *Inſtit.* 234. *a.* A man that is diſabled by Law to take ſuch an office, the King cannot capacitate him: as if the King ſhould grant to one to ſell an office, within the Statute *Edw.* VI. and to another to buy that office, theſe Grants would be void, as in *Vaughan* 534. in the caſe of *Thomas* and *Sorrel*, there are ſeveral caſes put, wherein the King cannot diſpenſe with a Statute.

Now by this Statute that we are upon, it is enacted, that every officer ſhall take the oaths, that every perſon that does neglect, ſhall be diſabled to hold the ſaid office; now this Act does not work upon the taking, but upon the holding; and if ſuch conditions be not performed, he is thereby rendered uncapable to hold his office, and the King can never enable a man whom the Law hath diſabled, 3 *Inſtit.* 154. But I foreſee the caſe in 12 *Coke* 18. will be objected againſt me, where it is ſaid, that no Act of Parliament can bind the King from any prerogative which is ſolely and inſeparably annexed to his perſon, but that he may diſpenſe with it by a *non obſtante*; and the Book doth inſtance in the caſe of Sheriffs, upon the Statute 23 *Hen.* VI. which does enact, that all Patents made or to be made of any office of a Sheriff, *&c.* for term of years, *&c.* within any County of *England*, *&c.* ſhall forfeit 200 *l.* Yet, ſays that Book, the King may diſpenſe with that Statute, and cites 2 *Hen.* VII. 66. to be there ſo adjudged by all the Judges of *England*; and that this is the only authority that ſeems to countenance this caſe. But this is the opinion only of my Lord *Coke*, for the Book which he cites and depends upon was never adjudged, as appears by *Brook* 5 *pt.* 45, 109. and what was ſaid in that caſe, was only ſaid by one Judge, and never judicially determined, nor ſo much as ſpoken to by any other Judge; therefore the foundation that my Lord *Coke* has laid, failing, the ſuperſtructure muſt needs fall, and ſo, with ſubmiſſion, that ſingle opinion in 12 *Coke*, *fol.* 18. is not law. But admitting the caſe to be Law, that can be no rule to guide this caſe by, for that Statute was made, rather to deprive the King of his power of making Sheriffs, and ſo conſequently commanding his Sheriffs not to ſerve him, than to diſable the ſubject, and thereby reſtraining the King's prerogative, which is ſo inherent in him. But by the Statute 25 *Car.* II. 2. the prerogative of the King is not touched, for the King may grant the office to any of his ſubjects, and it is only a direction to the ſubject to qualify himſelf for the King's ſervice; and if he be uncapable to ſerve the King, 'tis through his own fault and neglect, and may be puniſhable for the ſame, as in the caſe of Sir *John Reade*, in 27 and 28 *C r.* II. in the *Exchequer* he was made and ſworn Sheriff of *Hertfordſhire*, and neglected to take the oaths according to this Statute; by reaſon of which, the office became void, and afterwards there was an information exhibited againſt him upon this Statute we are now upon, for neglecting to take the ſaid oaths, and executing his office, and upon this he was convicted and fined. And the Court was of opinion, that no ſubject could put himſelf out of a capacity to ſerve the King, but for ſo doing he is puniſhable; and in the Law of the Sheriffs the diſpenſation is in the Patent, but in our caſe the diſpenſation is after the Patent, and ſo a difference between the two caſes: and for theſe reaſons, I pray your Lordſhip's judgment for the Plaintiff.

Arguments for the Defendant.

Sir *Thomas Powys*, the King's Solicitor, argued for the Defendant.

AS to the firſt point, that ſuppoſing the Defendant ought to have pleaded the diſpenſation to the Indictment, it does not appear by this Record, but that he did; for the declaration is, that he was *Legitime Modo Convictus*, and does not ſay whether he pleaded Not guilty, or how he pleaded; and for any thing that appears, he did plead it againſt the King, yet he may be admitted to plead it againſt the Plaintiff who is a ſtranger.

If they ſtand upon this as an eſtople, they ought to have relied upon it, and replied, that he had the diſpenſation at the time of the Indictment, and refuſed to plead it; for he that pleads an eſtople, muſt rely upon it, as the authorities are which treat of eſtoples. And therefore as to the firſt point, I think, with ſubmiſſion, we have very well pleaded the pardon and diſpenſation in bar of the action.

As to the ſecond point, whether the King can diſpenſe with the Statute or no; I humbly conceive, with ſubmiſſion, the King may very well diſpenſe with the Statute; 'tis admitted that the King may in many caſes diſpenſe with an Act of Parliament, and let us conſider why not this? It's well obſerved in 2 *Inſtit.* 496. that the King's prerogative is as much the Law of *England* as any other Law whatſoever; and the King may upon any cauſe moving him in reſpect of time, place, or perſon, by a *non obſtante* diſpenſe with any particular perſon, and that he ſhall not incur the penalty of the Statute, 7 *Coke* 36, 37. *Vaughan* 333. 347. *Glanvil* in his argument *ante P.* 205. doth admit a power in the King to diſpenſe with *Penal Laws*, and yet he was no friend to the prerogative. Though the conſent of the Lords and Commons be requiſite to the making of the Act of Parliament, yet it is the King that gives the ſanction to the ſaid Laws, and moſt of the ancient Statutes began in form of Charters, as it appears in 8 *Coke* 19. and the intents and meanings of Acts of Parliament, are every day by the Judges extended, and changed according to a better rule of Reaſon and Juſtice than the words will bear, *Hobart* 229. and the Judges have an authority over the Statute-Laws, to mould them according to the trueſt and beſt ſenſe, *Hobart* 346. and Statutes which have been made againſt common right, have been conſtrued void, 8 *Coke* 118.

There is a diſtinction taken in our Books between Malum in ſe, *and* Malum prohibitum.

The former the King cannot diſpenſe with, the latter he may; as where the Statute generally prohibits any thing upon a penalty, which was lawful before, (the Subject receiving no Injury by ſuch a Diſpenſation) the King there may diſpenſe with ſuch an Act. *Vaughan* 343. *Dyer* 5. 2. The King granted a licence to carry Bell-metal out of the Realm, notwithſtanding the Statute, *Dyer* 54. It was enacted by Statute, 4 *Hobart* 9. that none ſhould convey wine into *England* out of *Gaſcoigne*, but in *Engliſh* ſhips; and the King granted a licence to a man, that he, his deputies and factors might convey, *&c.* in any ſhip, notwithſtanding the Statute, 28 *Coke* 32. *Vaughan* 352, 353, 354. Now to apply the caſes to the caſe in queſtion, this is *Malum Prohibitum*, whether is the diſpenſation any damage to the ſubject? If it were any wrong, it were to the King himſelf, and ſure the King may very well diſpenſe with that, which only relates to himſelf.

I muſt diſtinguiſh between thoſe Acts of Parliament which concern Property, and thoſe which concern Government. Acts of Parliament which concern Property, the King cannot diſpenſe with; but thoſe which concern Government he may; and this for the great inconveniencies which may happen, or urgencies of State which may force him to it, and thoſe unforeſeen at the time of making the Law: for it may happen, by a viciſſitude of times, thoſe Laws that were made for the preſervation of Government, ſhould turn to the deſtruction of it, if the King could not diſpenſe with them.

The Common Law in ſome caſes does ſo very much reſpect the prerogative, that it leaves the private intereſt of the ſubject unregarded, and the King may dig in any of his ſubjects land for Saltpetre to make Gunpowder. Now this Statute 25 *Car.* II. was made to diminiſh the King's

And every the perſon aforeſaid, that doth or ſhall neglect or refuſe to take the ſaid Oaths and the Sacrament in the ſaid Courts, and at the reſpective times aforeſaid, ſhall be *ipſo facto* adjudged uncapable, and diſabled in Law to all intents and purpoſes whatſoever, to have, occupy or enjoy, the ſaid office or employment, and every ſuch office and place ſhall be void, *and is hereby adjudged void.*

And every perſon that ſhall neglect or refuſe to take the ſaid Oaths or the Sacrament as aforeſaid, and yet after ſuch neglect or refuſal, ſhall execute any of the ſaid offices, after the ſaid times expired, wherein he ought to have taken the ſame, and being thereupon lawfully convicted upon any information, *&c.* in any of the King's Courts at *Weſtminſter*, or at the Aſſizes, every ſuch perſon ſhall forfeit 500 *l.* to be recovered by him that ſhall ſue for the ſame.

And at the ſame time when the perſons concerned in this Act ſhall take the ſaid Oaths, they ſhall likewiſe ſubſcribe the Petition againſt the belief of Tranſubſtantiation under the ſame penalties as by this Act is appointed.

prerogative, but to ſecure him from his enemies, and for the preſervation of the Government; and the King is beſt judge what will be moſt for his own ſecurity, and the Government's preſervation. No Act of Parliament can diſcharge the ſubject from his allegiance which he owes to the King, every one is bound by his allegiance to ſerve his Prince when he ſhall be required. Therefore no Act of Parliament can diſable any man to ſerve the King. But they object, that this Act doth make no one incapable, but at his own election.

If this were ſo, it would be in the election of ſome or all the ſubjects to incapacitate themſelves to ſerve the King, and the King would be unſerved: for if it were not in the power of the King to force the ſubject, he would not (it may be not) be ſerved at all; as in the caſe of Sir *John Reade*, cited by the other ſide; he neglected to take the oaths, and thereby the office became void; ſo that the next elected might refuſe, and the next. In the mean time the King's ſervice lies neglected, and no buſineſs of the County can proceed, for want of a Sheriff. To pardon murder, is a prerogative ſolely and inſeparably incident to the King, who may diſpenſe with Statutes reſtraining it, 12 *Coke* 18. He may diſpenſe with *non reſidente*. *Hobart* 146. 3 *Inſtitut.* 339. In 3 *Inſtit.* the Lord *Coke* ſpeaking of Acts of Parliament that were made to reſtrain the King's power of pardoning murder, ſays, that ſuch Acts are good for King's to follow, but not binding, *Coke* 18, 19. There are ſeveral Statutes cited, with which the King by his prerogative may diſpenſe, as the Statute 36 *Hen.* VI. which does enact, that no man ſhall be Sheriff of one County two years together. Yet it was adjudged by all the Judges of *England*, ſays that Book, that the King may diſpenſe with it; the Statute of 4 *Hen.* IV. 31. that no *Welſhman* ſhall be Juſtice, or other Officer whatſoever in any part of *Wales*; and yet the King may diſpenſe with it. The Statute 8 *Rich.* 22. and 33 *Hen.* VIII. 24. do enact, that none ſhall be Juſtice of the Aſſize in the County where he was born, and yet the King with a ſpecial *non obſtante* may diſpenſe with that Statute. And in *Plowden* 502. 13. the King may grant to a man to be an Eſcheater for life, notwithſtanding that Statute.

To anſwer the Statutes which have been cited, which the King cannot diſpenſe with: I ſay, as to the Statutes of Simony and Uſury, the King cannot diſpenſe with them; but what is that to the matter in hand? For there is no reſtriction of the ſubjects ſervice, but the King may have the benefit notwithſtanding Then as to the Statute 5 *Ed.* VI. 16. againſt buying and ſelling of judicial offices, of which Statute, there is a clauſe in the 1*ſt Inſtitut.* 134. that the King may not diſpenſe with that Statute: There is a difference between that Statute and this; for that does enact, that if any perſon ſhall bargain and ſell any office, *&c.* ſhall loſe the office, *&c.* and all ſuch bargains and contracts ſhall be void; and that he that ſhall give any ſum of money, *&c.* for any ſuch office, *&c.* ſhall be a diſabled perſon in Law, to have, occupy, or enjoy the ſaid office, *&c.*

Now the Statute doth diſable the party upon doing ſuch an act, to take the office; for the making the bargain is prior to taking the office, and thereby he is diſabled to take it, ſo that he can never have the office legally veſted in him, if the King cannot diſpenſe with a conditional ſubſequent, and ſo that does not come near this. And for this reaſon I humbly pray Judgment for the Defendant.

Then the Lord Chief-Juſtice Herbert *ſpake thus:*

Chief-Juſtice. THIS is a caſe of great conſequence, but of as little difficulty as ever any caſe was, that raiſed ſo great an expectation; for if the King cannot diſpenſe with this Statute, he cannot diſpenſe with any *Penal Law* whatſoever.

As to the firſt point, whether he ſhall be admitted to plead this diſpenſation, and pardon to this action of debt; (having not pleaded it to the Indictment) I think he may: for this Court ſhall not be bound by the finding of the Jury below, for he (for any thing that does appear) did plead it there, and the Jury might have gone againſt the direction of the Court, yet that ſhall not conclude us; but if the party has good matter to diſcharge himſelf, we may ſhew it: as if a man be convicted of an aſſault and battery againſt the Defendant, the Plaintiff may give the former conviction in evidence, but yet he muſt alſo prove the battery, or elſe he ſhall not recover.

And this being an eſtople, it ſhall not bind, becauſe the Plaintiff was not party to the firſt ſuit.

As to the ſecond point, whether the King can diſpenſe with the Act or no, I think it a queſtion of little difficulty. There is no Law whatſoever but may be diſpenſed with by the ſupreme Law-giver; as the Laws of God may be diſpenſed with by God himſelf; as it appears by God's command to *Abraham*, to offer up his ſon *Iſaac:* So likewiſe the Law of Man may be diſpenſed with by the Legiſlator, for a Law may either be too wide or too narrow, and there may be many caſes which may be out of the conveniencies which did induce the Law to be made; for it is impoſſible for the wiſeſt Law-maker to foreſee all the caſes that may be, or are to be remedied, and therefore there muſt be a power ſomewhere, able to diſpenſe with theſe Laws. But as to the caſe of Simony, that is objected by the other ſide, that is againſt the Law of God, and a ſpecial offence, and therefore *malum in ſe*, which I do agree the King cannot diſpenſe with. And as to the caſes of Uſury and Non-Reſidence, thoſe caſes do come in under that rule, that the King cannot diſpenſe with them, becauſe the ſubject has a benefit by them; for in caſe of Uſury the Bond is made void by the Statute, and therefore if the King ſhould diſpenſe with it, the ſubject would loſe the benefit of the avoiding the Bond. And as to the caſes of buying and ſelling of offices, which are objected, there is no need of reſolving, whether the King could diſpenſe with that Statute or no, becauſe the party was diſabled to take any ſuch office by the contract, and the diſability was attacked by force before the office was veſted, ſo that the King could not remove the diſability: and ſo I do agree that it would have been in this caſe, if the Defendant had by his neglect or refuſal to take the oaths, rendered himſelf incapable before he had taken the King's diſpenſation; for the King's diſpenſation coming before the diſability attacked, it does prevent it.

The caſe of the Sheriff is much a ſtronger caſe than this, and comes up to it in every particular, for that Statute doth diſable the party to take, and the King to grant; and there is alſo a clauſe in that Statute, which ſays, that the Patent ſhall be void, notwithſtanding any *non obſtante* to the contrary; and there is a penalty of 200 *l.* like to our Caſe: and yet by the Opinion of all the Judges of *England*, the King has a Power of diſpenſing with that Statute; yet that Statute does expreſly ſay, the King ſhall not diſpenſe with it by a *non obſtante:* ſo if an Act of Parliament had a clauſe in it that it ſhould never be repealed, yet without queſtion, the ſame Power that made it, may repeal it. Beſides, that Statute makes the Patents void at the time of granting them; but by this Statute the Patents are good at the time of granting them, and continue ſo 'till the neglect to take the oaths, for doing of which the Patentee has three months time. And if the caſe of the Sheriff be Law, as it hath been taken ever ſince *Hen.* VIIth's time, and is cited for good law in many of our books, and never 'till now queſtioned; for the common courſe and experience have been according to it: then I defy all the world to ſhew me any material difference between that and this, only that this is the ſtronger caſe of the two, in many particulars. But becauſe the caſe has been denied by the Plaintiff's Counſel, it does concern us to take the opinion of our Brethren, it being a matter of ſo great conſequence in the Circuits; for if it be not law, then there are ſome Sheriffs that be not lawful, and ſo have not power to return the Juries, and then we have no power to try and give Judgment upon any offenders; and it alſo concerns us who go into our countries, to take advice of it: for if that caſe is not law, our patents, which are *non obſtante's* to 23 *Hen.* VIII. 24. may not be good, and ſo we have no authorities to go the Circuits; and therefore I will aſk the opinion of all the Judges, as well in that caſe as this *.

On *Monday* the 21ſt of *June*, after having conſulted with all the Judges, his Lordſhip delivered their Opinions in open Court, thus:

"In the Caſe of *Godwin* and *Hales*, wherein the defendant pleads a diſ-
"penſation from the King; it is doubted, whether or no the King had
"ſuch a Prerogative? Truly, upon the argument before us, it appeared
"as clear a Caſe as ever came before this Court: But becauſe men fancy
"I know not what difficulty, when really there is none, we were willing
"to give ſo much countenance to the Queſtion in the Caſe, as to take the
"advice of all the Judges of *England*. They were all aſſembled at *Ser-*
"*jeant's-Inn*, and this caſe was put to them; and the great caſe of the
"Sheriffs was put, whether the diſpenſation in that caſe were legal? be-
"cauſe upon that depended the execution of all the Law of the Nation:
"And I muſt tell you, that there were ten upon the place, that clearly
"delivered their opinions, That the Caſe of the Sheriffs was good Law;
"and that all the Attainders grounded upon Indictments found by Juries
"returned by ſuch Sheriffs, were good, and not erroneous; and conſe-
"quently that men need not have any fears or ſcruples about that matter.
"And in the next place, they did clearly declare, that there was no ima-
"ginable difference between that Caſe and this; unleſs it were, that this
"were the much clearer Caſe of the two, and liable to the fewer excep-
"tions.

"My Brother *Powel* ſaid, he was inclin'd to be of the ſame opinion;
"but he would rather have ſome more time to conſider of it: But he has
"ſince ſent by my Brother *Holloway*, to let us know, that he does concur
"with us. To theſe eleven Judges, there is one Diſſenter, Brother
"*Street*; who yet continues his opinion, That the King cannot diſpenſe
"in this Caſe: But that's the opinion of one ſingle Judge, againſt the
"opinion of eleven. We were ſatisfied in our Judgments before, and
"having the concurrence of eleven out of twelve, we think we may very
"well declare the opinion of the Court to be, that the King may diſpenſe
"in this Caſe: And the Judges go upon theſe grounds;

"1. That the Kings of *England* are ſovereign Princes.

"2. That the laws of *England* are the King's laws.

"3. That therefore 'tis an inſeparable Prerogative in the Kings of
"*England*, to diſpenſe with penal Laws in particular Caſes, and upon par-
"ticular neceſſary Reaſons.

"4. That of thoſe reaſons and thoſe neceſſities, the King himſelf is ſole
"judge: And then, which is conſequent upon all,

"5. That this is not a truſt inveſted in, or granted to the King by the
"People, but the ancient remains of the ſovereign Power and Prerogative
"of the Kings of *England*; which never yet was taken from them, nor can
"be. And therefore ſuch a Diſpenſation appearing upon Record to come
"time enough to ſave him from the forfeiture, Judgment ought to be given
"for the Defendant †,

Quod querens nil capiat per billam."

This Judgment making a great noiſe, the Lord Chief-Juſtice, in juſtification of his opinion, publiſhed the following Vindication.

A Short Account of the Authorities in Law, upon which Judgment was given in Sir Edward Hales's *Caſe: Written by Sir* Edward Herbert, *Chief-Juſtice of the Common-Pleas, in vindication of himſelf.*

HAVING been called to a place of Judicature in difficult times, and after my moſt ſincere reſolutions and uttermoſt endeavours of diſcharging the duty of that place, with a good conſcience, having yet had the

* See *Comberbach's* Reports, *page* 21, *& ſeq.* where this Caſe is largely reported.

† Biſhop *Burnet*, in his Hiſtory of his own Time, *Vol.* 1. *pag.* 669. ſays: Sir *Edward Hales*, a Gentleman of a noble Family in *Kent*, declared himſelf a Papiſt, tho' he had long diſguiſed it; and had once to myſelf ſo ſolemnly denied it, that I was led from thence to ſee, there was no credit to be given to that ſort of men, where their Church or Religion was concerned. He had an Employment, and not taking the Teſt, his coachman was ſet up to inform againſt him, and to claim the 500 *l.* that the Law gave to the Informer: When this was to be brought to trial, the Judges were ſecretly aſked their opinions; and ſuch as were not clear to judge as the Court did direct, were turned out; and upon two or three canvaſſings, the half of them were diſmiſſed, and others of more pliable and obedient underſtandings, were put in their places: Some of theſe were weak and ignorant to a ſcandal. The Suit went on in a feeble proſecution, and in *Trinity*-Term Judgment was given.

And in *page* 671. the Biſhop ſays,

But Judges, who are before-hand determined how to give their opinions, will not be much moved, even by the ſtrongeſt arguments. The ludicrous ones uſed on this occaſion at the bar, were rather a farce, fitter for a mock-trial in a Play, than ſuch as became men of Learning in ſo important a matter: Great expectations were raiſed, to hear with what arguments the Judges would maintain the Judgment that they ſhould give; but they made nothing of it: and without any arguing gave Judgment for the Defendant, as if it had been in a Cauſe of courſe.

hard fortune to fall under the greateſt infamy and reproach that is poſſible for any man to lie under, of perjury and breach of truſt; in giving a Judgment in Sir *Edward Hales*'s Caſe, contrary to Law, and contrary to my knowledge and opinion (for that only can make it criminal); and which, they ſay, tends to the ſubverſion of all our Laws, contrary to the oath that every Judge takes, and to that high truſt repoſed in him, to judge to the beſt of his underſtanding, according to Law: Although I cannot hope to wipe off that univerſal ill impreſſion that the malice of ſome people, who underſtand the nature of this Caſe very well, has made upon moſt men who do not underſtand it; yet in order to clear myſelf to all juſt and diſintereſted perſons who are only my enemies by miſtake, I think myſelf obliged to give ſome ſhort account of that Judgment, and the grounds upon which it was given: and this I will do, not by making an elaborate and legal argument, to make out by reaſons of my own, that the Judgment then given is conſonant to Law; which whether it be or no, is like to be conſidered in Parliament, and to whoſe determination I ſhall as entirely and chearfully ſubmit, as any other perſon in the Nation. But I ſhall ſet down, not all the variety of Caſes that we meet with in our Books, touching the King's power of diſpenſing with Acts of Parliament; for that would ſwell this Paper to an unreaſonable length, and diſcourage many from reading any part of it; but only ſome few of the chieſeſt and plaineſt authorities in Law, upon which the reſolution in the Caſe of Sir *Edward Hales* was grounded. I ſhall not only cite the Books and Pages where thoſe Caſes are to be found, but tranſcribe the very words, that every body may be convinced, that if we were in a miſtake, it was no wilful miſtake, but that we had the authority of former Judgments given by great men that went before us (and for which they were never queſtioned) to lead us into it.

The Caſe (for I muſt ſtate it upon my memory, not having any Copy of the Record by me) was ſhortly this:

An action popular was brought againſt Sir *Edward Hales*, upon the Statute 25 *Car.* II. *c.* 2. for the penalty of 500*l.* wherein the Plaintiff declares, that whereas it was provided by the Statute, *&c.* (ſetting forth the Statute): Notwithſtanding which, the Defendant having a commiſſion to ſerve the King as a Colonel of Foot, and not having received the Sacrament, nor taken the oaths and teſts, *&c.* within the times preſcribed by the Act, and after the times expired wherein he ought to have received the Sacrament, and taken the oaths and teſts as aforeſaid, he did execute the ſaid Office, and continued to act by colour of the ſaid commiſſion; of which he was indicted and convicted at the Aſſizes in *Kent*, *&c.* whereby the action accrues to the Plaintiff for the penalty of 500*l.* The Defendant pleads, that before the time expired, *&c.* he had a diſpenſation under the broad Seal to act, *non obſtante* that Statute.

To which the Plaintiff demurs.

And Judgment was given for the Defendant, that his Plea was good.

And firſt, it will be neceſſary to ſhew what this diſpenſing Power is, which is warranted by our Judgment; and that will beſt appear by the definition of it, which is given in the 11th Report of my Lord *Coke*, *page* 88. in the Caſe of Monopolies; *Diſpenſatio mali prohibiti eſt de jure Domino Regi conceſſa propter impoſſibilitatem prævidendi de omnibus particularibus; & diſpenſatio eſt mali prohibiti provida relaxatio, utilitate ſeu neceſſitate penſatâ.* "For true it is (ſays the Book) that in as much as an Act of "Parliament, which generally prohibits any thing upon a penalty that is "popular, or only given to the King, may be inconvenient to divers par-"ticular perſons, in reſpect of perſon, time, or place; for this purpoſe "the Law gives a power to the King to diſpenſe with particular perſons."

And in the 5 *Rep. p.* 63. in the Caſe of penal Statutes, which was the opinion of all the Judges of *England*, 2 *Jacobi*, it is reſolved, 'That 'the King may diſpenſe with any particular perſon; that he ſhall not incur 'the penalty of the Statute, tho' it be an Act made *pro bono publico*; and 'that this is a truſt and confidence inſeparably annexed to the royal per-'ſon of the King.' I cite theſe two firſt caſes, chiefly to ſhew, that a Diſpenſation in its nature is particular, and given to particular perſons by name; which is all the power that is attributed to the King by our Judgment. And this I mention, becauſe of an unreaſonable miſtake of moſt People that talk of the diſpenſing Power, as though the King's declaration of *Liberty of Conſcience*, whereby all the Laws that concern Religion are at once totally ſuſpended and laid aſleep, were warranted by it: Let that declaration ſtand or fall upon its own bottom, I am ſure the Caſe I am now ſpeaking of has nothing to do with it. And having by theſe Caſes cleared the nature of all diſpenſations, which are always granted to particular perſons (as Sir *Edward Hales*'s was in our Caſe, who was the firſt, and I think the only, perſon who then had ſuch a Diſpenſation), I ſhall now cite ſome of the chief authorities upon which our Judgment was given in that caſe: And the firſt and great caſe that I cite, wherein the King's diſpenſing Power is deſcribed and limited, is in the Year-book of *Hen.* VII. *fol.* 11. & *H.* VII. *fol.* 12. in theſe words: "There is a diverſity (ſays "the Book) between *malum prohibitum* and *malum in ſe*, as a Statute for-"bids any man to coin money, and if he does he ſhall be hanged; this "is *malum prohibitum*; for before the Statute coining money was lawful, "but now it is not ſo, and therefore the King can diſpenſe with it. So "if a man ſhip wool in any place but *Calais*, it is *malum prohibitum*; becauſe "it is prohibited by Act of Parliament, and the King can diſpenſe with "it, and ſo in like caſes: But that which is *malum in ſe*, the King, nor "no other perſon can diſpenſe with; as if the King would give a man "power to kill another, or licenſe one to make a nuiſance in a high-"way, this were void; and yet the King can pardon theſe things when "they are done." Theſe are the very words of that Book; and my Lord *Vaughan* diſcourſing of, and explaining this caſe in the caſe of *Thomas* and *Sorrell*, in his *Rep. p.* 333. firſt ſhews, how a Diſpenſation differs from a Pardon. For a Diſpenſation does *jus dare*, and makes the thing prohibited (to all others) lawful to be done by him that has it. And therefore the King cannot diſpenſe with *mala in ſe*, becauſe they never were, and never can be, made lawful: But even theſe (ſays the Year-book) may be pardoned after they are done.

From theſe Caſes reſults this plain Syllogiſm; Whatever is not prohibited by the Law of God, but was lawful before any Act of Parliament made to forbid it, the King, by his Diſpenſation, granted to a particular perſon, may make lawful again, to that perſon who has ſuch Diſpenſation, though it continues unlawful to every body elſe.

But to execute any office without taking the oaths and the teſts antecedent to any Acts of Parliament made to forbid it, was lawful.

Therefore the Diſpenſation granted to Sir *Edward Hales*, did make it lawful for him to do ſo, though it continued unlawful for any body elſe.

In this argument the premiſes are none of our own; we have them out of our law books; and the authority of thoſe books have never yet been queſtioned. I appeal then to any indifferent perſon, whether it can be criminal in Judges, to draw a neceſſary concluſion from premiſes and book-caſes that have been taken for Law for ſo many ages together.

The next great Caſe is the reſolution of all the Judges of *England*, in 2 *Hen.* VII. in the *Exchequer-Chamber*, upon the King's Power of diſpenſing with the Statute of 23 *Hen.* VI. *cap.* 8. *That no man ſhould be Sheriff for above one year.* The recital in the preamble, and the whole Purview, if compared with our Statute of 25 *Car.* II. *cap.* 2. equals it in every particular, and in ſome goes beyond it: for the miſchiefs recited in this latter Statute are only in theſe words, *For preventing dangers which may happen from Popiſh Recuſants, and quieting the minds of his Majeſty's good Subjects.* The cauſe of making the Statute of 23 *Hen.* VI. is for preventing the importable damage of the King and his People, perjury, manſlaughter and great oppreſſion. The Purview enacts,

1. *That no man ſhall be Sheriff for above a year.*
2. *That all Letters Patent made for years or lives ſhall be void.*
3. *That no* Non obſtante *ſhall make them good* (which ſhews that the Parliament thought the King could otherwiſe have diſpenſed with this Act by a *Non obſtante*).
4. *Whoever acts by colour of ſuch Letters Patent ſhall forfeit* 200*l.*
5. *He ſhall be utterly diſabled to bear the office of Sheriff in any County of* England.
6. *That every Pardon for ſuch offence ſhall be void.*

Notwithſtanding all this, it was adjudged in that Caſe before-cited by all the Judges of *England*, (who were at that time as learned as ever ſate upon the Bench); I ſay, it was adjudged by all the Judges in the Exchequer Chamber, that the King's Diſpenſation with that Statute was good.

Having then this Caſe before us, if we ſhould have judged the Diſpenſation not good in Sir *Edward Hales*'s Caſe, it muſt have been upon one of theſe two grounds: that is, either, 1. In the firſt place, we muſt have found ſome difference between the King's power in that caſe and in this, which I confeſs, after the wiſeſt enquiry, does not appear to me, and I wiſh any man would ſhew me any ſuch difference if he can: or elſe, 2. We muſt have adjudged that ſolemn reſolution given in the Exchequer-Chamber by all the Judges of *England* ſo long ago, and which has been taken for good Law ever ſince, we muſt adjudge no Law: whereas the known rule is, that after any point of Law has been ſolemnly ſettled in the Exchequer-chamber by all the Judges, we never ſuffer it to be diſputed or drawn in queſtion again.

But our enemies ſeeing the force of this argument, have had the confidence to ſay, that that point is not reſolved in that caſe; they might with as much modeſty affirm, *Thou ſhalt not bear falſe Witneſs againſt thy Neighbour*, to be none of the Ten Commandments; we can only reply in this caſe as in that, that if we have eyes to read, and common ſenſe to judge, it is there reſolved. Indeed there is another point about the Sheriff's paſſing his accounts, which the Judges were divided in; but in the point of the diſpenſation they all agreed: or elſe, that other point could never have come in queſtion.

But to put this beyond all controverſy, we have two things to offer.

Firſt, That it has been cited as adjudged in ſeveral books of great authority.

Secondly, It has been the conſtant practice to have ſuch diſpenſations in all Kings reigns ever ſince that reſolution.

As to the firſt, though I might cite many books, yet I will only cite three or four of the cleareſt and greateſt authorities: and the firſt ſhall be *Fitzherbert*, in his abridgment of this very caſe, *Tit. Grant.* 33. who lived near this time, and could not eaſily be miſtaken in the ſenſe of the Year-book: *The patent*, ſays he, *was adjudged good by all the Juſtices; but the Statute ſays expreſly, it ſhall be void*; therefore it is only made good by the King's diſpenſing.

2. Next to him ſhall be *Plowden*, who, as all Lawyers will confeſs, is as little like to be miſtaken in the ſenſe of the Year-books, as any Reporter we have; and he, in his *Commentaries*, *p.* 502. in the caſe between *Greendon* and the Biſhop of *Lincoln*, after citing the caſe both out of Year-book, and out of *Fitzherbert*'s abridgment, has theſe very words where the Statute was, *That the King's grant to any man to be Sheriff of any County for longer time than a year ſhall be void, notwithſtanding any clauſe of* non obſtante *to be put into the patent:* There it is held, *that the King*'s *grant to the Earl of* Northumberland, *to be Sheriff during life muſt have a clauſe of* Non-obſtante, *becauſe of the preciſe words of the Statute before-mentioned; and with ſuch a clauſe of* Non-obſtante, *the patent to the Earl was good.*

3. Next is my Lord *Coke*, who aſſerts the King's prerogative touching this matter in much higher terms than we could preſume to do, in giving Judgment in Sir *Edward Hales*'s caſe: for in his twelfth report, page 18, he has theſe words: 'No Act can bind the King from any Prerogative 'which is ſole and inſeparable to his perſon, but that he may diſpenſe 'with it by a *Non-obſtante*, as a ſovereign power to command any of his 'ſubjects to ſerve him for the publick weal; and this ſolely and inſepa-'rably is annext to his perſon: and his royal power cannot be reſtrained 'by any Act of Parliament, neither in *Theſi* nor in *Hypotheſi*, but that 'the King by his royal Prerogative may diſpenſe with it: For upon the 'Commandment of the King, and Obedience of the ſubject, does his Go-'vernment conſiſt; as is provided by the Statute of 23 *Hen.* VI. *cap.* 8. 'That all Patents made or to be made of any office of Sheriff, *&c.* for 'term of years, for life, in fee ſimple or in tail, are void and of none ef-'fect, any clauſe or parol *de non obſtante*, put or to be put into ſuch pa-'tents to be made notwithſtanding. And further, whoſoever ſhall take 'upon him or them, to accept or occupy ſuch office of Sheriff, by virtue 'of ſuch grants or patents, ſhall ſtand perpetually diſabled to be or bear 'the office of Sheriff within any County of *England*, by the ſame autho-'rity. And notwithſtanding that by this Act, *Firſt*, The Patent is made 'void. *Secondly*, The King is reſtrained to grant *non obſtante*. *Thirdly*, 'The grantee diſabled to take the office: yet the King by his royal ſove-'reign power of commanding, may command by his patent (for ſuch cauſes, 'as he in his wiſdom doth think meet and profitable for himſelf and the

'Commonwealth, of which he himſelf is ſolely Judge) to ſerve him and 'the weal Publick as Sheriff of ſuch a County for Years, or for Life, *&c.* 'And ſo it was reſolved by all the Juſtices of *England* in the *Exchequer-* '*Chamber*, 2 *H.* VII. And after ſome other Caſes to this Point of the 'King's Prerogative, he has this farther *(ſays he)* ſee 4 *Hen.* IV. *cap.* 31. 'in which it is ordained, that no *Welchman* be *Juſtice*, *Chamberlain*, *Trea-* '*ſurer*, *Sheriff*, *Steward*, *Conſtable* of a Caſtle, *Eſcheator*, *Coroner*, or chief '*Foreſter*, nor other Officer whatſoever, nor Keeper of *Records*, &c. in any 'Part of *Wales*, notwithſtanding any Patent made to the contrary, with 'Clauſe of *Non obſtante licet ſit Wallicus natus:* And yet without queſtion 'the King may grant with a *Non obſtante*.' Thus far that Book, and I have tranſcribed the Book at large, that every Body may ſee that the King's Power of diſpenſing with ſuch Acts of Parliament as reſtrain his granting Offices, ſtands upon a peculiar Reaſon, beſides the general one upon which his Power of diſpenſing with other penal Laws is founded. And that if this be a pernicious Opinion, we are not to ſuffer as the firſt Authors of it. But leſt it ſhould be objected, that this is my Lord *Coke*'s ſingle Opinion, or that the twelfth Report is not of ſo great Authority as the reſt of his Reports are; the ſame is reſolved by all the Judges of *England*, (if my Lord *Coke* be a faithful Reporter) in *Calvin*'s Caſe, in the ſeventh Report, p. 14. in theſe Words: *Every Subject is by his natural Allegiance bound to ſerve and obey his Sovereign*, &c. *It is enacted by the Parliament of* 23 H. VI. *That no Man ſhould ſerve the King as Sheriff of any County above one Year, and that notwithſtanding any Clauſe of* Non obſtante *to the contrary; that is to ſay, notwithſtanding that the King ſhould expreſly diſpenſe with the ſaid Act; howbeit it is agreed,* 2 H. VII. *that againſt the expreſs Purview of that Act, the King may by a ſpecial* Non obſtante *diſpenſe with that Act.* For that the Act could not bar the King of the Service of his Subject, *which the Law of Nature did give unto him.* This is reported (unleſs my Lord *Coke* had a mind to deceive the ſucceeding Judges, and draw them in to give pernicious Opinions) as the Senſe of all the Judges of *England* in King *James*'s Time, in the Exchequer-chamber.

And now I would aſk, Theſe Caſes thus ſolemnly reſolved, are they Law? Or are they not? If it ſhall be ſaid, that they are not Law, what Foundations have the Judges to ſtand upon? or what certain Meaſures can they take in giving Judgment, either between the King and his Subjects, or between Party and Party; if ſo many ſolemn Reſolutions by all the Judges in *England*, in the Exchequer-chamber, are not to be relied upon? If they are Law, then I appeal to all Mankind, whether our Caſe does not come up in every Tittle to the Reaſon of thoſe Reſolutions: Whether the Act of 25 *Car.* II. do not bar the King of the Service of ſome of his Subjects; and whether therefore for great Reaſons, and in particular Caſes, he may not diſpenſe with it?

But beſides the Authority of this Caſe, we have the conſtant Practice, that this Statute of Sheriffs has been conſtantly diſpenſed with ever ſince it was made; and if thoſe Diſpenſations were not good, then all Perſons convicted upon Indictments found by Grand Juries, returned by ſuch Sheriffs, are legally attainted; then all Pannels of Juries returned, and other Proceſs executed in Civil Cauſes, by ſuch Sheriffs, was altogether erroneous; and it is ſtrange that Nobody in ſo long a Time ſhould hit that Blot.

Obj. The only Objection that I hear is made to this, by eminent Men of our Profeſſion, (who freely acknowledge the Authority of theſe Caſes, and the Reſolution in them, that no Act of Parliament can debar the King of the Service of his Subjects which the Law of Nature gives him, to be good Law;) is this, that ſay they, It is not the Act of Parliament that debars the King of the Service of his Subjects in this Caſe, but it is the Default of thoſe Subjects who will not qualify themſelves for his Service, by doing thoſe Things that the Statute requires. But for a full and plain Anſwer to this, I ſay,

Firſt, We are not now conſidering theſe Grants of Offices, as they are beneficial to the Subjects, on whom they are conferred, but as the King has an Intereſt in the Service of thoſe Subjects; and it is a known Rule in Law, that among common Perſons, no Man ſhall ſuffer by the Default of another; much leſs ſhall the King be prejudiced by the Default of any of his People.

But, ſecondly, Pray, where is the Difference between an Act of Parliament's barring the King directly of the Service of his Subject, and doing of it by neceſſary and inevitable Conſequence? As, if an Act of Parliament were made, that no Man that is lame or deaf ſhould ſerve the King in any Office, though they were otherwiſe well qualified for it; the King were as effectually debarred of the Service of ſuch Subjects, as tho' they had been expreſſed by Name. I know it will be ſaid, that theſe are natural Defects, which the Subject cannot help; but the others are wilful Impediments, that may be removed if they pleaſe.

But to prove that this is not ſo: I aſk, whether when the Act requires Declarations and Subſcriptions to be made, it ſhould be done *contrary* to a Man's Opinion, or *according* to it? Certainly no Man will ſay, *contrary* to a Man's Opinion; for that would be high Diſſimulation, and more elude the Ends of the Act, than not doing it at all. If then it muſt be done *according* to a Man's Opinion, it is no more in any Man's Power to change his Opinion, than to cure himſelf of Deafneſs or Lameneſs. Every Man believes, not becauſe he will, but becauſe he muſt believe. Error is a Diſeaſe of the Mind, as much as thoſe before-mentioned are of the Body. It is true, a Man may ſeek for Inſtruction, and uſe all Means to be better informed; and ſo may a Man, in the other Caſe, try all proper Remedies to cure his Diſtempers; but proper Remedies do not always effect the Cure, and often when they do, there is much Time taken up in the Operation: And the King, who is in no Default at all, loſes the Service of his Subject in the mean time. And if this Prerogative be, as my Lord *Coke* ſays, *Proprium quarto modo*, and that it belongs to our Kings, as he ſays, *Omni, ſi li & ſemper*; the King can be no more debarred of the Service of his Subject for a Month or a Year, than he can be debarred of it for ever; eſpecially ſince in that Month or Year may happen ſuch Occaſions, which afterwards, during the joint Lives of the King that is to command, and of the Subject to be commanded, may probably never happen again.

Many other Caſes of Acts of Parliament might be cited, as 8 *R.* II. 2. That no Man ſhould go Judge of Aſſize into his own County. And 10 *E.* III. 3. That whoever has a Pardon of Felony, ſhall find Sureties for the good Behaviour, or his Pardon ſhall be void; which Statutes have been conſtantly diſpenſed with ever ſince they were made. But I reſolve not to heap up all the Caſes of Diſpenſations, but to confine myſelf to thoſe that were, as they are before cited, the principal Ground of our giving Judgment in Sir *E. Hales*'s Caſe: Only after I have anſwered ſome Objections, I have two Authorities more to offer, which I take to be of the greateſt weight in this Caſe; and that is, two Conceſſions of the Commons of *England* in Parliament, acknowledging this Power of diſpenſing to be in the King.

But firſt, To anſwer an objection or two that I hear is made:

1. *Obj.* This Act was made *pro bono publico*, and in the caſe before cited, of 11 *H.* VII. the King cannot diſpenſe with a common Nuiſance; and this caſe diſpenſed with, would be as bad as diſpenſing with a common Nuiſance.

Anſw. Tho' this will receive an eaſy anſwer, yet I ſhall avoid giving it in words or reaſons of my own, (as I do all along, becauſe I know they would be ſuſpected and miſconſtrued) but in the Words of my Lord *Vaughan*; whom I cite the oftener, becauſe every body remembers him, and it is very well known, he was never guilty of ſtraining the King's Prerogative too high. In *Thomas* and *Sorrel*'s Caſe, the chief Reaſon why the King can't diſpenſe with a publick Nuiſance, is ſaid by him to be, becauſe every particular Perſon who has received Damage by it, may have his Action, which the King cannot bar. *Nor ſee I any Reaſon*, ſays he, Page 335. *why the King may not diſpenſe with thoſe Nuiſances by which no Man has a Right to a particular Action, as well as he may with any other Offence againſt a penal Law, by which no third Perſon has Cauſe of Action: From whence it follows, that if an Act of Parliament call an Offence a Nuiſance, from whence no particular Damage can ariſe to a particular Perſon to have his Action, the King may diſpenſe with ſuch a nominal Nuiſance.*

Now to apply this to our caſe, for exerciſing an office without taking the teſt, no particular perſon can have an Action, becauſe no particular perſon can have any damage by it, (for an Action, as an informer, is not meant, that being the caſe of all popular Statutes) and therefore the King may diſpenſe with it, before the Action brought; and in Page 341. he explains this very well: *No Offence*, ſays he, *againſt a penal Law could be diſpenſed with, if the Reaſon of not diſpenſing were becauſe the Offence is* contra bonum publicum; *for all Offences againſt penal Laws are ſuch.*—P. 342, *Though ſuch Laws are* pro bono publico, *they are not Laws* pro bono ſingulorum populi, (which are the Laws that the King cannot diſpenſe with, as will appear at large in the Conceſſion of the Commons, 3 *Caroli*, which I will cite by and bye), *but* pro bono populi complicati, *a the King in his Diſcretion ſhall think fit to order them for the good of the whole. In this Notion the Eſtate of every* Pater-familias *may be ſaid to be* pro bono communi *of his Family, which yet is but at his Diſcretion and Management of it; and they have no Intereſt in it, but have Benefit by it.*

Obj. 2. But it is again objected, That in Statutes that are *pro bono publico*, in a leſs Degree, the King may diſpenſe. But this Statute was ſo highly neceſſary for the Publick, that it could not be diſpenſed with.

Anſw. To which my Lord *Vaughan* anſwers in the Caſe before-cited, Page 344.

1. *All penal Laws, when made, and in Force, are equally neceſſary; and in Things neceſſary, there is no Gradation of more or leſs neceſſary.*

2. *If any penal Laws were poſſibly leſs diſpenſible than others, thoſe capitally penal were leſs diſpenſible than thoſe leſs penal. But it is not ſo; for coining Money of right Alloy, in Imitation of the King's Coin, is capitally penal without Licence; but it may be licenſed*, &c. *It is capital to multiply Gold or Silver by the Statute* 5 H. IV. c. 4. *but may be licenſed, as was done to* John Faceby, tempore *H.* VI. The Diſpenſation with a *Non obſtante* to that Statute may be ſeen, *Coke*, *Placita Coronæ*, fol. 74. cap. 20.

Obj. 3. But if the King have a Power to diſpenſe with one, he may diſpenſe with twenty, with an hundred, and ſo the Statute may become of little Force.

Anſw. From the Abuſe of a Thing to draw an Argument againſt the Thing itſelf, is no Conſequence at all; it is, as is reſolved in the Caſes above cited, a high truſt repoſed in the King, and if the King will violate his Truſt, there is never a one of his Prerogatives but may be abuſed, to the Ruin of his People. To inſtance in one or two:

1. Every body will grant, that the King can pardon Murder and Robbery; yet if he ſhould pardon every Murder and every Robbery that is committed, it were better to live with the Cannibals in *America*, than in our native Country; and the human Laws that are made to puniſh thoſe Crimes, would be rendered of as ſmall Force and Effect, as it is objected the Law in our Caſe would be by frequent Diſpenſations.

2. There is no Doubt but the King may create any Man a Peer of *England*, and thereby give him a Vote in Parliament; yet if the King ſhould abuſe his Power ſo far as to create ten thouſand Peers, or confer this Honour upon every body that aſks it, no doubt it were a total Deſtruction of the legiſlative Power of the Nation. And yet in either of theſe Caſes, (or in any other Branch of the King's Prerogative) if the Judges ſhould judge the King had ſuch a Prerogative, it were an unreaſonable Objection to ſay, theſe Prerogatives may be abuſed; *Ergo*, the Judges have given a pernicious Judgment.

When we were to give Judgment in Sir *Edward Hales*'s Caſe, we could neither know, nor hinder, if we did, any ill uſe the King might make of this Power; we were only to ſay upon our Oaths, whether the King had ſuch a Power or no, and for that we had the great Authorities above-cited, and two much greater than thoſe; I mean, two ſeveral clear Conceſſions of all the Commons of *England* in Parliament aſſembled, of this diſpenſing Power to be in the King; and that not in a ſubmiſs, complying Temper, but when they were in a high Debate with the Crown (eſpecially in the latter Caſe) about the Violation of other Laws.

And the firſt of theſe is *Rot. Parl.* 1 *H.* V. *n.* 15. and it is printed in *Roll*'s ſecond Abridgment, Tit. *Prerogative*, 180. the Record is in theſe Words: *The Commons pray, that the Statutes for voiding of Aliens out of the Kingdom, may be kept and executed: To which the King agrees, ſaving his Prerogative, that he may diſpenſe with whom he pleaſes. And upon this the Commons anſwered, that their Intent was no other, nor never ſhould be by the Grace of God.* There were as great Apprehenſions of Dangers and Inconveniencies from Aliens then, as there is from Roman Catholicks now.

And afterwards, in the ſame Parliament, [*Rot. Parl.* 1 *Hen.* V. *n.* 22.] when the Commons prayed that the Statutes of Proviſors, Statutes

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of the ſame nature with this in our caſe; (for they were made againſt the Court of *Rome*'s encroaching Juriſdiction in *England)*; I ſay, when they made the like Prayer, that theſe may be put in execution, being admoniſhed by the King's anſwer in the former caſe, they themſelves inſert in their very Prayer, a ſaving for this Prerogative of the King, and then the King agrees to it.

But the plaineſt Conceſſion of the Commons of *England* aſſembled in Parliament, was that 3 *Caroli*, upon a Debate between the two Houſes, upon the Petition of Right; *ante p.* 204, 205. as it was delivered by Mr. *Glanvil*, in a full Committee of both Houſes of Parliament, 23 *May*, 1628. in the Painted Chamber: and that what he ſays as to this matter, may not paſs for the ſingle opinion of Mr. *Glanvil*, (though he was a learned man) he in the preſence of the Commons, addreſſes himſelf to the Lords in theſe words, *p.* 204. *Having thus reduced to your Lordſhips memory the effects of your own reaſons; I will now, with your Lordſhips favour, come to the points of our reply, wherein I moſt humbly beſeech your Lordſhips to weigh the reaſons which I ſhall preſent, not as the ſenſe of myſelf, the weakeſt Member of our Houſe, but as the genuine and true ſenſe of the whole Houſe of Commons, conceived in a buſineſs debated there with the greateſt Gravity and Solemnity, with the greateſt concurrence of Opinions, and Unanimity, that ever was in any buſineſs maturely agitated in that Houſe.* And then coming to ſpeak of the Point in queſtion, he delivers the ſenſe of the Commons in theſe words; (*ante* page 205.) *There is a truſt inſeparably repoſed in the perſons of the Kings of* England, *but that Truſt is regulated by Law; for example, when Statutes are made to prohibit things not* mala in ſe, *but only* mala quia prohibita, *under certain forfeitures and penalties to accrue to the King, and to the Informers that ſhall ſue for the breach of them: the Commons muſt, and ever will acknowledge a regal and ſovereign Prerogative in the King, touching ſuch Statutes, that it is in his Majeſty's abſolute and undoubted Power, to grant diſpenſations to particular perſons, with the clauſes of* non obſtante, *to do as they might have done before thoſe Statutes, wherein his Majeſty conferring grace and favour upon ſome, doth not do wrong to others. But there is a difference between thoſe Statutes and the Laws and Statutes whereon the petition is grounded: By thoſe Statutes the ſubject has no intereſt in the Penalties, which are all the fruit ſuch Statutes can produce (that is, to ſuch Informer) until by Suit or Information commenced, he become entitled to the particular forfeitures, whereas the laws and Statutes mentioned in our Petition are of another nature. There ſhall your Lordſhips find us to rely upon the good old Statute called* Magna Charta, *which declareth and confirmeth the ancient Common Laws of the Liberties of* England. *There ſhall your Lordſhips alſo find us to inſiſt upon divers other moſt material Statutes, made in the time of King* Edward III. *and King* Edward IV. *and other famous Kings, for explanation and ratification of the lawful Rights and Privileges belonging to the Subjects of this Realm: Laws not inflicting Penalties upon offenders* in malis prohibitis, *but Laws declarative or poſitive, conferring or confirming,* ipſo facto, *an inherent right and intereſt of liberty and freedom in the ſubjects of this Realm, as their birthrights and inheritances deſcendable to their Heirs and Poſterity: Statutes incorporate into the body of the Common Law, over which (with reverence be it ſpoken) there is no truſt in the King's ſovereign power or prerogative royal, to enable him to diſpenſe with them, or to take from his ſubjects that birthright or inheritance which they have in their Liberties, by virtue of the Common Law, and of theſe Statutes.*

I have the rather cited this at large, becauſe it is a clear acknowledgment of the King's diſpenſing Power in as large a manner as we have adjudged it, and does at the ſame time vindicate it from one of the moſt clamorous, the moſt malicious, but withal, the weakeſt objections that ever was made againſt it. By this Judgment, ſay they, you have cancelled all our Laws, and given up our lives, liberties, and eſtates, to be diſpoſed of at the King's pleaſure. It is plain, that this is no conſequence at all; for the Commons here in Parliament, at the ſame time that they expreſly grant that the King has undoubted Power of diſpenſing with laws prohibiting things that are not *mala in ſe*, but only *mala quia prohibita*; laws that are made, as my Lord *Vaughan* expreſſes it, *pro bono populi complicati*; yet they utterly deny, as they had good reaſon to do, that the King can diſpenſe with one tittle of *Magna Charta*, or any of thoſe other laws whereby the lives, the liberties, the intereſts of any of the ſubjects are conferred upon, or confirmed to them; for theſe are Laws *pro bono ſingulorum populi*, which the King can never diſpenſe with. And as to this matter, I do not know whether it will be proper, but any man, ſo ſenſibly touched in his reputation, may be provoked to commit ſome indecencies. I muſt appeal to all men that have obſerved my actions and behaviour ſince I have had the honour to ſit upon the Bench, whether I uſe to be guilty, in Laws of this kind, to ſtrain the conſtruction of them for the King's Intereſt. Firſt, in ſuch Laws wherein the lives of men have been concerned, I confeſs, I have been ſcrupulous even to a fault; for in ſome caſes upon Statutes that had been adjudged felony by wiſer and better Judges than myſelf, and it was highly for the King's ſervice they ſhould be ſo; yet I could never give Judgment of Death, becauſe I could not ſatisfy my own conſcience that thoſe Statutes were now in force. And in other caſes, wherein the rights of the ſubjects have been brought in queſtion, how ſtrictly I have kept to that ſubſtantial difference taken by the Houſe of Commons, that though the King in Laws of Government, in penal Laws of public nature, has a power to diſpenſe in particular caſes, yet he cannot diſpenſe with Laws which veſt any the leaſt right or property in any of his ſubjects, will appear by the opinion I gave in the caſe of *Magdalen College*, (for the truth of which, I appeal to all that know any thing of the tranſactions in that caſe) wherein, when the King's right againſt the College was endeavoured to be aſſerted by a diſpenſation granted by himſelf, I utterly denied that diſpenſation to be of any force at all, becauſe there was a particular right and intereſt veſted in the Members of that College, as there is in the Members of many other Corporations, of chuſing their own head. So far have I been from giving up all Men's lives, liberties, and properties to the King's pleaſure.

I had forgot to take notice of two or three objections more that are uſually made.

Obj. Firſt, here is a diſability, and the King cannot diſpenſe with a diſability. As the Statute againſt buying offices, the King, ſay they, cannot diſpenſe with for that reaſon.

Anſw. There is the ſame diſability in the caſe of Sheriffs; and yet reſolved that the King can diſpenſe in that caſe; and the reaſon in the Statute of buying offices, or ſitting in Parliament without taking the oaths, is becauſe there is a diſability actually incurred; and when any perſon is actually diſabled, he cannot have his diſability taken off but by Act of Parliament. But in the Statute diſpenſed with, in the caſe of Sir *E. Hales*, there is no diſability actually laid upon any man; but certain things are required to be done, and as a penalty for diſobeying the ſaid Act, and omitting the doing thoſe things required by it; the diſability with the other forfeitures are to be incurr'd after conviction. Now the nature of diſpenſations being, as was ſhewed before, to make the thing lawful to him who has it, which is unlawful to every body elſe; it does plainly prevent the committing any offence by that perſon, and conſequently the incurring any penalty or diſability at all. But in the caſe of buying offices the perſon is diſabled before the diſpenſation comes; for he is diſabled, *ipſo facto*, by contracting or dealing for the office. So the true difference between the caſe of Sheriffs, and the caſe of buying offices, is this, *That the King in the one caſe can prevent the incurring a diſability, but cannot purge it in the other after it is incurred.* To illuſtrate this by a caſe of the like nature, *The King may prevent an attainder, but he cannot purge an attainder.* If a man has committed Treaſon or Felony, *the King by granting his pardon may infallibly prevent the Offender's ever being attainted; but after he is once actually attainted, the King can by no means take off that attainder, or purge the corruption of blood, but by Act of Parliament; provided the Judgment by which he is attainted be not erroneous.*

Obj. But it is objected, that theſe Laws were made for the intereſt of Religion, and all offences againſt Religion are *mala in ſe*, and therefore not to be diſpenſed with.

Anſw. I anſwer, that true it is, all offences that are directly againſt Religion, as it is conſtituted ſuch by the Divine Law, are *mala in ſe*, and not to be diſpenſed with, and in this caſe the Parliament is bound, as well as the King; for an Act of Parliament made againſt Religion in that ſenſe is utterly void, as is inſtanced in *Doctor* and *Student*, of an Act, *That ſhould forbid the giving of Alms upon any occaſion*, &c. But human and politick Conſtitutions, though made for the intereſt of Religion, as they had a beginning, ſo they are alterable by the ſame power that made them; and therefore the breaches of them are in their nature *mala prohibita*, as was reſolved in the great Caſe of diſpenſations, in 11 *H.* VII. above cited, and inſtances given; *as the King may diſpenſe with a Prieſt holding of two Benefices*, though the Laws againſt pluralities were made for the intereſt of Religion, and the better edification of the people. *So the King may diſpenſe with a Baſtard's entering into Prieſt's orders*, &c. Theſe inſtances are taken for Law in that Year-book.

But to all this I know it is ſaid, that theſe high truſts and prerogatives might be always ſafe, and ſometimes uſeful in a Proteſtant Prince's hands, who would faithfully diſcharge the duty of one that ought to be *cuſtos utriuſque tabulæ*; but when theſe prerogatives are aſſerted to a Prince who is of a contrary religion to that eſtabliſhed by Law, there would be always danger of their being abuſed to the prejudice or deſtruction of the eſtabliſhed Religion.

To which I anſwer, that it cannot be forgotten, that the promoters of the Bill of Excluſion uſed the ſame argument: If you leave him King, ſay they, he will have all the prerogatives of a King, and thoſe prerogatives may be made inſtrumental to the ruin of your religion; which could not be denied by the gentlemen on the other ſide, who oppoſed that Bill. Their only reply was, *fiat juſtitia, ruat cœlum*, it is his right, and we muſt not do evil that good may come; we muſt not do wrong, no not to promote the intereſt of religion itſelf. The ſame argument that weighed with them to aſſert the right of ſucceſſion to the Crown of *England*, and conſequently to all the prerogatives together, was the rule we had to guide us in giving Judgment in this caſe concerning a particular branch of them. We muſt not break our oath, nor give Judgment contrary to what ſeemed to us to be Law, let the conſequence be what it will.

But it has been farther objected to me, by ſome of my friends, that, though I could not in conſcience have given Judgment againſt the King, being of the opinion that I was, yet I ſhould rather have parted with my place, than to have given a Judgment, even according to Law, which might be ſo prejudicial to that excellent religion that I profeſs; and of which when I ceaſe to be, let me ceaſe to be at all.

I anſwer, That neither in prudence nor in conſcience I could have taken that courſe.

Firſt. Not in prudence; for I confeſs that ſaying, *Omnia dat, qui Juſta negat*, had great weight with me in the caſe: and that I was of opinion, ſince an incroachment of Juriſdiction was feared, there could not be a greater, nor more dangerous provocation to it, than for Proteſtant Judges to refuſe to give Judgment for a Prince of a different perſuaſion, in that which we could not deny to be his right.

And next, in conſcience, I could not decline giving Judgment in this caſe; for by our oaths we are as much obliged to give Judgment one way or other, as we are to give what we think a righteous Judgment in all caſes that come before us.

It has been objected, that all this was a contrivance, an informer ſet up, and all but a feigned action.

As to this matter, I can truly ſay, that I don't remember that I ever heard of this Action, 'till after it was actually brought; but in this there ſeems to be no hurt or inconvenience at all. The Law is as well tried and ſettled in a feign'd Action, as in a true. There are feigned Actions directed every day out of Chancery to this very purpoſe, that great and difficult points of Law may be ſettled by them; and why the King might not direct ſuch an Action to be brought to ſatisfy himſelf whether he had ſuch a power, and if he had, that the people might be ſatisfied, and acquieſce in it; I confeſs I ſee no difference at all. If there were indirect means uſed for procuring opinions, or the like, I have nothing to ſay to it. I ſtand upon my innocence, and challenge all the world to lay any thing of that kind to my charge. My part was only to give my own opinion, in which, if either by miſunderſtanding the books that I have cited, or by drawing weak concluſions from them, I have erred in the Judgment that I gave; How can I for this be charged as a criminal? The law neither ſuppoſes, nor requires an infallibility in any of his Majeſty's Courts of Juſtice; it were very uneaſy ſitting in them, if it did. We can but judge according to the books that lie before us, and according to the meaſure of our underſtanding of theſe books:

we have not always ſo much light to guide us, as we thought we had in this caſe. We often meet with caſes new and rare, and very ill ſettled by former Judgments, where we are forced to dig truth, as it were, out of the mine, to compare and diſtinguiſh, to ſkreen and ſift, and gather the ſenſe of the Law out of the confuſion of diſagreeing, and very often contradictory opinions, as well as we can: and if after all our labour and our pains, we happen to be miſtaken, it was never yet imputed as a crime. The Judgment is reverſed in a writ of error, not only without any accuſation, but without the leaſt reflection upon him that gave it. Nor can a miſtake in Judgment be more criminal in a matter of a greater concernment, than it is in matters of the leaſt conſequence: It would be very miſchievous and very dangerous, if it ſhould. For if in queſtions of Prerogative, any miſtake ſhall be made capital on the one hand, when Judgment is given for the King; why ſucceeding Princes may not be as angry at any miſtakes on the other hand, I cannot imagine. And when once affairs are come to that paſs, there will be great encouragement for any man, that can make the leaſt ſhift to live without it, to undertake thoſe very neceſſary, but very difficult, and very troubleſome employments; great freedom for men to give Judgment according to their opinion and their conſcience; and great reliance upon the reſolutions of thoſe, who know they ſhall be ſure to pay with their lives and fortunes for any miſtake of theirs, either to the King or the People, as either of them ſhall happen to get the upper hand. For my own part, I thank God, I can ſay theſe two things: Firſt, That for theſe ten years together, wherein (with very little intermiſſion) I have ſate as a Judge in ſeveral Courts, though I may be juſtly accuſed of many weakneſſes and miſtakes, yet I have never given Judgment in any one Caſe againſt the clear dictates of my reaſon and my conſcience. And the ſecond thing is, that I never gave Judgment in any controverted Point, wherein I had ſo many, and ſo great authorities to warrant it, as I have to warrant that Judgment which was given in Sir *Edward Hales*'s Caſe. And this I ſay, not to ſet up that opinion again in a Pamphlet, which was ſo ill reliſhed in a Court of Juſtice, nor to oppoſe my Senſe to the Judgment of the Nation; for I think it is very fit that this dark Learning (as my Lord *Vaughan* calls it) of *Diſpenſations*, ſhould receive ſome light from a determination in Parliament; that Judges for the time to come, may judge by more certain Rules, which Acts of Parliament the King may, and which he may not diſpenſe with. But I have cited thoſe authorities at this time in my own defence, and for theſe particular purpoſes; in the firſt place, to ſhew,

1. That we are not the firſt inventors of this diſpenſing Power, but that it has been allowed without controverſy, to the Kings of *England* in all ages, that they might diſpenſe with many Acts of Parliament.

2. That if our Judgment was erroneous, and that the King could not diſpenſe with that Act of Parliament; yet that error was but an error in that ſingle Caſe, and had no ſuch large and miſchievous conſequences as is pretended. For that, becauſe we judged that the King could diſpenſe with that Statute, for others to conclude from thence, that therefore he had a Power to diſpenſe with all other Statutes; eſpecially ſuch as confer, or veſt in any of the ſubjects any manner of intereſt whatſoever, in their lives, liberties, or eſtates; or that, becauſe the King may diſpenſe with a penal Law, wherein a diſability is annexed to the breach of it as a penalty, and that penalty not to be incurred before a legal conviction, and where the King's diſpenſation makes the thing diſpenſed with lawful, and conſequently prevents any conviction or penalty at all: For others to conclude from thence, that therefore the King may diſpenſe with ſuch Statutes, where a precedent diſability is actually laid upon any man, as there is upon the Members of both Houſes, till they have taken the oaths and teſts preſcribed; and therefore without queſtion, is not in the King's power to diſpenſe: I ſay, theſe are conſequences which may flow from the heated imaginations of angry men, but have no warrant or foundation at all from the Judgment given by us.

I have one thing more to ſay in my juſtification, which is, that if I have been guilty of ſo heinous offences as I am accuſed of, where is the temptation or the reward? If it was to keep in my Judge's place, which otherwiſe I might have loſt, I can only anſwer, That if that were the caſe, I then became the worſt man in the world, only to keep that, which it is pretty well known, I was with much difficulty, with the perſuaſion of my friends, prevailed with to accept: and for any other reward, whoever is acquainted with the circumſtances of my fortune, will, I am confident, notwithſtanding the falſe and idle reports, of I know not what great reverſions lately fallen to me, as eaſily acquit me of having been corrupted by the King, to give a pernicious Judgment in this Caſe, as of having enriched myſelf by taking bribes in caſes between party and party.

All that I have to add more, is, that howſoever this that I have ſaid in my defence may happen to be underſtood at preſent, yet I could not deny myſelf the ſatisfaction of having put in a Plea of Innocence at leaſt; that whatſoever ſhall happen to me now, may perhaps meet with a more equal Judgment in after-times; ſince it ought to be much leſs uneaſy to me to loſe my life, if any body be very fond of taking it, than to let the aſperſions that are every day caſt upon me, to paſs in ſilence; or ſuffer myſelf to be tranſmitted to poſterity under the character of a betrayer of my Religion, or a ſubverter of the laws and liberties of my country.

Sir Robert Atkins, *at the End of his* Enquiry into the Power of diſpenſing with Penal Statutes, *makes the following ſhort Argument upon the Pleadings of the afore-mentioned Caſe of Sir* Edward Hales.

THE firſt Point argued by the Plaintiff's Counſel was, That it appears by the Declaration, and it is now confeſſed by the Defendant's joining demurrer, that the Defendant had been indicted for this offence, in exerciſing the Office of a Colonel without having taken the Teſts.

And upon the Indictment he either did plead this Diſpenſation, or might have pleaded it. And he is now convict, according to the direction of the Act of 25 *Car.* II. ſo that he now comes too late to plead it to this Action: For he cannot falſify the conviction, nor aver any thing againſt the Record of it, and bring the fact to be tried over again in this Action; but is concluded and eſtopped in Law to ſay any thing to the contrary of that Record, by which he is found guilty of the offence againſt this Act of Parliament.

The Defendant either did plead this Diſpenſation or Pardon to the Indictment, in diſcharge of the Indictment, and it hath been over-ruled by the Judges at the Aſſizes (as by Law it ought to be, being no good Plea); Or he might have pleaded it, if he had been adviſed it had been a good Plea. And not having done it, he had elaps'd his time, and now comes too late to plead it, being convict of the crime.

To this it was objected (as I hear) that the Plaintiff, if he will take the advantage of an Eſtoppel, ought to have it ſet forth by way of replication to the Defendant's Plea, and to have relied upon it.

For the Rule is, That he that pleads an Eſtoppel, muſt rely upon it as an Eſtoppel.

It is true, if a man will plead an Eſtoppel, he muſt rely upon it.

But in this Caſe the Plaintiff does not plead the Eſtoppel, but the Eſtoppel appears by the Declaration, and the Defendant's own Plea together: ſo that there was no need for the Plaintiff to ſet that forth by way of replication, which doth ſufficiently appear by the Defendant's own Plea, *viz.* That he did not take the Teſts within the time limited by the Act, and the conviction is confeſſed by his Plea, and joining in demurrer.

If a man recover a debt upon a bond, and before execution dies, if his Executor ſue a *Scire facias* upon that Judgment, the Defendant cannot plead any Plea that he might have pleaded before, as *non eſt factum*, or by *Dureſs*, or the like: for he is concluded by the Judgment.

In *Jaſon* and *Kete*'s Caſe, in *Syderfin's Rep. fol.* 43. by *Bridgeman*, Chief-Juſtice, a man ſhall never help himſelf by *Audita Querela* (tho' that is an equitable ſuit at Law) for any matter that he might have pleaded before.

There is no Eſtoppel in this Caſe, for the Conviction is upon an Indictment, which is the King's ſuit: and this is the ſuit of another, *viz.* the now Plaintiffs, and ſo they are two diſtinct ſuits.

The conviction upon the Indictment is an Eſtoppel againſt the Defendant himſelf, of which any man may take the advantage, and he himſelf ſhall never be admitted to aver againſt it: As in *Maynye*'s Caſe, in *Leonard*'s firſt part, *fol.* 3.

An attainder for treaſon is an univerſal Eſtoppel; of which any ſtranger may take the advantage, not only againſt the Party attainted, but againſt his wife too, if ſhe ſue for dower. And it does not run in privity: By *Manw. Ch.* Bar.

Where a man is attainted by his own confeſſion of a felony, a ſtranger is not eſtopped to ſay he was not guilty *: But if *A.* commit felony, and after enfeoff *J. S.* of his land; and after *A.* is attaint of this felony by verdict, there *J. S.* is eſtopped, and may not aver that *A.* was not guilty, becauſe he claims under him: much leſs ſhall *A.* himſelf aver againſt the verdict, that he is not guilty †.

If a man be acquitted of felony, all the World, ſays *Grevil*, in *Keilwey Rep.* 81. *b.* is eſtopped to ſay the contrary ‡. So *vice verſa*, if he be convict, by the ſame reaſon §.

As to that which is objected, that the conviction is upon an Indictment (which is the King's ſuit); but this is another ſuit, and therefore the verdict ſhall not conclude the Defendant in this ſuit:

This is not another ſuit, but in effect an execution upon the conviction, and grounded upon that Record, and therefore not merely a new ſuit, but a dependant action; as a Writ of error, or an *Audita Querela*, or a *Scire Facias* upon a Record, are dependant ſuits, or an action of debt upon a Judgment.

The Act of 25 *Car.* II. *c.* 2. hath made it criminal in any perſon, after his neglect of taking the two Oaths, or of the Sacrament, by the times limited, to execute any ſuch office or place of truſt; and for ſuch offence hath made him indictable at the Aſſizes: and upon a conviction the offender incurs (among other penalties) the forfeiture of 500*l.* and gives it to any one that will ſue for it in an action of debt.

So the Statute hath directed the method of trying the offence, and of convicting the offender, by Indictment at the Aſſizes.

And if he that ſues for the forfeiture ſhall be driven to prove the offence over again, then the conviction at the Aſſizes ſerves for nothing, but was all in vain. And ſuch conſtruction defeats the intention of the Law-makers; for they intended this for the only trial, and not to have ſeveral trials: For ſuppoſe it ſhould be tried again in this action, and a verdict paſs for the Defendant, here ſhall be trial againſt trial, and verdict againſt verdict: and ſuch conſtruction ought to be made of Acts of Parliament, as may not elude, but agree with the intent of the Law-makers; and ſo as that no words, clauſe or ſentence, ſhall be altogether idle and inſignificant.

And this conviction upon the Indictment is the very ground of the Action of debt brought by the now Plaintiff; for the words of the Act are, *And being thereupon lawfully convicted upon any indictment, every ſuch perſon ſhall from thenceforth forfeit* 500 *l.*

So that till there be ſuch a conviction, there is no forfeiture incurred of 500*l.* nor no action can be brought for the 500*l.* The offence muſt be proved and determined before any action can be brought; and therefore the proof of the offence, whereof the Defendant is convict, muſt not be made in this action over again: if it muſt, what ſerves the conviction for?

Suppoſe the Plaintiff here had brought this action, after the neglect of the Defendant of taking the Oaths, and of receiving the Sacrament, and his acting in his office after ſuch neglects, and before any conviction upon Indictment, and had only averr'd, that the Defendant had ſo neglected, and yet acted, would this action have been well brought? Or, ſuppoſe there had been a conviction, but the Plaintiff had not ſet it forth in his declaration, but had only averr'd the offence committed, would this have been a good declaration? Surely it would not. This proves that the Record of the conviction is the very ground and foundation of this action, and the action would not lie without ſuch conviction; ſo that it is not a mere new action, but a dependant action.

And the uſual difference is where the action is a dependant action, depending upon a Record, and grounded upon it; and where it is a collateral ſuit, not depending upon that Record.

* 7 *E.* 4. 1. Br. Eſtoppel 163. † *Knoil* and *Haymor*'s caſe, third Kebl. 528. by Chief-Juſtice *Hale*. ‡ *Rol. Abr.* firſt Part, 362. § Dr. and Stud. 68. a. *ad fin. & b.*

An Action againſt the Sheriff for an eſcape of one taken in execution; this is a dependant Action, and is grounded upon the Record of the Judgment given againſt the party that eſcaped. The Sheriff cannot aver any thing againſt that Record, and examine it over again; nor can he take any advantage of error, or erroneous proceeding, in obtaining that Judgment. *Saunders*'s *Rep.* 2 *part.* 101 *.

So in an Action of debt grounded upon a Judgment, or in an *Audita querela*, to be relieved upon a Judgment.

And ſo in our Caſe, this Action of debt for the 500*l.* is grounded upon the conviction; which muſt ſtand for truth as long as it remains in force, not avoided by error or attaint.

A Writ of Error to reverſe a Judgment, is a dependant Action: In error, the Plaintiff may not aver any thing againſt the Record. *Mullens verſus Weldy. Syderfin*'s 1*ſt part*, 94. Error was ſued in the *King's-Bench* to reverſe a Judgment given in the *Palace-Court*: And the Plaintiff in error aſſigned for error, that the Duke of *Ormond* (who is principal Judge of that Court by Patent) was not there. It was agreed by the Court, that it might not be aſſigned for error; for it was contrary to the Record.

But *per Cur.* in an Action of treſpaſs, or falſe impriſonment, which, (ſays that Report) are collateral Actions, he may falſify and aſſign that, if he be taken upon ſuch Judgment.

So if a man be indicted and convict of an aſſault and battery, and afterwards the perſon ſo aſſaulted brings his Action for the battery, this hath no dependance upon the Indictment or Conviction; for it may be ſued, tho' there were no Indictment, but is a diſtinct and collateral ſuit. The Indictment and Verdict is no eſtoppel, nor can ſo much as be given in evidence: as is held by the whole Court, in the Caſe of *Samſon* verſus *Yardley*, and *Tothill*, 19 *Car.* II. B. R. *Keble*'s 2 *part*, 384. The like in an appeal of murder, *Keble*'s 2 *part*, 223.

Another penalty upon the offender againſt this Statute of 25 *Car.* II. is, that he ſhall be diſabled to ſue in any Action. Now ſuppoſe a perſon convict at the Aſſizes, ſues an Action, may not the Defendant in that Action take the advantage of that diſability, and plead the conviction? As in caſe of an Outlawry pleaded in diſability; there need not be ſet forth all the proceedings in that ſuit wherein the Plaintiff was outlawed, but he may plead the Record of the Outlawry and rely upon it; and it ſhall not be examined whether there was any juſt cauſe to ſue him to the Outlawry, or not.

The Indictment, the Defendant's Plea to it, and the Verdict upon it, have determined the matter of fact, that the Defendant is guilty of the offence againſt this Act of Parliament.

The Act itſelf hath pronounced the Judgment, which conſiſts of many particulars; one whereof is, that the Defendant ſhall forfeit 500*l.* to him that will ſue for it; and the action of debt for the 500*l.* brought by the Plaintiff, grounded upon all theſe, is in the nature of an execution.

And all theſe put together, are not ſeveral and diſtinct ſuits, but in effect all but one ſuit and proceſs, one depending upon the other.

The ſecond Point is, Whether the Diſpenſation pleaded by the Defendant be a good bar to the Action of debt? And this is properly called, The great Point of the Caſe:

For which the Reader is referred to Sir Robert Atkins's *Large Pamphlet, of* The Enquiry into the Power of diſpenſing with Penal Statutes.

Then Sir Robert *adds a Poſtſcript: Being ſome Animadverſions upon a Book writ by Sir* Edward Herbert, *Lord-Chief-Juſtice of the* Common-Pleas, *entituled*, A ſhort Account of the Authorities in Law, upon which Judgment was given in Sir *Edward Hales*'s Caſe.

[*After a ſhort Apology for making ſome Animadverſions upon the ſaid Book, he proceeds thus:*

THE Chief-Juſtice *Herbert*, *ante pag.* 617. gives us the definition of a diſpenſation out of Sir *Edward Coke*'s 11*th Rep. fol.* 88. viz. *Diſpenſatio mali prohibiti eſt de jure Domino Regi conceſſa, propter impoſſibilitatem prævidendi de omnibus particularibus.*

And again, *Diſpenſatio eſt mali prohibiti provida relaxatio utilitate ceu neceſſitate compenſata.*

Upon the word *Conceſſa*, I would gladly be ſatisfied, when, or by whom that Power was ever granted to the King; where ſhall we find that Grant?

It is clear, that whoever hath the entire power of making a Law, may juſtly diſpenſe with that Law. And therefore Almighty God, being the ſole and ſupreme Law-giver, might diſpenſe even with the moral Law; as he did with the ſixth Commandment, when he commanded *Abraham* to ſacrifice his ſon *Iſaac*; and with the eighth Commandment, when he commanded the *Iſraelites* to borrow the jewels of the *Egyptians*, and to go away without reſtoring of them.

But it ſtands not with reaſon, that he who hath but a ſhare with others in making of a Law, (as the King hath no more) ſhould have the power, by himſelf alone to diſpenſe with the Law, unleſs that power were expreſly intruſted with him by the reſt of the Law-makers; as ſometimes hath been done.

Sir *Edward Coke*, in his 7*th Rep.* in the caſe of *Penal Statutes*, *fol.* 36. towards the lower end, does affirm, that this diſpenſing Power is committed to the King, by all his ſubjects. So that it is not claimed *Jure Divino*, but by grant from the People. But where to find any ſuch Grant we know not.

I have, as I conceive, made it appear in my larger argument, *p.* 14. that the firſt invention of Diſpenſation with Laws, began with the Pope, about the time of *Innocent* III. and by our King *Henry* III. in imitation, and by encouragement from the Pope; ſo that it was not by the Grant of the People, but ever exclaimed againſt by all good men, and generally by all the People; and ever fenced againſt by a multitude of Acts of Parliament.

It is true, the diſpenſing with laws hath ever ſince been practiſed; and they began at firſt here in *England* to be uſed only in Caſes where the King alone was concerned, in Statutes made for his own profit, wherein he might have done what he pleaſed. But it is but of later times that they have been ſtretched to Caſes that concern the whole Realm. See my Argument, *fol.* 13. Hence it evidently appears, it cannot be a legal prerogative in the King; for that muſt ever be by preſcription, and reſtrained to thoſe caſes that have been uſed time immemorial, and muſt not be extended to new caſes.

Now there hath been no ſuch uſage as will warrant the diſpenſing with ſuch an Act of Parliament as is now before us, that of 25 *Car.* II. *c.* 2.

The Chief-Juſtice *Herbert*, from the definition before recited, and thoſe two authorities of Sir *Edward Coke*, in his Caſe of Monopolies, and that other of penal Statutes, frames an argument to prove, that the Diſpenſation granted to Sir *Edward Hales*, was good in Law.

Becauſe a Diſpenſation is properly and only in caſe of a *Malum Prohibitum*; he thence infers, that the King can diſpenſe in all caſes of *mala prohibita*.

Which is a wrong inference, and that which Logicians call, *Fallacia à dicto ſecundum quid ad dictum ſimpliciter*. Becauſe he can diſpenſe with ſome, that therefore he can diſpenſe with all, is no good conſequence.

It appears by the late Chief-Juſtice *Vaughan*'s Reports, in the Caſe of *Thomas* and *Sorrel*, (ſo often cited by the Chief-Juſtice *Herbert*) *Vaughan*'s *Rep. fol.* 333. the fourth Paragraph, that his opinion is, That the King cannot diſpenſe with every *Malum Prohibitum*; and he gives many inſtances of ſuch *Mala Prohibita* that are not diſpenſable, *fol.* 342, and 334. *parag.* 4.

Therefore the Lord-Chief-Juſtice *Herbert* ſhould, as I conceive, regugularly firſt have given us the diſtinction of *Mala Prohibita*, into ſuch as are diſpenſable, and ſuch as are not diſpenſable; and then have ſhewn, that the Diſpenſation granted to Sir *Edward Hales*, fell under the firſt part: But that learned Reporter, the Chief-Juſtice *Vaughan* (ſo often cited by our now Lord-Chief-Juſtice) in the aforeſaid caſe of *Thomas* and *Sorrel*, *fol.* 332. *the laſt Paragraph ſave one*, quarrels with the very diſtinction of *Malum Prohibitum*, and *Malum in ſe*, and ſays it is confounding.

From whence I would obſerve, and from the whole Report in *Thomas* and *Sorrel*'s caſe, that the notion of diſpenſation is as yet but crude and undigeſted, and not fully ſhaped and formed by the Judges.

The Pope was the Inventor of it, our Kings have borrowed it from them; and the Judges from time to time have nurſed and dreſſed it up, and given it countenance. And it is ſtill upon the growth and encroaching, till it hath almoſt ſubverted all Law, and made the regal power abſolute, if not diſſolute.

I muſt agree, that our Books of late have run much upon a diſtinction, *viz.* Where the breach of a penal Statute is to the particular damage of any perſon, for which ſuch perſon may have his Action againſt the breaker of that law; there, tho' it be but *Malum Prohibitum*, yet the King cannot diſpenſe with that penal Law, according to the rule in *Bracton*:

Rex non poteſt gratiam facere cum injuriâ & damno alterius.

As for inſtance, there are ſeveral Statutes that prohibit one man from maintaining another's ſuit, though in a juſt cauſe. See *Poulton de pace Regis & Regni*, in his *chap. of Maintenance*, *fol.* 55.

Now it is held that the King cannot diſpenſe with thoſe Laws, becauſe it would be to the prejudice and damage of that particular perſon, againſt whom the ſuit is ſo maintained by another; for there can be no maintenance, but it is to the wrong of a particular perſon.

So of carrying a diſtreſs out of the Hundred.

But there are many other penal laws, where, by the tranſgreſſing of them, no ſubject can have any particular damage, and therefore no particular Action for the breach of them.

As upon the Statute that prohibits the tranſportation of wool, under a penalty. By the breach of this Law, that is, by the exportation of wool, no one particular man hath any damage, more than every other man hath, but it is only againſt the publick good.

And the breach of ſuch a penal law is puniſhable only at the King's ſuit, by indictment or preſentment.

And the like where ſuch a penal Statute gives an Action popular, to him that will ſue for the penalty, who hath no right to it more than another, till his ſuit be commenced.

In theſe caſes, it is commonly held, that the King may diſpenſe with ſuch penal Statutes, as to ſome particular perſons, and for ſome limited time, (whereof they make the King the ſole Judge;) becauſe, as the reaſon is given in the Chief-Juſtice *Vaughan*'s *Reports*, *fol.* 344. *parag.* 2. ſuch offence wrongs none but the King. This is now the common received opinion and diſtinction. And the breach of ſuch kind of Statutes, are ſaid to be only the King's damage in his publick capacity, as ſupreme Governor, and wronging none but himſelf. Lord *Vaugh. Rep.* 342. *parag.* 3.

But if we will narrowly ſearch into this diſtinction, and weigh the reaſons ſo given, we ſhall find it is without any juſt ground.

The damage done to the particular perſon in the Caſes paſt, in the firſt part of this diſtinction, are merely his own proper and peculiar damage; and he is intitled to his particular action for it, in his own proper perſonal right; and therefore if he diſcharge and diſpenſe with them, it is no wrong to any other man: he may do what he will with his own.

But the Caſes in the ſecond part of this diſtinction, are where the King hath a right to the ſuit, and the offence and damage are ſaid to be to him only.

But are they ſo (as the former) in his own perſonal right, as his Lands and other Revenues are? Or are they to him but as a truſtee for the Publick, for which reaſon he is called *Creditor Pœnæ?* And may he therefore, upon the like reaſon diſpenſe with them, or diſpoſe of them, as a ſubject may do with his own particular Intereſts?

Again, ſhall a publick damage and injury to the whole Nation, be more diſpenſable by the King, than the loſs of one private man?

——fuit hæc ſapientia quondam
Publica privatis ſecernere——

And therefore, in my apprehenſion, the King cannot, in ſuch caſes of Diſpenſations, be truly ſaid to wrong none but himſelf; and it is not agreeable to the definition before given, *Utilitate Compenſata*, for the King wrongs the whole Realm by it. Whereas if he grants a diſpenſation with a Penal Law of the firſt ſort of this diſtinction, he only wrongs ſome particular perſons.

The caſes and authorities for diſpenſations in our Books that were granted in ancient times, will generally be found to be only where the Penal Statutes were made for the King's own proper intereſt and benefit at his diſpen-

* *Jaques* verſus *Cæſar*. And Dr. *Drury*'s Caſe, 8 *R.* 142. And *Mackally*'s Caſe, 9 *R.* 68.

ſing with the Statute of *Mortmain*. For in ſuch caſes it was to the King's own loſs only, in caſes where the King might by Law have given away his lands or ſervices. So the King may in his Patent of grant of lands, diſpenſe with the Statutes, 1 *Hen.* IV. *cap.* 6. that require there ſhall be mention of the true values of them. And by a *non obſtante* to thoſe Statutes (which is now generally uſed) the King doth in effect declare, that it is his pleaſure to grant thoſe lands, whatever the value of them be, more or leſs: and the Statute does by expreſs words ſave a liberty to the King in that caſe.

The King is not a truſtee for others in ſuch caſes, nor can theſe diſpenſations be ſaid to be directly to the damage of the Public. And ſuch Penal Laws as merely concern the King's own revenue or profit, may juſtly be thought to be intended, to be made only to put the King's matters into an ordinary method and courſe, and ſo ſave the King a labour, as the Lord *Hobart* ſays; and ſo prevent the King's being ſurpriz'd or miſ-inform'd, when Patents are gain'd from him, and not deſign'd to tie the King's hands, or to reſtrain his power; as out of all doubt was done and intended by the Law-makers in our Act of 25 *Car.* II.

But in all the late caſes and authorities which we meet with in our Books concerning *non obſtante's*, and diſpenſations, as in the time of King *Hen.* VII. and ſo downward to this day, we ſhall find them practiſing upon ſuch Penal Statutes as merely concern the publick good and benefit, and the Laws of ſuch a nature, by the breach of which the whole Nation ſuffers: while ſome particular perſons, it may be, by giving a large fine, or a yearly ſum, obtain the favour to be diſpens'd with and exempt from a Penal Law, while all others continue to be bound by it.

As for example; where a Statute forbids the exportation of Wool, or of Cloth undyed or undreſs'd, under a penalty; ſuch a Law is greatly for the publick good, and it takes care that our own people ſhall have employment and maintenance. Yet this is ſuch a Law, as according to the receiv'd diſtinction, the King may diſpenſe with, there being no particular damage to one man more than to another, by breach of ſuch a Law, although it be a mighty damage to the whole Nation: for by ſuch a diſpenſation, the perſon ſo diſpens'd with to export ſuch white Cloth undyed, will have the ſole trade, which before the making of that Penal Statute was equal and common to all. I wiſh the Houſe of Commons would enquire what vaſt riches have been heretofore gotten by ſuch as have obtained the diſpenſations with this Penal Statute, beſides the ſums they paid to the Crown for them. Theſe are mere Monopolies.

In ſuch a caſe it may rightly be applied, *That Sin taketh occaſion by the Law.* It had been better for the Nation, that ſuch Laws were never made, being no better obſerv'd: For here again the diſpenſation is neither *Utilitate*, nor *Neceſſitate penſata.*

Look into the caſe of *Thomas* and *Sorrel*, and you will find few or no caſes of diſpenſations cited out of our Books, but of the time of King *Henry* VII. and much more of very late times: ſo that the ill practice is ſtill improving and ſtretching.

The Lord Chief-Juſtice *Herbert*, in the next place, *page* 618. proceeds to mention the great caſe of 2 *Hen.* VII. a reſolution of all the Judges in the *Exchequer-chamber*, upon the King's diſpenſing with the Statute of 23 *Hen.* VI. *cap.* 8. *That no man ſhould be Sheriff above one year.* This is the great leading caſe and authority, upon which the main ſtreſs is laid to juſtify the Judgment given in Sir *Edward Hales*'s caſe.

I would avoid repeating what I have already ſo largely ſaid to this authority, to which I muſt refer my Reader, by which I hope it is moſt evidently made out, that the King neither hath, nor never had any juſt right or power to elect Sheriffs: but the right of electing was anciently and originally belonging to the Freeholders of the ſeveral Counties: and ſince it was unjuſtly taken from them as they have ever been on the loſing hand; it hath been lodged in the great Officers of the Realm, as the Lord-Chancellor, Lord-Treaſurer, Lord Privy-Seal, and the Judges, *&c.* as appears by the ſeveral Statutes.

And they are to make ſuch choice every year in the *Exchequer*, on a day appointed by the Statute for that purpoſe. So that the Sheriffs are by thoſe Statutes to continue in their offices for one year only; and the King cannot hinder ſuch election.

Only by his Patent or Commiſſion to the Sheriff, hath he uſed to ſignify to the Sheriff himſelf that is ſo choſen; and to publiſh to all others who the perſon is that is ſo choſen. This is all the uſe of the Patent; but it is the proper election of thoſe great Officers that truly veſts them in their Office.

And it does as clearly appear, that when former Kings have diſpens'd with a Sheriff's continuing in his Office for longer than one year, contrary to the ſeveral Statutes ſo forbidding it, the King hath ſo done it by virtue (not of his prerogative, but) of a ſpecial Act of Parliament enabling him to do it, for ſome extraordinary occaſions, and for ſome limited time only. See for this the Statute of 9 *Hen.* V. *cap.* 5. in the Statutes at large, and my larger argument, *fol.* 34.

The truth is, the power of diſpenſing is originally in the Legiſlators. He only can diſpenſe with a Law, that can make a Law. The power is equal; and the Legiſlators can confer the ſame power upon the King or any others, for ſome convenient time, *&c.* as appears by the laſt inſtance of the Sheriff, and divers other like caſes, mentioned in my foregoing argument, where I have alſo obſerved many other things upon that reſolution of 2 *Hen.* VII. concerning Sheriffs.

The Chief-Juſtice *Herbert* ſuppoſes the miſchiefs recited in the preamble of that Statute of 23 *H.* VI. *cap.* 8. concerning Sheriffs continuing in their offices longer than one year, to be equal, if not greater (as he judges) than the miſchiefs recited in the Statute of 25 *Car.* II. by Papiſts being in offices; and from thence, I preſume, would infer, that the caſe of Sir *Edward Hales* is not ſo fatal in the conſequence, as the caſe of a Sheriff.

I may appeal to any ordinary judgment, and to the ſad experience and trial we have ſo lately had, and to the danger we were ſo lately in (from which Almighty God, by no leſs than a miracle, hath in great mercy delivered the Nation), whether the miſchiefs that could any way poſſibly ariſe from the diſpenſing with the former (I mean the Statute concerning Sheriffs) be comparable to the infinite miſchiefs ariſing from putting Papiſts into office, and intruſting them with our Religion, and all our Civil Rights.

The Chief-Juſtice, upon thoſe words of the Statute concerning Sheriffs, *viz. That no* Non obſtante *ſhall make them good*, infers *page* 618. that thoſe words do ſhew, that the Parliament which made that Act concerning Sheriffs, was of opinion, that had it not been for that clauſe, the King could otherwiſe have diſpens'd with that Act by a *non obſtante.*

Anſw. This to me ſeems a ſtrained inference, and that it is very far from ſhewing any ſuch opinion in that Parliament. It rather ſignifies, that had not the Parliament inſerted that clauſe into the Act, the King might have done again, as he had frequently practis'd before, *viz.* granted diſpenſations upon that Statute: which ill practice they endeavoured to prevent for the future, nor approving the practice, nor owning the power of doing it. *Ex malis moribus bonæ oriuntur leges.* A good Law rather condemns a contrary practice before uſed.

I heartily deſire my Reader (as I have done in my foregoing larger argument) carefully to obſerve and examine of what ſort and nature thoſe ſeveral caſes are, which the reſolution of the caſe of 2 *H.* VII. urges to warrant that reſolution; as thoſe caſes concerning the true value of lands, which the King grants; and that concerning the ſhipping of wool to a certain ſtaple, *&c.* and let the Reader judge how vaſt a difference there is between thoſe Statutes in the nature, and import, and reaſon of them, and this weighty important Statute now before us; and how little that reſolution of 2 *Hen.* VII. can be warranted by the caſes there cited, being of ſo inferior and minute a conſideration, in compariſon of the principal caſe.

It is true, Sir *Edward Coke* (if the twelfth Report which goes by his name, be truly his) hath ſince that reſolution given in 2 *Hen.* VII. found out new and different reaſons and arguments, which are not urged, and therefore I preſume never ſo much as thought on, at that time by the Twelve Judges, who gave the reſolution in that caſe of 2 *Hen.* VII.

Thus ſays Sir *Edward Sandys*, in his relation of the Religion uſed in the weſt parts of the World: thoſe of the *Roman* Religion made their greatneſs, wealth and honour, to be the very rule by which to ſquare out the Canons of their Faith; and then did ſet Clerks on work to deviſe arguments to maintain them.

Sir *Edward Coke* ſeems to juſtify that reſolution concerning Sheriffs, from this ground, *viz. That the King hath a ſovereign power, to command any of his ſubjects to ſerve him for the publick-weal. And this is* (ſays he) *ſolely and inſeparably annexed to his perſon, and that this royal power cannot be reſtrained by any Act of Parliament*, 12 Rep. fol. 18.

That it is not ſolely annexed to the King's perſon, appears by the ſeveral Acts of Parliament, which I have cited to this purpoſe in my larger argument, *fol.* 34. where the power of diſpenſing with ſome particular Acts, was given to the King by the Parliament, and by him accepted for ſome ſhort time. And the whole Parliament have in divers caſes themſelves exercis'd this very power.

Judge of the weight of the reaſons ſaid to be given there by Sir *Edward Coke*, by that one inſtance of his in the caſe he puts of purveyance, 12 *Rep. fol.* 19. which (he ſays) cannot be taken from the King, no, not by Act of Parliament.

Yet we have lived to ſee it lately taken away by Act of Parliament; which in the judgment of a Parliament (which is of the higheſt authority in Law) may therefore be taken from the King.

And is the King in truth reſtrain'd from commanding his ſubjects to ſerve him for the publick-weal, either by thoſe Statutes that diſable Sheriffs to continue in their offices longer than one year, or by our Statute of 25 *Car.* II. that diſables *Popiſh* Recuſants to bear publick offices: becauſe ſome very unfit, uncapable, and dangerous perſons are diſabled to bear offices of truſt and power (and this by the King's own conſent to the Act, and by the advice of the great Council, the Parliament), and indeed of the whole Realm?

Does the King by this (which the Judges miſcal a reſtraint) want for choice of fit perſons to ſerve in offices? Doth the publick-weal ſuffer by this reſtraint? Is it not rather preſerv'd by it? Hath not the King Proteſtant ſubjects enough to bear offices? And are *Popiſh* Recuſants (who account Proteſtants Hereticks, and to be rooted out and deſtroy'd, and with whom they hold no faith, is to be kept, and againſt whom they have been continually plotting miſchief), are theſe the fitteſt to be intruſted with the defence of the Proteſtant Religion, and with our Lives and Eſtates, which are all concern'd, more or leſs, in every public office and truſt?

And are thoſe perſons (the Papiſts) that have a dependance upon the See of *Rome*, and a foreign power, fit to be intruſted with the power of the Nation, with the Militia, and the Sea-ports?

Is not this to commit the Lamb to the cuſtody of the Wolf?

This Act that diſables Papiſts to bear offices, cannot be juſtly ſaid to be a reſtraint upon the King; that expreſſion ſounds ill, and takes the matter by the wrong handle. It rather imports the King's declaration and reſolution, by advice of his great Council, to employ none in offices and places of truſt, but ſuch as are moſt capable and fit, and will moſt faithfully anſwer the great ends for which they are ſo intruſted, that is, the preſervation of the Proteſtant Religion, which is the true *Engliſh* Intereſt.

And this agrees with the rules of the Common Law, that if an office be granted to one that is *Inidoneus*, the Grant is void, though granted by the King himſelf. Of this I have treated more largely in my argument, *fol.* 37.

The Lord Chief-Juſtice *Herbert*, *page* 619. aſks the queſtion, Whether ſo many ſolemn reſolutions of all the Judges of *England* in the *Exchequer-chamber*, are not to be relied upon for Law? And I anſwer, that if they were ten times as many more, yet they are not to be relied on againſt many expreſs poſitive Acts of Parliament directly to the contrary. For what words could the Parliament uſe more emphatical and expreſs, and more to the purpoſe, than by ſaying, that a *non obſtante*, or a diſpenſation, or a Grant of ſuch a thing (prohibited by that Law) ſhall be abſolutely void, and *ipſo facto* adjudged void, and the perſon made uncapable to take? And is not a Judgment in Parliament, and by Act of Parliament, of the higheſt authority?

But (ſays the Chief-Juſtice, *fol.* 619.) the conſtant practice hath been to diſpenſe with the Statute of Sheriffs. I anſwer, it hath alſo been a very frequent practice too for the King, to make ſuch perſons Sheriffs, as were none of the number nominated or choſen as aforeſaid by the Chancellor, Treaſurer, Judges, and other great Officers; and it paſſes for current that he may ſo do, though it be a vulgar error: for it hath been reſolved by all the Twelve

Twelve Judges, to be an error in the King. See Sir *Edward Coke*'s 2 *Inſtit.* or *Magna Charta*, *fol.* 559. and yet it is practis'd to this very day.

The Chief-Juſtice, *page* 619. ſeems to excuſe *Popiſh* Recuſants for not qualifying themſelves for offices, by taking the oaths and the teſt, *&c.* for that no man (ſaith he) hath it in his power to change his opinion in Religion as he pleaſeth, and therefore it is not their fault. It is an error of the mind, *&c.*

Anſ. Here is no occaſion taken to find fault with them for their opinion; let them keep their Religion ſtill, if they like it ſo well, who hinders them. This Act of 25 *Car.* II. impoſes no penalty upon them for their opinion; but is there any neceſſity of their being in offices? Muſt they needs be Guardians of the Proteſtant Religion? The penalty upon them by this Act, is not for their opinion, but for their preſuming to undertake offices and truſts, for which they are by King and Parliament adjudg'd and declar'd unfit.

Page 620. The Chief-Juſtice *Vaughan* is brought in, arguing for the King's power of diſpenſing with *(Nominal)* nuiſances (as he is pleas'd to call and diſtinguiſh nuiſances). The word nominal, as there underſtood, imports, that though a Parliament declares any thing to be a nuiſance, (as ſometimes they do in Acts of Parliament, to render them indiſpenſable) which yet in its proper nature would not otherwiſe be ſo conceiv'd to be; that ſuch a nominal nuiſance (as he holds) may however be diſpens'd with by the King, though regularly by Law the King may not diſpenſe with any nuiſance.

Anſw. Shall any ſingular or particular perſon, though a Chief-Juſtice, preſume to call that a mere *nominal nuiſance*, which a Parliament by a ſolemn Act and Law have adjudg'd and declared to be a real nuiſance? Are we not all concluded by what a Law ſays? This arrogance is the miſchief now complain'd of.

The Chief-Juſtice *Herbert*, *page* 620. ſays, that from the abuſe of a thing, an argument cannot be drawn againſt the thing itſelf. I agree this is regularly true; yet we have an inſtance to the contrary in the Scripture, in that point of the *Brazen Serpent*. But in our caſe the abuſe doth ariſe from the very nature of the thing itſelf, from the conſtitution of it.

For the King practiſes no more in diſpenſing, than what theſe reſolutions of the Judges allow him to do by this pretended prerogative. The error is the foundation.

They have made his power to be unlimited, either as to number of perſons, or as to the time, how long the diſpenſation ſhall continue. Sir *Edward Coke* ſays, and ſo the other Books, That the King is the ſole Judge of theſe.

Nec metas Rerum, nec Tempora ponunt.

The Chief-Juſtice *Herbert*, *fol.* 620. cites two clear conceſſions (as he is pleas'd to call them) of all the Commons of *England* in Parliament, which he eſteems much greater authorities than the ſeveral reſolutions of all the Twelve Judges.

But how far theſe are from conceſſions, will eaſily appear to an indifferent Reader. They are no more than prudent and patient avoiding of diſputes with the ſeveral Kings. And there are multitudes of the like in the old Parliament-Rolls.

It is but an humble clearing of themſelves from any purpoſe in general, to abridge the King of any of his prerogatives (which have always been touchy and tender things); but it is no clear nor direct allowance of that diſpenſing there mention'd, to be any ſuch prerogative in him.

However, I am glad to ſee an Houſe of Commons to be in ſo great requeſt with the Judges. It will be ſo at ſome times, more than at others.

Yet I do not remember, that in any argument I have hitherto met with, a vote, or order, or opinion of the Houſe of Commons hath been cited for an authority in Law, before now. Will the Houſe of Peers allow of this authority for Law?

It will be ſaid, that this is but the acknowledgment of parties concern'd in Intereſt; which is allowed for a good teſtimony, and ſtrongeſt againſt themſelves.

Anſw. I do not like to have the King and his people to have divided intereſts. Prerogative and the people's liberties ſhould not be look'd upon as oppoſites. The prerogative is given by Law to the King, the better to enable him to protect and preſerve the ſubjects rights. Therefore, it truly concerns the people to maintain prerogative.

I could cite ſeveral Parliament-Records wherein the poor Houſe of Commons have been forced to ſubmit themſelves, and humbly beg pardon of the King, for doing no more than their duty, merely to avert his diſpleaſure. See the caſe of Sir *Thomas Haxley*, whom the King adjudg'd a Traitor, for exhibiting a Bill to the Commons for the avoiding of the outrageous expences of the King's houſe, 20 *R.* II. *num.* 14, 15, 16, 17, and 23, and the Commons were driven to diſcover his name to the King, and the whole Houſe in a mournful manner craving pardon for their entertaining of that Bill.

No doubt, as good an authority againſt the Commons for ſo ſaucily meddling in a matter ſo ſacred, and ſo far above them. Yet afterwards, 1 *Hen.* IV. *num.* 91. that Judgment againſt Sir *Thomas Haxley* was revers'd.

As for the diſtinction, *page* 622. of a diſability actually incurr'd before the meddling in an office, and where the diſability is prevented by the coming of a diſpenſation; I anſwer, that its being ſo prevented, is but *Petitio Principii*, and a begging of the queſtion. And to this diſtinction I have (I think) fully ſpoken in my larger argument, *fol.* 40.

The late Parliament, in making this Act of 25 *Car.* II. had, no doubt, a proſpect that probably the Crown would deſcend upon a *Popiſh* Succeſſor; and they levelled this Act againſt the dangers that might then befal our Religion and Liberties, and they thought it a good ſecurity: but it is all vaniſhed and come to nothing, by occaſion of this Judgment in the caſe of Sir *Edward Hales*. And that muſt be juſtified by a *Fiat Juſtitia*.

As to the objection that the Chief-Juſtice fancies might have been made againſt him, or advice given him that he ſhould rather have parted with his place, than to have given a Judgment ſo prejudicial to the Religion he profeſſes, *pag.* 622.

This, I ſay, that for my part I ſhould never have advis'd him to have parted with his place, much leſs to have given a Judgment againſt his own opinion. But let his opinion be what it was, yet ſeeing the clear intention of the makers of the Law contrary to that his opinion, and knowing the deſperate effects and conſequences that would follow upon the diſpenſing with that Act, (for we were upon the brink of deſtruction by it) and taking notice (as this Chief-Juſtice and the reſt of the Judges needs muſt) that the King had firſt endeavour'd to have gain'd a diſpenſing power in this matter from both Houſes (which was the fair and legal courſe), and that yet that very Parliament which, out of too great a compliance with thoſe times, had over-look'd ſo many grievances, and conniv'd at the King's taking and collecting of the Cuſtoms, (tho' in truth the Collectors, and all that had any hand in the receiving of them, incurr'd a *Præmunire* by it) not to mention the ill artifice uſed in gaining the Exciſe; yet that Parliament of the King's boggled at the diſpenſing with the Act of 25 *Car.* II. knowing the mighty importance of it.

And though they could not but take notice that ſo many Judges at once had been remov'd, becauſe they could not ſwallow this *Bitter Pill*, and others brought into their places, as might be juſtly ſuſpected, to ſerve a turn, and the King's learned Counſel could not at firſt find out this prerogative to do his work with, till ſo many ways had been attempted, and all prov'd ineffectual; ſure in ſuch circumſtances it had been prudence, nay the duty of the Judges to have referr'd the determination of it to a Parliament; and the rather, becauſe it was to expound a Law newly made, and the conſequences ſo dreadful, and the intent of the Law-makers ſo evident.

And this hath been frequently practis'd by Judges, in caſes of far leſs difficulty and concernment. This I have alſo enlarged upon in my large argument, *pag.* 26.

Object. But it might have been a long time before any Parliament had been called.

Anſw. We ought to have Parliaments once a-year, and oftener if need be; and *eadem præſumitur eſſe mens Regis, quæ Legis*; and we then ſtood in great need of a Parliament even for the ſake of this very caſe.

And theſe haſty Judgments are one ill cauſe why Parliaments meet no oftener; the work of Parliaments is taken out of their hands by the Judges. And it is the intereſt of ſome great Officers, that Parliaments ſhould not be called, or elſe be haſtily prorogu'd or adjourn'd.

As to the point of the feigned Action, which the Lord Chief-Juſtice ſeems to juſtify, I conceive he miſtakes the force of the objection. Feigned Actions may be uſeful; but this Action againſt Sir *Edward Hales*, is ſuſpected not only to have been feign'd and brought by *Covin* between him and his ſervant and friend, but it was feignedly and faintly proſecuted, and not heartily and ſtoutly defended.

This ſolemn reſolution was given upon a few ſhort arguments at the Bar, and without any at the Bench, and upon other reaſons (as I have heard) which were then made uſe of, are now given by the Chief-Juſtice; but the times will not bear them.

After all, I intend not by this to do the office of an accuſer, nor to charge it as a crime. But as I think myſelf bound in duty, on the behalf of the whole Nation, of myſelf, (though a ſmall part and member of it) and of my friends, I humbly propoſe, that the Judgment given in Sir *Edward Hales*'s caſe, may, after a due examination, (if there be found cauſe) be legally revers'd by the Houſe of Lords, and that reverſal approv'd of and confirm'd by a ſpecial Act of Parliament.

But as that Judgment of the Lord-Chief-Juſtice's was of the utmoſt conſequence, and his Vindication far from ſatisfying the People; Mr. *Atwood*, a very conſiderable man in his profeſſion, at that time, undertook the anſwering the Chief-Juſtice: Therefore to ſet the whole matter in a true light, and to obſerve an exact impartiality, Mr. *Atwood*'s Examination of the Chief-Juſtice's Account, is here inſerted, as follows.

The Lord Chief-Juſtice Herbert's *Account examin'd by* William Atwood, *Eſq. Barriſter at Law, wherein is ſhewn, That thoſe Authorities in Law, whereby he would excuſe the Judgment in Sir* Edward Hales's *caſe, are very unfairly cited, and as ill applied.*

WERE it not the reproach of our times, to have had men advanc'd to Courts of Judicature for other merits beſides Integrity and Learning in the Laws of their Country; it might ſeem a great piece of vanity in me, to anſwer a Book ſtamp'd with the name and authority of a Chief-Juſtice.

Yet, perhaps, I might be thought, not without cauſe, to take this as my more immediate Province; having been the firſt of the profeſſion who ventur'd in public companies to ſhew, how wofully that innocent Book-caſe, 2 *Hen.* VII. in relation to Sheriffs, has been miſtook, or wreſted, to ſerve for colour to that haſty Judgment in Sir *Edward Hales*'s feigned caſe.

Wherefore, how needful ſoever the Chief-Juſtice may find it, to make proteſtations of his ſincerity, *vid. Account*, *p.* 616. this may ſuperſede any ſuch from me. Nor would I willingly call his a proteſtation contrary to apparent fact (eſpecially conſidering that weakneſs of Judgment manifeſted by this defence), did he not give too great occaſion for it. 1. From the large ſteps which he took to precipitate, and, as I am well aſſured, to ſollicit that reſolution. 2d. The manner in which he delivered it, widely differing from what he now prints. 3. The unfairneſs of his preſent quotations. And, 4. The unhappineſs, not to ſay worſe, of thoſe inſtances which he is pleaſed to give of his ſincerity.

I ſhall not diſpute, or repeat his Lordſhip's ſtate of the caſe: but the queſtion upon it being, Whether the King may by his prerogative diſpenſe with the Statute 25 *Car.* II. *cap.* 2. requiring all perſons in any office under the King, to take the teſt againſt Popery, I ſhall enquire,

1. Whether thoſe Books, which he relies on as authorities for his Judgment, give any colour to it?

2. Whether, admit they did, they would countenance the reſolution as he delivered it?

3. Whether thoſe Inſtances which he offers of his ſincerity, may reaſonably be taken for ſuch?

4. Whether he in any meaſure clears himſelf from the imputation of being highly criminal?

His Lordſhip, like a maſter-diſputant, begins, as he thinks, with a definition of a Diſpenſation, which he ſays, *Account*, *p.* 617. is given by the Lord *Coke* : Diſpenſatio mali prohibiti eſt de jure Domino Regi conceſſa, propter impoſſibilitatem prævidendi de omnibus particularibus; & diſpenſatio eſt mali prohibiti provida relaxatio, utilitate, ſeu neceſſitate penſatâ.*

Where, I muſt ſay, he very unlearnedly clogs the definition of a diſpenſing power, with the perſon in whom 'tis ſuppoſed to be lodged: nay,

* *Coke* 11. Rep. fol. 88.

and the reaſon too why it ſhould be ſo, which neither the Lord *Coke*, nor common ſenſe, gives him any warrant to bring into the definition. However it ſeems, according to this, a diſpenſing Power, in ſome caſe or other, is veſted in the King; which yet is far from proving any thing to his purpoſe; for either the King may in all caſes diſpenſe as to particular perſons, and then his diſtinction of *malum prohibitum*, *v. p.* 617. and *malum in ſe*, falls to the ground; or elſe it reaches only to thoſe caſes, in which the judgment or flattery of Judges have aſcribed it to him.

He adds out of the Lord *Coke*, (*p.* 617.) 11 *Rep. f.* 88. as an enlargement upon what he calls the definition, *Inaſmuch as an Act of Parliament, which generally prohibits any thing upon a penalty that is popular, or only given to the King, may be inconvenient to divers particular perſons, in reſpect of perſon, time, or place; for this purpoſe the Law gives a Power to the King to diſpenſe with particular perſons.* Where the Lord *Coke* manifeſtly reſtrains the penalty, to ſuch as is given the King as Head of the People, upon which account only he calls it popular: nor, indeed, can be thought to take in what is granted to any ſubject that will inform; it being mentioned without diſtinction, whether before or after an Information commenced.

And that the Lord *Coke*'s words here, 7 *Rep. f.* 36. ought not to be reſtrained farther, is yet more evident, from the caſe of *Penal Statutes*, on which Sir *Edward Herbert*'s miſ-repreſentations will occaſion my more particular Remarks.

As Sir *Edward*, conſidering what intereſt he has ſerv'd, may be preſumed ſomething converſant with Prieſts and Jeſuits, he might, among others of leſs uſe, have conſulted the learned *Suarez (a)*, who after the definition, which he makes to be *Legis humanæ relaxatio*, in a diſtinct Chapter ſhews, with whom the ordinary power of diſpenſing (which he diſtinguiſhes from that which is delegated) is lodged, where he ſays, *ib. c.* 14. *f.* 395. *Certum eſt eum habere ordinariam poteſtatem diſpenſandi, qui legem tulit:* And he gives the reaſon, *Quia ab ejus voluntate & potentia pendet.* So that none can have this power, but he, or they who are veſted with the legiſlative excluſive of others, or ſuch as have it delegated from thence. That the King has not the legiſlative excluſive of others, is what I have formerly proved at large *(b)*; and it lies on the other ſide to ſhew, that the diſpenſing power has been delegated to him. Yet thus much may be ſaid on the contrary:

Firſt, That the King could not in Law be preſumed to have exerciſed ſuch a power by himſelf; for that the ancient Law provided, that he ſhould have a Council choſe in Parliament, who (as the Charter affirm'd to be declaratory of the ancient Law, and ſworn at the Coronation of *Hen.* III. has it *(c)*) were ſworn *quod negotia Domini Regis & Regni fideliter tractabunt, & ſine acceptatione perſonarum omnibus juſtitiam exhibebunt:* and that it was accounted the Law long after that, appears by the impeachment of *Roger Mortimer*, 4 *E.* III. part of which was, that *Whereas it was ordained in the Parliament next after the King's Coronation, that four Biſhops, four Earls, and four Barons, ſhould ſtand by the King*, Pur luy Counſeiller; *without whoſe aſſent* Nul gros Buſoign ne ſe Feuſt: nevertheleſs *Mortimer* would undertake to manage all by himſelf, accroaching royal Power *(d)*: And it is eaſily to be ſhewn, that ſuch a Council was in uſe, or continually inſiſted on, as the right of the Kingdom, from the time of the Charter, confirm'd 28 *Hen.* III. till the end of the Reign of *Hen.* VI.

2. A Power to grant *non obſtante's* to Statutes, could not have been a right in the Crown at Common Law; for we have clear proofs of its odious and condemned beginning from the ſulphureous fountain of *Rome*, as an honeſt popiſh lawyer confeſs'd with a deep ſigh, 35 *Hen.* III. This *non obſtante Matthew Paris* calls, *a deteſtable addition againſt all Reaſon and Juſtice:* And when, the year after, King *Henry* urged the example of the Pope for *non obſtante's*, the Prior of *Jeruſalem* ſays, *God forbid you ſhould uſe this unpleaſant and abſurd word; as long as you obſerve Juſtice you may be King, and as ſoon as you violate it, you will ceaſe to be King*; which ſhews how little foundation in Law it then was thought to have; and what the whole Nation thought of the Pope's uſe of it, may be ſeen at large in *Matthew Paris*, and Mr. *Prynne*'s Animadverſions on the 4th *Inſtitute (e)*.

Farther, the reaſons given why the King ought to have this power, fail here upon many accounts.

1. In that the intereſt of the whole, of which the Legiſlators are the beſt Judges, when they make the Law without exception, ought to outweigh all private inconveniencies.

2. The Law has provided a more certain and equal remedy; having taken as ſufficient care for the meeting of Parliaments, once a year at leaſt, and I may ſay, *(f)* ſitting too, as it has for the ſitting of the common Courts of Juſtice; as appears from the ſeveral Statutes in print, and others in the Rolls, which avoid the common cavil upon the words, *oftener if need be.*

And theſe were, like the famous triennial Act, proviſions for the greater certainty of meeting ſo often at leaſt, but no receſſions from the old Law; which, as appears both by the *Mirrour*, and the life of King *Alfred (g)*, was for the great Council to meet twice a year at *London*.

3. The great reaſon aſſigned in the *Latin* quotation from the Lord *Coke*, *propter impoſſibilitatem prævidendi de omnibus particularibus*, which is after diſtinguiſhed, as to perſon, time, and place, can by no means be applied to the caſe in queſtion: For, 1. The Law was made but very few years before their Lordſhips reſolution, and not grown more inconvenient by length of time, to any particular perſon, than it was at the making of the Act. 2. The Law-makers had in their immediate proſpect every particular perſon of the *Romiſh* communion; and the time when, and place where the danger would happen, if any ſuch were commiſſioned.

Let us now ſee what help he can have from his ſecond quotation from the Lord *Coke*, which is 7 *Rep. fol.* 73. But he intends, I ſuppoſe, *fol.* 37. and would have it believed, that it was the opinion of all the Judges in *England*, 2 *Jac.* I. that the King may diſpenſe with any particular perſon, that he ſhall not incur the penalty of the Statute, though it be an Act made *pro bono publico*; and that this is a truſt and confidence inſeparably annexed to the royal perſon of the King, *Account*, *p.* 617. In which, 1. He again overthrows his diſtinction of *malum in ſe*, and *prohibitum*, making that power at large, in relation to any Statute *pro bono publico*. 2. He manifeſtly perverts the Lord *Coke*'s ſenſe, whoſe words are, 7 *Rep. fol.* 36. *When a Statute is made* pro bono publico, *and the King, as head of the Commonwealth, and the fountain of Juſtice and Mercy, is by all the Realm truſted with it; this is a truſt and confidence inſeparably adjoined and annexed to his royal perſon, in ſo high a point of Sovereignty, that he cannot transfer it to the diſpoſition or power of any private perſon, or to any private uſe; for this was committed to the King, by all his ſubjects, for the publick good*, &c. *But true it is, that the King can, upon any cauſe moving him, in reſpect of time, place, or perſon*, &c. *make a* non obſtante *to diſpenſe with any particular perſon, that he ſhall not incur the penalty of this Statute.*

Where the ſole queſtion was, of transferring over a penalty granted to the King, as entruſted by all the Realm to ſee the Statute put in execution, by inflicting the penalty. This truſt is adjudged inſeparable, and not to be transferred over; but that however the King may diſpenſe with the penalty granted to himſelf: upon which, I muſt ſay, our Chief-Juſtice has made a very foul ſtretch; for what is this to the informer's part, concerning which the queſtion before him was? But ſurely there is a mighty difference betwen theſe two propoſitions: "Where the ſubjects have entruſted the King with a Statute made for the publick good, this truſt is "inſeparable, and cannot be transferred to another: but the Statute ſo "intruſted, may be diſpenſed with;" which is all that is to be gathered from my Lord *Coke:* And this, "Tho' an Act be made for the publick "good, yet the King may diſpenſe with it, and this is a truſt and confi-"dence inſeparably annexed to the royal perſon of the King;" which is Sir *Edward Herbert*'s perverſe comment. In ſhort, Lord *Coke* ſays, *Where the King is entruſted with the execution of a Statute made for the publick good, he may diſpenſe with that Statute.* Sir *Edward Herbert* ſays, *he may diſpenſe with any Statute made for the publick good.* Upon which 'tis to be obſerved, that the queſtion in the Lord *Coke*, was not of diſpenſing, but granting over the penalty; which penalty, he ſays, is not to be transferred over: the other would make it of diſpenſing, and that that power is inſeparable, and not to be transferred; ſo apparently changes the ſtate of the queſtion.

His next ſtep is to the Year-book of *H.* 7. *f.* 11. & 12. in which he leaves us to ſeek the year, which is 11. This he calls the firſt, and great caſe which he cites, wherein the King's diſpenſing power is deſcribed and limited.

"There is a diverſity, ſays the Book *Account*, (*p.* 617.) between *malum "prohibitum*, and *malum in ſe*; as a Statute forbids any man to coin money, "and if he does, he ſhall be hanged; this is *malum prohibitum:* For before "the Statute, coining money was lawful, but now it is not ſo, and there-"fore the King can diſpenſe with it. So if a man ſhip wool in any place "but *Calais*, it is *malum prohibitum*, becauſe it is prohibited by Act of "Parliament. But that which is *malum in ſe*, the King, nor no other "perſon can diſpenſe with: as if the King would give a man power to "kill another; or licenſe one to make a nuiſance in the high-way, they "were void, and yet the King can pardon theſe things when they are done." Upon this caſe 'tis obſervable, that the power of diſpenſing is here aſſerted in relation to things, and not perſons: wherefore according to this, taken in Sir *Edward Herbert*'s latitude, the King may grant diſpenſations to all in general, where the matter is only *malum prohibitum:* Whereas he himſelf owns, that the nature of a diſpenſation is particular, and given to particular perſons by name. 2. Many things in *Magna Charta*, nay the moſt, are but *mala prohibita:* and ſo *Magna Charta* itſelf may be diſpenſed with; when he himſelf owns, that the King cannot diſpenſe with one tittle of *Magna Charta:* And methinks he could not but obſerve this contradiction. Wherefore the rule there, admit it were a Judgment in Law, as it was not, being only ſpoken *obiter*, by one of the Judges *(h)*, can be applied only to ſuch caſes as are there cited. The firſt is that of coining money, which goes upon the ground in *Moor*'s *Reports (i)*, where 'tis ſaid, that *ſuch Statutes as give a Prerogative may be diſpenſed with:* And that of ſhipping wool at *Calais*, the King's Staple, is of the ſame nature; and both ſufficiently ſhew the diſtinction of *malum prohibitum* from *malum in ſe*, to relate barely to ſuch things as become evil by accident, as they are againſt an accidental prerogative: which no way interferes with the rights of the ſubjects in general, or particular.

And I much wonder that Sir *Edward Herbert* ſhould cite my Lord *Vaughan*, in the caſe of *Thomas* and *Sorrel*, as confirming what he would infer from the Year-book, when Lord *Vaughan* ſays, *fol.* 332. *That old Rule has more confounded men's Judgments on the ſubject, than rectified them*; and *fol.* 333. himſelf denies that the King can diſpenſe with every *malum prohibitum* by Statute, though prohibited by Statute only.

Oh, but my Lord *Vaughan* ſhews, that a Diſpenſation does *jus dare*; and makes the thing prohibited to all others, lawful to be done by him that has it. Does he ſay this of every *malum prohibitum?* By no means: Wherefore we muſt apply it to the caſe then in queſtion, which concerned wine-licences; about which the King had a Prerogative by Statute Law: and the diſpenſing with that, falls within the rule in *Moor (k)*, agreeing with the Lord *Coke*, in the caſe of *Penal Statutes (l)*. Yet even thus much was a point gained by the Prerogative, ſince the 1*ſt* of *H.* VII. for it is then made a doubt before all

(a) *Suarez de Legibus, lib.* 6. *cap.* 10. *fol.* 384. *ib. cap.* 14. *fol.* 395. (b) V. *Jus Angl. ab Antiquo.* & *Jani. Angl. fa. Nov.*

(c) Vid. *Mat. Par. de anno* 28 *H.* III. So *Rot. Par.* 42 *H.* III. *m.* 4. *m.* 10. V. *Jan. An. fa. Nov. p.* 244. *Rot. Par.* 4 *E.* III.

(d) Vid. *Rot. Par.* 5 *E.* II. *Ryley pl. parl. f.* 317. *Rot. Par.* 8 *E.* II. *n.* 35. 4 *E.* III. *n.* 16. 17 *E. n.* 12. *Walſingham, f.* 243. Vid. *Knighton*, the 1ſt Art. againſt *R.* II. *f.* 2747. Vid. *etiam* 5 *H.* IV. *n.* 37. 11 *H.* IV. *n.* 15. 1 *H.* VI. *n.* 16. 24. 30. 11 *H.* VI. *n.* 17. 31 *H.* VI. *n.* 38. Vid. *Rolls Ab.* 2 part 179. *Mat. Par. ed. Tig. f.* 784. Vid. *Mat. Par. f.* 827. *illepidum.* (e) *Prynne*'s Animad. *f.* 129, 130. Vid. *etiam* Sir *John Davis*'s *Rep. f.* 69. *b.*

(f) Vid. *Mod. ten. Parl. Parliamentum ſeparari non debet, dummodo aliqua Petitio pendeat indiſcuſſa vel ad minus ad quam non fuit determinatum reſponſum; & ſi Rex contrarium permittat, perjurius eſt.* As I find it in an ancient MS. of the *Modus*. Vid. *etiam* 4 *Inſt. fol.* 11. Vid. 50 *E.* III. *n.* 177, 178. 1 *R.* II. 95. This is acknowledged for Law in the King's Name, 2 *R.* II. *n.* 4.

(g) Vid. *Spelm. Vit. Ælfredi, f.* 115. *Mirrour, p.* 282. Where 'tis placed among the abuſes of the Law, That Parliaments are not held twice a year.

(h) Chief-Juſtice *Fineaux*, 11 *H.* VII. *f.* 12. 2.

(i) *Moor*'s *Rep. f.* 714. Indeed the Book ſpeaks alſo of diſpenſing with Statutes, reſtraining the Prerogative; but that concerns not the Inſtances here of things forbid the Subject for the limitation of that Power, *vid. infra.*

(k) *Sup. f.* 714. (l) 7 *Rep. f.* 36. *b.*

the Judges of *England*, in the *Exchequer-Chamber*, and adjourned over for the difficulty (*a*), Whether the King could licenſe the ſhipping wools elſewhere than at *Calais*; one of the very inſtances which Sir *Edward Herbert* relies on: And Chief-Juſtice *Huſſey* was poſitive that the King could not licenſe; tho' indeed the Chief-Baron, and ſome others, held as *Fineux* did afterwards. Wherefore nobody of leſs aſſurance than our Chief-Juſtice can ſay, from theſe Caſes reſults this plain ſyllogiſm:

Whatever is not prohibited by the Law of God, but was lawful before any Act of Parliament made to forbid it, the King by his diſpenſation may make lawful again, to that perſon who has ſuch diſpenſation, tho' it continues unlawful to any body elſe, &c. *Acc. p.* 617. In which, if we grant his major, I will own, the concluſion to bring it to Sir *Edward Hales*'s caſe is not criminal. Yet the propoſition is ſo pernicious, ſtriking at the very foundation of our government, that if there were a reſolution, inſtead of an extra-judicial opinion, giving that countenance which even that looſe opinion does not; yet it ought to be rejected: for if all Acts of Parliament, contrary to *Magna Charta*, are void, as ſome have held, I am ſure much more ſo would ſuch Reſolutions of Judges be. And that ſuch an one would be contrary to that *Great Charter*, is evident: for no man can ſay, that all things prohibited by *Magna Charta*, are prohibited by the law of God.

To come to Sir *Edward*'s next great caſe, as he calls it, *Acc. p.* 618, but indeed the only one which has coloured the reſolution to the world; which is that 2 *H.* VII. Notwithſtanding his promiſe, he, *p.* 617, has not been ſo fair to give the words of that caſe, or ſo much of them as is material, leſt every body might judge of how little uſe it would be to him; nay, leſt men ſhould be for ſatisfying their own eyes, he has not directed to the *folio*.

The *Engliſh* of the material part is thus (*b*): "In the *Exchequer-Chamber* all the Juſtices were ſhewn for the King, how King *Edward* the Fourth, by his Letters Patent, had conſtituted the Earl of *N*—— Sheriff of the ſame County; and had granted the ſaid Earl the office of Sheriff of the ſaid County for the term of his life, with all the other offices tended, thereto belonging; rendering to the King at his Exchequer, annually, 100*l.* without any account, or any other thing to be given for it, *&c.*

"Now, 1. Whether this Patent was good? And alſo, 2. How this Patent ſhall be intended? were the points in queſtion. And as to the firſt point, the Juſtices held the Patent good; for it is a thing which may well be granted for term of life or inheritance; as divers Counties have a Sheriff by inheritance; and this commenced by a Grant of the King. Then was ſhewn a Reſumption: and then was ſhewn a Proviſo for *H.* Earl of *N.* ſo that the Patent remains in its force. *Radcliff* ſhews the Statute of 28 *E.* III. *c.* 7. and 24 *E.* III. *c.* 5. That no Sheriff ſhall be more than one year, *&c.* altho' he had a *non obſtante*. And notwithſtanding this, that the King ſhall always have his Prerogative, as of the value and certainty of the land, and other things granted by the King, and of wools ſhipped, and of Charters of murder, and many other caſes where the Statutes are, That Patents that want theſe things ſhall be void; yet the Patents are good with a *non obſtante*: But without a *non obſtante* the Patents are void, by reaſon of the Statutes. So here the Patent, with a *non obſtante*, *&c.*"

This is all that is ſaid in the Book upon the firſt point; upon which it is obſervable,

1. By the Book it would ſeem, that this *Radcliff* was but a Serjeant at Law; for at the end of the caſe *Brian Juſtice* demands of *Brian Radcliffe*, *&c.* Yet indeed I find upon ſearch, that he was a Baron of the Exchequer.

2. What *Radcliff* ſays, is after the reſolution of the Judges is over, and no way influenced that.

3. Whereas Sir *Edward Herbert* ſays, the reſolution was upon 23 *H.* VI. *c.* 1. *Radcliff*, who ſhould better know the ſubject of debate, diſcourſes only concerning the Statutes, 28 *E.* III. *c.* 7. (*c*) and 12 *E.* III. *c.* 5. which are barely prohibitory, without any mention of *non obſtante's*, or any avoiding or diſabling clauſe. Indeed *Radcliff*, it being upon a ſudden diſcourſe, as the Book ſhews, miſtakes the Statutes, as if they had ſuch clauſes: and *Brook* (*d*), who cites part of the Patent, which it ſeems he had ſeen, ſays, there was in it a *non obſtante* to the Statutes 28 *E.* III. *c.* 7. and 12 *E.* III. *c.* 9.

Fitzherbert (*e*) indeed ſays, *R.* objected the 23 *H.* VI. but for that *ſit liber judex*.

4. But above all, tho' our Chief Juſtice calls them the Judges enemies, *Acc. p.* 618. who ſay, the point of *non obſtante* is not reſolved in this caſe, which he calls confidence; and that they may as well deny one of the ten Commandments: 'Tis manifeſt beyond contradiction, that the reſolution ended at *iſſint que le Patent demurr en ſa force*: after which comes *Radcliff*'s diſcourſe, and the reſolution went upon two grounds:

1. That this was a thing grantable for inheritance, or for life; which if it were, it could not be preſumed to be touched by the prohibitory Statutes: And beſides, if the queſtion had been upon the other, the caſe had been an exception out of the Statute; for the (*f*) Statute excepts *ſuch Counties in which divers of the King's Liege People be inheritable to the office of Sheriff at the making of the Statute; and alſo ſuch perſons who have Eſtate of freehold in the Office of Sheriff, at the making of the Letters Patent made to them of the office of Sheriffs*, *&c.* Now whether this were really a County ſo inheritable, or of an Eſtate of freehold, at the time, or no, is not ſo very material; being at leaſt it was ſo look'd upon by the Judges, nay, and by the Parliament too, as will appear by their ſecond ground.

But that this County was ſuch an one, I take to be alſo true in fact: for it is to be conſidered, that this was the County of *Northumberland* (*g*), which was a *Palatinate*; upon which reaſon this, with other Counties under it, was left out of the Survey in *Doomſday-Book*, as being *penſitationibus liberi*: This *Palatinate* comprized *Cumberland* and *Weſtmoreland*, among other Counties: in the laſt of which, the Sheriffwick is at this day enjoyed in fee. Indeed *Northumberland* came ſoon into the Crown, as early as the time of *William* the Second, upon the rebellion of *Mowbray*, conſtituted Earl thereof in the time of *William* the Firſt: But the authority in law is much clearer, that this Sheriffwick, if ever held in fee, would remain in the Crown as an inheritance in groſs, and was not merged, than any Sir *Edward Herbert* has produced on his ſide: for which we may obſerve the rule taken in the Caſe of the Abbot of *Strata Mercella*, 9 *Rep. f.* 25. *b.* which is this: "When a Liberty, Franchiſe, or Juriſdiction was at the beginning erected and created by the King, and there was no ſuch Flower in the Crown before; there, by the acceſſion of them again to the Crown, they are not extinct."

Where inſtances are given of the caſes of Markets, Hundreds, and Earldoms; nor can any one ſay, that Sheriffwicks are ancient Flowers of the Crown: But more directly to our caſe, is that between Sir *Robert Atkins* and *Robert Holford* (*h*), which, though not in our Books, is well known. The Caſe was of the Grant of the Seven Hundreds of *Cirenceſter*, with the returns of Writs to the Abbot and Convent of *Cirenceſter*: This came to the Crown by the diſſolution of Monaſteries, 31 *H.* VIII. but yet that it was not merged thereby, but remained as an inheritance in groſs, without the help of any Statute, was the opinion of the great *Hales*, then Chief-Baron, and of two other *Barons*, *Windham* and *Turner*. Part of *Hales*'s words, as I find them excellently well reported, and full to this point, are:

"Such Hundreds as were anciently ſever'd from the Counties, and come again to the Crown by eſcheat or forfeiture, were ſometimes, but rarely committed to the Sheriff, and rejoined to the County, but for the moſt part kept as diſtinct: *Rot. Brevium*, and the Hundred to which it was annexed, without an actual and ſpecial re-annexion to the County, remains in the King in groſs; for the *Rot. Brevium* is a thing created *de novo*. Suppoſe it were a Court of Juriſdiction merely created by the King, and the Hundred itſelf, tho' ancient, yet by return to the Crown it is not merged or annexed: This I know in the caſe of the Courts belonging to the Honours of *Glouceſter* and *Hereford*, that came to *H.* V. by marriage of a coheir, it is ſtill *in eſſe*."

This were enough to ſhew, that the Judges reſolution 2 *H.* VII. had a better legal foundation than what Sir *Edward Herbert* would ſuggeſt.

2. But then, beſides that, there was another ground mentioned in the Book, which was, That a reſumption was ſhewn before the Judges; and then was ſhewn a Proviſo for *H.* Earl of *N.* and ſo (ſays the Book) the Patent remains in its force. This reſumption was an Act of Reſumption 1 *H.* VII. and if this Act provided for that Earl's Grant, as the Judges, it ſeems, thought it did, who can doubt but the Grant was good? The Act of Reſumption is to be ſeen upon Record, *Rot. Parl.* 1 *H.* VII. *part* 2. It is a reſumption of Grants made by *Edward* the Fourth; and among others of the *Yefts*, that is, *Gifts of offices*; The Proviſo runs thus:

"Provided always, that this Act of Reſumption, or any other Act made, or to be made, in this preſent Parliament, be not in any wiſe prejudicial or hurtful to the ſeveral Grants and Letters Patents made to *Henry* Earl of *Northumberland*, *&c.*" Which indeed does not make good any void Grant, but ſuppoſes all the Grants to him to be good in Law; nor would the Judges diſpute their ſuppoſal.

I admit with him, *Acc. p.* 618, that *Fitzherbert* ſays, and that truly, that the Patent was adjudged good; but the reaſon he gives agrees with what I have ſhewn: his words are, *for ſuch a thing may be grantable for Inheritance, or for Life*. And then I am ſure that the Statute does not ſay expreſsly, the Patent ſhall be void, though Sir *Edward* affirms that it does. *Vid. Acc. p.* 618.

Obj. It may be objected, that the exception in the Statute relates to eſtates in the ſubject; but if this were an intereſt in groſs in the King, that it could not be taken from him without expreſs words, cannot be denied me.

What he cites from *Plowden*, *Acc. p.* 618. can be of no more ſervice; for he only ſays, *there it is held*; and I agree it is held by *Radcliff*, *Acc. p.* 618. with a miſtake of the Statute, That the King can grant a Sheriffwick for more than a year: Yet whereas he magnifies this as cited by *Plowden*, who, as he ſuppoſes, well underſtood the ſenſe of the Year-book:

It does not (*i*) appear that it was *Plowden*, but one who was of Council in the Caſe for the Defendant, who mentions this.

2. He mentions it only as a Caſe in *Fitzherbert*, *Plowden*, *f.* 502. without referring to the Book, 2 *H.* VII.

But the ſecond point raiſed before the Judges, 2 *H.* VII. which occaſioned the main debate in that caſe, as appears by the Book, ſhews, that the reſolution could not be upon the point of Prerogative; for they queſtioned whether the King could diſpenſe with his own profit: And all the Judges, except *Brian* and *Cateſby*, held, that the Patentee ſhall account for the green wax, and other things, notwithſtanding the clauſe of *abſque reddendo computum*: But the debate concerning other things ariſing upon that ſecond point was adjourned; the firſt reſolved upon the grounds above.

Tho' hitherto there is no Proof, that any one of authority in the Law has taken the Book 2 *H.* VII. in Sir *Edward Herbert*'s ſenſe, which yet would be of no moment if they were expreſs, being the Book is to be ſeen, and clearly otherwiſe; yet he thinks my Lord *Coke* will bear him out, and to this purpoſe he cites two places: one, where he ſuppoſes that the Lord *Coke* not only authorizes this ſenſe of the caſe, but aſſerts the Prerogative, *Acc. p.* 618. in much higher terms than they would preſume to do: and by the ſecond he would have it believed, that if the Lord *Coke* be a faithful Reporter, all the Judges of *England* took that caſe in the ſame ſenſe.

The firſt is the caſe of cuſtoms, 24 *Eliz.* which is pregnant with many objections againſt its being of any force in this caſe.

1. The Book, 12 *Rep. f.* 17. is of ſuſpected authority, being printed in the late times, and what the Lord *Coke* never owned, or thought fit to print in his life-time.

2. This comes foiſted in among caſes in the time of King *James*, without any parallel caſe which might occaſion the placing of it there.

3. It was when the Lord *Coke* was but a young Reporter, it being ten years before he was King's Sollicitor (*k*).

4. It is not only no point in queſtion relating to the caſe where 'tis cited, and ſo extrajudicial, but wholly foreign to it: For the queſtion

(*a*) 1 *H.* VII. *f.* 2. b. & 3. d. (*b*) 2 *H.* VII. *f.* 6. b. & 7 a. (*c*) It ſhould be *c.* 9. (*d*) *F.* 7. a. *Brook*'s Patents, *n.* 45. (*e*) *Fitz Ab.* tit. Grant, *n.* 32.
(*f*) 23 *H.* VI. *c.* 8. (*g*) Vid. *Camb. Brit. f.* 115. Vid. *Dugdale's Baron. f.* 2. *Brompton*, a. *f.* 779. *ad* 798. *de Regno Northumb.*
(*h*) Sir *Rob. Atkins*, v. *Rob. Holford in Scaccharia*, *Hil.* 22 & 23 *Car.* II. Vid. *Rep. penes doctiſſimum Dominum Ward.*
(*i*) *Grenden*, v. *eveſque de Lincoln.* (*k*) Was made Sollicitor 16 *June*, 34 *Eliz. Dudg. Chron. Series*, *f.* 99.

was, Whether goods ſold before they were landed, were to pay cuſtom within the Statute 1 *Eliz. c.* 11. Wherefore being barely a *memorandum* of a young Reporter, no way occaſioned by what went before, it cannot poſſibly have any weight.

5. The fancy'd reaſon here given why the King may diſpenſe with the Statute of Sheriffs, is none at all: for whereas it ſays, 12 *Rep. f.* 18. *That the King has a ſovereign Power to command any of his Subjects to ſerve him for the publick weal, and this ſolely and inſeparably annexed to his perſon: and this Royal Power cannot be reſtrained by any Act of Parliament:* There is no authority cited for this, but the caſe 2 *H.* VII. which, as appears to any body that reads it, neither has that reaſon been mentioned ſo much as by any one Judge, nor in the leaſt goes upon the point of the prerogative. Beſides, if the King can command any Subject to ſerve him for the publick weal, either he is to be Judge, or the Laws: If the latter, then no perſon, not qualified by law, is obliged to act; nor tho' qualified, to do any thing forbid by the laws: If the former, as the words imply, then the King's commands may be pleaded to juſtify any ill Miniſter who has rendered himſelf obnoxious to the laws. But that this cannot be, is ſufficiently evinced by neceſſary examples in all ages. And this, by the way, may ſhew how falſe, as well as pernicious, that doctrine is which tell us, that ἐξουσία in the *New Teſtament*, always ſignifies the authority of a Perſon, not of a Law. Or, as another has it to the ſame purpoſe, *By higher Powers, it is evident, we are to underſtand the perſons of ſovereign Princes, or Governors, not the Laws and Conſtitutions, as our Republican Doctors pretend.*

Of the ſame batch is another memorable poſition, *That the King's moſt illegal Acts, tho' they have not the authority of the Law* (for indeed, to ſay they have, would be a blunder with a witneſs), *yet they have the authority of Sovereign Power.* Some will ſay, that this is qualified by what follows, *which is irreſiſtible and unaccountable:* as if the King had this power only ſo far as it is irreſiſtible and unaccountable. Whereas it is evident the propoſition is entire before, being the medium whereby he would prove, that the King's illegal Acts are not inauthoritative; in proof of which medium, he afterwards affirms, that the ſovereign Power which made the laws, and can repeal and diſpenſe with them, is inſeparable from the Perſon of the Prince.

Reduc'd to a Syllogiſm, it runs thus; *The authority of ſovereign Power is irreſiſtible and unaccountable; but the King's moſt illegal Acts have the authority of ſovereign Power.* This is an entire propoſition upon which he concludes, *Ergo, the King's moſt illegal Acts are irreſiſtible and unaccountable.* This aſſumption he goes on to prove from the ſuppoſition, that ſuch a Sovereign Power as he deſcribes, is inſeparable from the perſon of the Prince; upon which, or the like Doctrine, another raiſes this comfortable uſe: *In all ſovereign Governments* (and ſuch he at large endeavours to ſhew *England* to be) *Subjects muſt be ſlaves as to this particular; they muſt truſt their lives and liberties with their Sovereign.*

But for the honour of our Gown, this may be ſaid, That ſuch Hereticks never appeared among Lawyers, till Divines began firſt to wreſt the laws and ſcriptures to their own damnation. But as the former quotation out of the Lord *Coke* can do Sir *Edward Herbert* no ſervice, upon the reaſons above ſhewn; much leſs can the other, which is one of Sir *Edward*'s uſual perverſions. He tells us, *Acc. ante* p. 619. That it is reſolved by all the Judges (if my Lord *Coke* be a faithful Reporter), that it is agreed 2 *H.* VII. that the King may, againſt the expreſs proviſion of the Act 23 *H.* VI. diſpenſe with that Act; for that the Act could not bar the King of the ſervice of his Subjects, which the law of nature did give unto him. He adds, *This is reported (unleſs my Lord* Coke *had a mind to deceive the ſucceeding Judges, and draw them in to give pernicious opinions) as the ſenſe of all the Judges of* England, *in King* James's *time, in the Exchequer-Chamber.* Whereas the Lord *Coke*, on purpoſe to prevent ſuch an abuſe of his words, ſays in the beginning of the Caſe, 7 *Rep. f.* 4. "I ſhall give no juſt offence to any, "if I challenge that which of right is due to every Reporter; that is, to "reduce the ſum and effect of all to ſuch a method, as upon conſideration "had of all the arguments, he himſelf thinketh to be fitteſt and cleareſt "for the right underſtanding of the true reaſons and cauſes of the Judg-"ment, and reſolution of the caſe in queſtion."

Upon which it is evident, that if any one of the Judges mentioned this, the Lord *Coke* is a faithful Reporter; but had he been ſilent as to this matter, no man could ſuppoſe, that ſuch a tedious argument as that in *Calvin*'s caſe was the reſolution in which the Judges concurred in every expreſſion.

But Sir *Edward Herbert*'s own eyes might, and ought to have ſatisfied him, that the Judges 2 *H.* VII. gave no determination upon the 23 *H.* VI. nor does the Book ſay, that ſo much as any one perſon ſpoke to that Statute, or mentioned the reaſon deviſed in *Calvin*'s caſe; *For that the Act could not bar the King of the ſervice of his Subject, which the Law of Nature did give unto him.* Nor could Sir *Edward* chuſe but know the abſurdity of that ground: for according to that, all ought to be left in the ſtate of nature, as it was before any Law made; ſo that not only any perſon might act, tho' prohibited by ſubſequent Laws, but he might act any thing forbid by any poſitive Law; which would make a mad world. And this would come of a natural allegiance due to the perſon of a King, without reſpect to the Laws of his Government *(a)*. And the reſolution of the Judges in *Calvin*'s caſe is quite contrary to this ſuppoſal; for it is there reſolved, That they who were born under King *James*'s allegiance, before he had the Crown of *England*, were aliens here, notwithſtanding that acceſſion *(b)*.

But my Lord *Coke* is ſo far from giving any real countenance to ſuch a reſolution, as that in Sir *Edward Hales*'s caſe, that he, in concurrence with all the Judges of *England*, is expreſs to the contrary; for in relation to the Court of Admiralty, he and the reſt of the Judges declare, 4 *inſt. f.* 135. "That the Statutes of 13 *R.* II. *c.* 3. 15 *R.* II. *c.* 5. and 2 *H.* IV. *c.* 11. "being Statutes declaring the juriſdiction of the Court of the Admiral, "and wherein all the Subjects of the Realm have intereſt, cannot be diſ-"penſed with by any *non obſtante*." Nay, he gives another reſolution of Judges, tho' not ſo ſolemn as the former; yet what he ſays is warranted in the Books, and the reſolution comes up to our caſe *in terminis*, 3 *Inſt. f.* 154. his words are, "When an Act of Parliament is made, that diſabled any "Perſon, or maketh any thing void, or tortious, for the good of the Church "or Common-wealth; in that law all the King's Subjects have an intereſt, "and therefore the King cannot diſpenſe therewith, no more than with "the Common Law."

All the chimerical foundation of ſolemn reſolutions being thus deſtroy'd, I need not concern myſelf with the vain, airy ſuperſtructure, which muſt vaniſh *in fumo*; and inſtead of the Appeal, *What may be relied upon, if ſuch reſolutions may not? Acc. ante p.* 619. I appeal to all mankind, whether our ſenſes are not ſufficient Judges againſt theſe accidents, ſubſiſting without any ſubject, mere tranſubſtantiation nonſenſe? Such are reaſons deviſ'd for a reſolution which never was to be ſeen.

But we are told, That beſides the authority of the caſe, we have conſtant practice that this Statute has been diſpens'd with ever ſince; and if it were not ſo, the conſequences would be dreadful, *illegal Convictions, &c. Ac. ante p.* 619. But to this I ſay,

1. *A facto ad jus non valet argumentum*, till there be legal determinations on the ſide of the fact.

2. The fact cannot be ſhewn, for any Sheriff to have enjoy'd the office for more than one year by the ſame patent.

3. However the conſequences would not neceſſarily follow *(c)*; for we know, even Laws made by Kings *de facto*, have always been look'd on as binding, and ſo have the admittances to Copy-hold eſtates, made by diſſeiſors, and others without title. And tho' I love not to lay any great ſtreſs upon precedents of our own time, yet it may ſerve to Sir *Edward*; and we well know, that notwithſtanding the late illegal choice of Sheriffs in the City of *London*, yet no challenges were allow'd, becauſe they were Sheriffs *de facto*.

That I may not be here unneceſſarily detain'd, with what he ſays to real or fancied objections; I ſhall haſten to his other pretended authorities, and ſhall begin with his laſt, as having the moſt immediate reference to the caſes above-cited, and which he ſeems to be moſt proud of; and that is Serjeant *Glanvil*'s argument, delivered at a conference between the Lords and Commons; wherein he owns, that in ſuch things as are only *mala quia prohibita, Acc. ante p.* 621. under certain forfeitures and penalties to the King, and the Informer, there the King may diſpenſe. This indeed is more than appears from any caſe that Sir *Edward Herbert* has cited, as I have ſhewn above; yet is no more than what the Lord *Coke* ſaid elſewhere *(d)*, immediately after he had denied that power in things *made void or tortious, for the good of the Church or Commonwealth*; *in which*, he ſays, *all the King's Subjects have an Intereſt, and therefore the King cannot diſpenſe therewith, no more than with the Common Law.*

All that is more, in Serjeant *Glanvil*, relates only to the nature of thoſe Laws which were then inſiſted upon; if he went further, it could no more be an evidence of the opinion of the Houſe of Commons in that point, not being the point put to the queſtion, than his quotation out of *Calvin*'s caſe is of the opinion of all the Judges. But the firſt part of his ſpeech cannot be ſtretch'd farther than *mala prohibita* had formerly been taken, that is, in relation to new prerogatives, or at leaſt things wherein the Subjects in general have no intereſt veſted in them; and he expreſsly reſtrains it to ſuch caſes, *wherein his Majeſty, by conferring grace and favour upon ſome, doth not do wrong to others*; *Acc. p.* as it is in my Lord *Coke* above, and in *Moor* *(e)*, where 'tis held, that Statutes which give a prerogative, or reſtrain the prerogative, may be diſpens'd with; but not ſuch as give or diſpoſe of Intereſts. And as to what reſtrains the prerogative, not coming within the *mala prohibita*, tho' it falls not under conſideration here; yet we may obſerve the difference taken in Lord *Hobart (f)*, where a Statute is made to eaſe the Sovereign of labour, not to deprive him of power. In the firſt caſe the King may diſpenſe, not in the other.

And I think no Man can doubt but the Statute, 25 *Car.* II. *cap.* 2. which only requires officers to take the oaths, and teſt, to diſtinguiſh them from Papiſts, but diſables them that do not take them within three months, veſts an intereſt, not only in ſeveral particular perſons, who may be reverſioners, but in all the Subjects in general; and is of the nature of thoſe Statutes inſiſted on in the Petition of Right, and preſs'd for by Serjeant *Glanvil*, *Acc. ante p.* 621. "Not Laws inflicting penalties *in malis prohi-*"*bitis*; but Laws declarative, *or poſitive, conferring, or confirming* ipſo facto "*an inherent Right and intereſt of liberty, and freedom in the Subjects of this* "*Realm, as their birth-right, and inheritances deſcendable to their heirs and* "*poſterity.*" A freedom, I may add, from *Popiſh* ſlavery and tyranny; *Statutes incorporate into the body of the Common Law, over which, with reverence be it ſpoken, there is no truſt in the King's ſovereign power or prerogative royal, to enable him to diſpenſe with them, or take from his Subjects that birth-right, or inheritance which they have in their liberties, by virtue of the Common Law, and of theſe Statutes:* I may ſay, this Statute.

And ſuch a Statute it is, that no man that wiſhes well to the Proteſtant Intereſt, not only here, but thro' *Chriſtendom*, would conſent to the abrogating or impairing the force of it; without obtaining ſuch Laws for reſtoring the ancient conſtitution, both for the choice of Sheriffs and Counſellors, among other things, as might more effectually keep out the *Booted Apoſtles*; than any other means, next to the glorious expedition of his Highneſs the Prince of *Orange*; whoſe miraculous ſucceſs are not only the ſubject of preſent admiration, but have been plainly foretold in paſt ages, and will be celebrated in all future.

But to return from this ſhort digreſſion: 'Tis manifeſt that Serjeant *Glanvil* ſpeaks as well of ſuch Laws as are poſitive, as thoſe that are declarative; ſuch as confer an inherent Right, as that confirm it; and of Statute, as well as common Law, not to be diſpens'd with: ſo that he is manifeſtly on our ſide, and ſeems not in the leaſt to have exceeded the Lord *Coke*, where he makes ſo expreſs an exception of our caſe, from that diſpenſing power which he allows. By inherent, the Serjeant can mean no more, conſidering the import of confer, than actually veſted, and inherent, and inſeparable by any leſs power than that from which it was derived. Thus in relation to thoſe prerogatives that have been counted inherent, and inſeparable in relation to penalties, and the like *(g)*, the true meaning can be only, that while they continue, they are not to be ſeparated and transferred over to another. Yet no thinking

(a) Vid. Archb. *Abbot*'s Exceptions to *Sibthorp*'s Serm. *Ruſhw. part* 1. *f.* 439 & 442. *(b)* 7 *Rep. f.* 27. Vid. *Vaugh. f.* 286. *(c)* Vid. Conſid. touching the Grand Queſt. *a. p.* 210. *to* 214. 1 *Inſt. f.* 58. *b.* *(d)* Vid. *ſupra*, 3 *Inſt. f.* 154. *(e)* *Moor, ſup. f.* 714. *(f)* *Hobart, f.* 146. Vid. *Vaughan f.* 57. ſpeaking of Lord *Hobart*'s Judgment, which is always accurate for the reaſon of the Law. *(g)* Vid. Lord *Coke*'s Cap. of Penal-Statutes, 7 *Rep. f.* 36.

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Man will doubt the Power of a Parliament, in relation even to them; and if they cannot be receded from in particular, at leaſt they may in groſs; when a King does *cedere imperio*, or *abdicare Regnum*, which moſt prerogative-caſuiſts *(a)* own may be, not only by actual Ceſſion from the Government, but by Acts amounting to an Abdication, and ſhewing a fixed Intention no longer to treat his People as Subjects. Nor perhaps could there be greater Evidence of ſuch Intention, than the diſpenſing at a Lump, not barely by Retail to particular Perſons, with thoſe Laws which were made by the united Wiſdom of the Nation to ſecure it, as much as they thought human Means could, or at leaſt the Court would yield to againſt thoſe real Dangers which were in their immediate Proſpect. Nor in all Probability had this Encloſure been laid waſte, if the diſpenſing Judges had not made the firſt Gap.

As to Sir *Edward*'s ſuppoſed clear Conceſſions of this Power from all the Commons of *England*, 1 *H.* V. *Acc. ante p.* 620. they are quite otherwiſe than he repreſents them, nor would be concluſive to his Point however.

In the firſt, ſays Sir *Edward*, "The Commons pray, that the Statutes "for voiding of Aliens out of the Kingdom may be kept and executed; "to which the King agrees, ſaving his Prerogative, that he may diſpenſe "with whom he pleaſes; and upon this the Commons anſwered, that "their Intent was no other."

But the Recorder ſays, *Sauvant a luy ſa prerogative*, "ſaving to him "his Prerogative." Whatever that was, they declared they never intended to injure it. Then it goes on with the Copulative *and*, which adds new Matter, and is diſhoneſtly left out by Sir *Edward*, *Et quil purra diſpenſer aveſque ceux queux luy plerra*, "And that he may diſpenſe with "whom he pleaſes." Which is an additional Grant or Licence to that King; but that this ſaving is but a general ſaving of the Prerogative, appears by the very next Record, which he cites of the ſame Parliament.

Sir *Edward*'s Words are, "In the ſame Parliament, when the Com"mons pray, That the Statutes of Proviſors, Statutes of the ſame Na"ture with this in our Caſe (for they were made againſt the Court of "*Rome*'s encroaching Juriſdiction in *England*), I ſay, when they make "the like Prayer, that theſe may be put in Execution; being admoniſh"ed by the King's Anſwer in the former Caſe, they themſelves inſert in "their very Prayer, a ſaving for this Prerogative of the King's, and then "the King agrees to it." Where he would inſinuate, that this Prerogative of diſpenſing with particular Perſons is there ſaved, when the Record is expreſs to the contrary: The Words in *Engliſh* are,

"Alſo the Commons pray, for the good and Profit of the Realm, that "all the Statutes made againſt Proviſors, in the Times of the moſt noble "King, *E.* III. *R.* II. *H.* IV. *(b)* your Father, whom God be mer"ciful to, may ſtand in their Force, and may be held and executed in all "Points; and that no Protection, nor other Grant, to any Perſon, by "our Lord the King, working to the contrary, in forbearance of the "Execution of the ſaid Statutes, be allowable or available to any Perſon "whatſoever in this Matter. And if any thing be done to the contrary, "let it be held for null or void; ſaving all times the Prerogative of the "King."

The King anſwers, "Let the Statutes thereof made, be held and "kept." Which is plainly meant according to their Prayer, without the King's impeding the Execution of them by any Protection, or other Grant to any Perſon whatſoever; and if ſuch Grant be, that it ſhall be void. Is not this as much as to ſay, (*Vid. Acc. ante p.* 618.) *That no* non obſtante *ſhall make any ſuch Grant good?* Oh, but Sir *Edward* will tell us, *That this ſhews that the Parliament thought the King could otherwiſe have diſpenſed with thoſe Acts.* By no Means; it only argues an Abuſe crept in (which *Matthew Paris* ſhews to have been as early as the Time of *H.* III.) and likely to be allowed of by the Judges; but the Parliament would prevent even that; and ſurely they would never provide, that a *non obſtante*, or Grant to a particular Perſon ſhall be void, if they thought the King had a Prerogative to defeat this when he pleaſed: Much leſs, when they expreſly pray againſt ſuch an Abuſe, can they be thought to contradict themſelves, and in the ſame Breath that they deſire that no Perſon whatever may be diſpenſed with, yet leave the King a Prerogative to diſpenſe with whom he pleaſes. The Abſurdity of which Reaſoning he might have ſeen in that excellent Speech of Serjeant *Glanvil (c)*, which he himſelf receives as the Senſe *of the Commons of* England, *aſſembled in Parliament.*

Wherefore the ſaving in both the Records, *Acc. ante, p.* 621. can be but general ſavings, of ſuch Prerogative as the Kings had, whatever it were; which the Kings, as they began to encroach upon the People, or to be jealous of their Encroachments, would have inſerted out of abundant Caution, before they would yield to ſeveral Acts. And theſe being Acts of Parliament, which could paſs but as the King conſented, the People were forced often to gild the Pills with ſuch Savings; but it was othewiſe of Judgments in Parliaments to which no Conſent of the King was requiſite.

Farther yet, admit the King had a Prerogative of diſpenſing with particular Perſons, both as to Aliens and Proviſions; yet there could no general Rule be taken from thence, becauſe it would only argue, that the fondneſs for Aliens, and fear of diſpleaſing the Court of *Rome*, had at firſt occaſioned the reſerving the Power of eaſing ſome particular Perſons, without which the King would paſs no Act againſt them. However it was, the frequent Complaints of the Commons *(d)*, and Acts made againſt both the one and the other, ſhews that thoſe Laws were little regarded or executed, and yet that the King had not a Prerogative allowed him any more for particular Perſons, than for all in general.

Sir *Edward* has five other trivial Inſtances of the diſpenſing Power, which, however, I ſhall not omit. One is the diſpenſing with the Statute, 8 *R.* II. *c.* 2. *Account, p.* 619. which requires, that no Man ſhould go *Judge of Aſſize into his own Country:* But for this there is only Practice, which has paſſed *ſub ſilentio*, and ſo could be of no Authority in Law. Beſides, the Statute is barely prohibitory, and does not render the Patents void if otherwiſe; yet I cannot ſay but an Information would lie, though there were a *non obſtante* in the Caſe.

The ſecond is of diſpenſing with the Statute 10 *Ed.* III. *cap.* 3. *Acc. ante, p.* 619. which provides, *That whoever has a Pardon of Felony, ſhall find Sureties for the good Behaviour*; of which he ſays, as of the other, *That it has been conſtantly diſpenſed with ever ſince it was made.* But if the Practice had been ſo, which he does not prove, it would not avail, unleſs it had come in queſtion judicially, whether the Pardon would be valid to one who had not given, or at leaſt tendered Sureties. Indeed there is a Caſe in our Books, where the Court did not require Sureties, becauſe of a particular Clauſe in the Pardon diſpenſing with it: But this was no earlier than 16 *Car.* I. *(e)* the Judges of which Time paid ſufficient Deference to Prerogative; but that Caſe ſeems to be not only *primæ impreſſionis*, and without any Reaſon given, but in effect condemned by the Reporter, as he ſhews that the Court abuſed their Diſcretion, if they had any, in the Matter: 'Twas the Caſe of Sir *Matthew Mints*, who appeared to be guilty of ſeveral Miſdemeanors, for which he deſerved to be bound to the good Behaviour, committed after the Time to which he was pardoned.

The third and fourth Inſtances, ſcattered from the reſt, are of diſpenſing with Pluralities, and Baſtards entering in Prieſts Orders; *Acc. ante, p.* 622. which, if poſſible, will be leſs ſerviceable to him: For,

1. Such diſpenſations are never granted by the King *(f)*, but by the Archbiſhop; and the King only licenſes, or confirms, the Archbiſhop's Diſpenſation in unuſual Caſes.

2. That the King's Licence or Confirmation in *Caſes unwont*, as the Statute has it, is of any Force, is owing to the Statute, 25 *Hen.* VIII. *cap.* 21.

3. Even in uſual Caſes, where the Archbiſhop might diſpenſe, though the King's Confirmation be added, yet unleſs it come in due time, it will not prevent a Lapſe incurred upon the Statute 21 *Hen.* VIII. *cap.* 13. againſt Pluralities; as was adjudged in *Digby*'s Caſe *(g)*, though the Diſpenſation came before Induction. And this comes up fully to one of the Points in Sir *Edward Hales*'s Caſe, which our Chief-Juſtice has not been ſo fair as in the leaſt to mention to be a Point in the Caſe: Nay, quite contrary, he ſuppoſes it to be a Caſe, *Acc. ante, p.* 623. *where a Diſability is annexed as a Penalty, and that Penalty is not to be incurred before legal Conviction, and where the King's Diſpenſation makes the Thing diſpenſed with lawful, and conſequently prevents any Conviction or Penalty at all*; forgetting, that in the very State of the Caſe, he owns there was a Conviction before the Diſpenſation came. So that here was a Diſability actually incurred, and that upon Record, as appears in the Pleadings; and while that Record remains, there is no falſifying of it, though in fact the Conviction were before the three Months given in the Statute to prevent a Diſability *(h)*; and he had no other Means, than either to plead no ſuch Record, or to bring his Writ of Error. Wherefore this Diſpenſation comes clearly within *Digby*'s Caſe, as being too late, ſuppoſing otherwiſe it were valid.

As Sir *Edward* ſhews that he has read *Thomas* and *Sorrel*'s Caſe, he might have known another Reaſon of theſe two Caſes, *viz.* *(i)* "That "the King may diſpenſe with a Baſtard to take Holy Orders, or with a "Clerk to have two Benefices with Cure, which were *mala prohibita* by "the Canon Law, and by the Council of *Lateran*, not by Act of Par"liament;" which is moſt true. For theſe are mentioned in the Book of *Hen.* VII. before any Act made againſt Pluralities.

There is another Inſtance in that wild Annotation, upon the Caſe of Cuſtoms in the 12 *Rep.* where 'tis ſaid, "See (*Acc. p.* 619.) 4 *Hen.* IV. "*cap.* 31. in which 'tis ordained, that no *Welſhman* be Juſtice, *&c.* in "any Part of *Wales*, notwithſtanding any Patent to the contrary, with "Clauſe of *non obſtante licet ſit Wallicus*: And yet without Queſtion the "King may grant with a *non obſtante.*"

Nor do I queſtion it neither, even before 21 *Jac.* I. *cap.* 38. when that Statute was repealed, provided the *Welſhman uſe not Welſh Speech*; and this by 27 *H.* VIII. *cap.* 26.

But as to theſe three laſt Inſtances, it might be ſaid further, that if they were ſtronger than they prove, yet they might fall under the Difference received by him from Lord *Vaughan*, where he ſays, the King may diſpenſe with Laws made *pro bono publico complicati*, but not with ſuch as were made *pro bono ſingulorum populi*; in which the Lord *Vaughan* is not ſo abſurd, as to mean, that though the King cannot diſpenſe with a Law in which any Man in particular is ſo far intereſted, as to be entitled to an Action for himſelf alone, yet he may with thoſe in which all the ſubjects are intereſted. But his Meaning, to make him conſiſtent with himſelf, muſt be reſtrained to Lord *Coke*'s Senſe upon the Penal Statute, which makes this Power to be only where *the King, as Head of the Commonwealth, is truſted by all the Realm* (*k*); in which Senſe he alone is to look after the Intereſt of the *populus complicatus* under him as Head. Thus Lord *Vaughan*, 1. Expreſly, (*Acc. p.* 620.) qualifies it, when he ſays, "They are *pro* "*bono populi complicati*, as the King in his Diſcretion ſhall think fit to or"der them for the good of the whole." 2. He illuſtrates it by the Example of a *Pater-familias (l)*; "Whoſe Eſtate, he tells us, may be ſaid "to be *pro bono communi* of his Family, which yet is but at his Diſcre"tion and Management of it, and they have no Intereſt in it, but have Benefit by it." 3. Both he and Sir *Edward Herbert* allow Inſtances, where every particular Man is not entitled to his Action, and yet the Statutes are owned to be *pro bono ſingulorum populi*, and not to be diſpenſed with; *Account, p.* 620. and ſuch are *Magna Charta*, and thoſe other Laws mentioned by Serjeant *Glanvil* and Sir *Edward. Acc. p.* 620. And if ſome Difference can be found between the Intereſt *ſingulorum populi* in all thoſe Statutes, and in ours, to uſe his Words, I wiſh any Man would ſhew me any ſuch Difference; or elſe we muſt ſay, that not only the former Reſolutions, but Lord *Vaughan* here, as well as where I before obſerved, is full againſt him; nay, he is even againſt himſelf.

(a) Vid. Grot. de Jure Belli & Pacis. Vid. Falkner's *Chriſtian Loyalty*, p. 544, 545. ſpeaking of the *Pariſian* Maſſacre, *&c.* But if ever any ſuch ſtrange Caſe as is propoſed ſhould really happen in the World, I confeſs it would have its great Difficulties. *Grotius* thinks that, in this utmoſt Extremity, the uſe of ſuch Defence, as a laſt Refuge *ultimo neceſſitatis præſidio*, is not to be condemned, provided the Care of the common Good be preſerved. And if this be true, it muſt be upon this Ground, that ſuch Attempts of ruining do *ipſo facto* include a diſclaiming the governing thoſe Perſons as Subjects, and conſequently of being their Prince or King. Vid. Biſhop *Bilſon*, of *Chriſtian Subjection*, Ed. 1586. p. 280. I never denied, that the People might preſerve the Foundation, Freedom, and Form of their Commonwealth, which they foreprized when they firſt conſented to have a King.

(b) Rot. Parl. 1 H. V. n. 22. *(c)* Vid. Serjeant *Glanvil*'s Speech, *ante p.* 202. *(d)* Vid. Dr. *Stillingfleet* againſt *Creſſy*, from p. 426. to 451. *(e)* Sir *Matthew Mints*'s Caſe, *Crooke.* Car. fol. 597. *(f)* Vid. *Vaughan*'s Rep. f. 20. *Edes* v. *Eveſq*; *d' Oxford.* *(g)* 4 Rep. f. 78. b.

(h) Vid. Rolls Abr. Brook. Fitz. tit. *Eſtoppel*, particularly *Statham. Si home ſoit oblige de garder le Pace & puis* Scire Facias *iſſift vers lui de ceo quil bat. une que viet & eſt trove coup. & puis cet port. brief de tranſ. vers luy de meſme le batie & ill pled. de rien coup. il luy eſtoppera per matter trove la ſuite le Roy, &c.* So Brook, n. 59.

(i) Vaughan, f. 358. *(k)* Vid. 7 Rep. p. 36. *(l) Vaugh.* p. 342.

himself: which I would be loth to think that Lord *Vaughan* is (*a*), who owns, *That the King cannot dispense in any case but with his own right, and not with the right of any other*; which he confines not to individual persons, considered singly; for he says expressly (*b*), "*If the wisdom of the Parliament hath made an Act to restrain, pro bono publico*, the importation of "foreign manufactures, that the subjects of the Realm may apply themselves to the making of the said manufactures for their support and "livelihood, to grant to one or more the importation of such manufacture, without any limitation, *non obstante* the said Act, is a Monopoly, and void." For this I am sure, particular persons are not entitled to actions upon their own accounts. Indeed he supposes the King may license, limiting the quantity, and that for private uses (*c*), not by way of merchandize, as not being against the end of the Act. Wherefore in our case all subjects being interested as Protestants, their support and encouragement being provided for by the Act, and the letting Papists into the Government against the end of it, who can doubt but Lord *Vaughan* would have pronounced Sir *Edward Hales*'s dispensation void?

And whereas our Judge pleads in his excuse, *Account*, *p.* 622. That though this Law was made for the interest of Religion, the offence is not directly against Religion, but against a politick Constitution, tho' made for the interest of Religion; he might not only have learnt from Lord *Coke*, that the subjects have such an interest as the King cannot dispense with, in what is made void or tortious, that is, unlawful, for the good of the Church; but Lord *Vaughan* shews (*d*), that there are *mala politica* not to be dispensed with, and instances in some things, which are nuisances *in specie*.

Now, besides what already has been shewn, to disable these three last instances urged by Sir *Edward*, that they are not *pro bono singulorum populi*, as that rule is vindicated from misapplications, may appear, in that neither of them affect all the people in general. As to the Clergymen, they can only do injury in their respective parishes where they are beneficed, and the *Welshman* in that part of *Wales* where he is an officer; nor besides, can the Clergymen be supposed much to prejudice the interest of Religion, being the Pluralist cannot supply his Cure but by one qualified, and the Bastard might be a good man, and good Preacher. And yet even these would fall within Lord *Vaughan*'s acceptation of his own rule (*e*); for he shews that laws made for the benefit of but part of the Kingdom, Artificers and Husbandmen, cannot be dispensed with to any one person, to frustrate the ends of the Statutes.

This leads to another flourish which he makes with the Lord *Vaughan*'s authority, in answer to the objection, that the Law was made *pro bono publico*, *Acc. p.* 620. and it was highly necessary for the publick. Indeed Lord *Vaughan* will have it, that the sole reason why a Statute cannot be dispensed with, is not, that the Law was made *pro bono publico*, because all Laws were made for publick good; and yet dispensations had been allowed in some, nor was the degree of publick good that which altered the case; yet he shews that the extent of it does: and seems still to keep to Lord *Coke*'s rule, where the People had entrusted the King with the Law, as Head of the complicated body, there the trust was entirely in him; but when the law extended in interest not only to individual persons, but to a considerable part of the Nation, much more when to all, in either of which cases the Statute is *pro bono singulorum populi*, in neither of these can the King dispense. And that the Statute in question is of the largest extent, appears as the Nation is a Protestant Nation, this the religion established by Law, and these provisions necessary means to preserve it; and therefore though the Papists have no benefit by it, they are not in Law, in this respect, any part of the people; for people always is taken for them that have legal interests. Thus when the Statute provides (*f*) that the People of Counties shall choose their Sheriffs, it relates not to all the People in general, but only to Freeholders.

Secondly, Having thus shewn, that those grounds which our Judge pretends to have gone upon, afford no countenance even to his palliation of the Judgment, they will appear much less to countenance it as it was delivered; which to evince, I shall here set it down *ipsissimis verbis*, from that faithful reporter Mr. *Blaney*.

It was on that memorable day, when, as another mark of his sincerity, he directed the willing Jury, and concurred in the infamous sentence against that excellent Author Mr. *Johnson*; when the Jury was gone out, the Chief-Justice took occasion to inveigh against spreading of scandalous reports about cases depending in the Court; and to prevent any thing of that nature in the case of Sir *Edward Hales*, he thought fit to deliver the opinion of the Judges in this manner:

Chief-Justice. "In the case of *Godwin* and *Hales*, wherein the Defend-
"ant pleads a dispensation from the King, it is doubted, whether or no
"the King had such a prerogative? Truly, upon the argument before us,
"it appeared as clear a case as ever came before this Court: But because
"men fancy I know not what difficulty, when really there is none, we
"were willing to give so much countenance to the question in the case,
"as to take the advice of all the Judges in *England*. They were all as-
"sembled at *Serjeant's-Inn*, and this case was put them, and the great
"case of the Sheriffs was put; whether the dispensation in that case were
"legal, because upon that depended the execution of all the Law of the
"Nation? And, I must tell you that there were then ten upon the place,
"that clearly delivered their opinions, that the case of the Sheriffs was
"good Law, and that all the Attainders grounded upon Indictments
"found by Juries returned by such Sheriffs, were good, and not erro-
"neous; and consequently, that men need not have any fears or scruples
"about that matter. And in the next place, they did clearly declare,
"that there was no imaginable difference between that case and this, un-
"less it were, that this were the much clearer case of the two, and lia-
"ble to the fewer exceptions. My Brother *Powel* said, he was inclined
"to be of the same opinion, but he would rather have some more time to
"consider of it; but he has since sent by my Brother *Holloway* to let us
"know that he does concur with us. To these eleven Judges, there is
"one dissenter, Brother *Street*, who yet continues his opinion, that the
"King cannot dispense in this case. But that's the opinion of one single
"Judge, against the opinion of eleven: We were satisfied in our own
"judgments before, and having the concurrence of eleven out of twelve,
"we think we may very well declare the opinion of the Court to be,
"that the King may dispense in this case; and the Judges go upon these
"grounds:
"1. That the Kings of *England* are sovereign Princes.
"2. That the Laws of *England* are the King's Laws (*g*).
"3. That therefore, 'tis an inseparable prerogative in the Kings of
"*England*, to dispense with Penal Laws in particular cases, and upon
"particular necessary reasons.
"4. That of those reasons, and those necessities, the King himself is
"sole Judge: and then, which is consequent upon all,
"5. That this is not a trust invested in, or granted to the King by the
"people; but the ancient remains of the sovereign power, and preroga-
"tive of the Kings of *England*, which never yet was taken from them,
"nor can be. And therefore such a dispensation being pleaded by the
"Defendant in this case, and such a dispensation appearing upon Record
"to come time enough to save him from the forfeiture, Judgment
"ought to be given for the Defendant, *quod quærens nil capiat per billam.*"

'Tis evident, that these propositions are very wide from any thing that he has, or could have urged from the Books, unless where a brand of infamy has been set upon the Judges. The examples of which, made in several ages, one would have thought, might have given sufficient caution; yet indeed, he might have had enough of this kind from those of the other Gown, who, I think, are now pretty well ashamed of these notions. Whatever power of dispensing the King has, the Books suppose it to be entrusted by the people; but according to this resolution, it came down from Heaven the Lord knows how. And as he goes upon the supposition of an absolute soveregnty in the King (*h*), inseparable from his person, as such will have it, unless that be granted, all that he builds upon it are but castles in the air: for this we are to have recourse to our constitution, to see what that power in the Prince is; which the great *Fortescue* says, is, *à populo effluxa*, "derived from the people." But for that we have no occasion, from any so much as pretended proof of his assertions; nor can any be offered but from the resolution of the infamous Ship-money Judges, which seems to run parallel to this, but is indeed far short of it: for though they made the King the sole Judge of the Kingdom's necessity, yet they supposed it to be at a time when there was a real danger to be prevented by the exercise of this Judgment; whereas here it is abused to the bringing in what the Parliament laboured to prevent.

But I must observe, *vide Account*, *p.* 623. 1. That whereas Sir *Edward Herbert* owns the dispensing power to be of dark learning, and that *it is very fit it should receive some light from a determination in Parliament, that Judges may judge, by more certain rules, which Acts of Parliament the King may, and which he may not dispense with.* Grant his premisses, and there can be no darkness in it; for the power will extend to all cases, as far as the legislative does; and that he has determined positively in this point, *Account*, *p.* 617. when he makes all things, not forbid by God's Law, to be dispensible by the King. Nay, if he might dispense with every *malum prohibitum*, that is not *malum in se*, without such qualification as I have shewn ought to be, it would go farther, even as far as God's power (*i*), who never dispenses with more than his own positive Laws, not such as are founded upon eternal reasons: and thus the positive Laws of God and Man would be subject to the pleasure of the Prince. 2. He has taken it out of the power of the Parliament to settle the bounds of this extravagant power: for, what he ascribes, he says, never was taken from the Crown, nor can be; because, forsooth, *'tis the ancient remains of the sovereign power and prerogative of the Kings of* England. Wherein by the way, there is an implication contrary to what he would infer; for this implies, that 'tis but the remains of a power diminished and impaired. 3. His printed and parol resolutions are not only very different, as is obvious by the comparison, but very contrary: *Account*, *p.* 623. One says, 'tis a dark learning; the other, the case is as clear as ever came before the Court.

Thirdly, Tho' his insincerity is sufficiently evident from every part of his defence, yet it may not be unprofitable for the Publick, that he should be followed to those instances in which he glories; for which, 'tis not enough for him to shew some one Act wherein he is singular, if he follows the multitude to sin in others, even of the same kind; which if he does, he can no more acquit himself of Perjury and breach of Trust, *Account*, *p.* 616. than the rest of the tainted herd.

In matters of blood, *Account*, *p.* 621. he affects the reputation of great tenderness, and thinks he has been scrupulous even to a fault. *For*, says he, *in some cases upon Statutes, that had been adjudged Felony by wiser and better Judges than myself, and it was highly for the King's service that it should be so, yet I would never give judgment of death, because I could not satisfy my conscience, that those Statutes were now in force.* It is a fault, it seems, not to give judgment against his conscience, when the narrow interest of the Court exacts it, and other Judges, influenced from thence, would countenance it: But we may observe, that those Statutes concerning Soldiers (*k*), of which he is to be understood, not only give no warrant for such judgment, as is obvious to the meanest capacity; but if they could admit of any question, the unbiassed Judgment of the then Recorder of *London*, Sir *John Holt*, ought to outweigh the whole Bench.

But I wish our Chief-Justice could as well acquit himself in the case of Lord *Brandon*. The father's heroic merits of the Crown, too great to be rewarded; and the son's hereditary valour, dangerous to those who had reason to fear brave spirits, occasioned the rigorous prosecution of both. The

(*a*) Thomas v. Sorrel, *f.* 350. (*b*) Ib. *f.* 347. (*c*) Vaugh. *f.* 346. (*d*) Vide Lord *Vaughan*, *f.* 339, 340.
(*e*) Lord *Vaughan*, *f.* 344, 345, 346, 347. (*f*) 2 Inst. *f.* 559. (*g*) So *Sibthorp*, Rushworth, vol. 1. p. 422.
(*h*) Vid. *Case of Resistance*, p. 200. See there such a Sovereignty as makes Laws, can repeal and dispense with them. *Fortescue*, *p.* 32. *Ad tutelam namque legis subditorum, ac eorum corporum & bonorum rex hujusmodi erectus est, & ad hanc potestatem a populo effluxam ipse habet quo ei non licet potestate aliâ suo populo dominare.* See this condemned 13 & 14 *Car.* II. *cap.* 29. Vid. Rushworth, part 2. *fol.* 608.
(*i*) Vid. Grot. de Jure Belli & Pacis, l. 1. c. 1. *Sicut ut bis duo non sint quatuor, ne a Deo quidem effici potest; ita ne hoc quidem ut quod intrinsecâ ratione malum est malum non sit.*
(*k*) The case *Crook*, *Car.* 15. & *Hutton* 134. is of one prest to serve beyond Sea.

father

father was obliged to change his ſoil, till it might become more equal, not unmindful of our Saviour's advice, or rather precept, *When perſecuted in one Country, to flee into another*; that tho' he contemned Death, he might not provoke it. The ſon falling into their hands, both his life and honour, which the ſevereſt trials approved to be moſt valued by him, were deſigned for a ſacrifice. In ſubſerviency to which, our Chief-Juſtice directed the willing Jury to find him guilty of high-treaſon, chiefly upon a ſuppoſed conſpiracy to ſeize the Caſtle of *Cheſter*; which, if true, were but felony by a Statute *(a)*, as to that part, yet in force, and ſo could be no evidence of treaſon. Nor would he ſuffer the fact to be found ſpecially, tho' he pretended not to anſwer the Caſes and Records, which were cited to ſhew, that the matter alledged could not be treaſon: nor did the then Sollicitor undertake the taſk, notwithſtanding that ſhew of reaſoning, with which he laboured to ſet aſide the authority of Lord *Coke (b)*, pleading expreſly and unanſwerably for that injured Hero, (of whom the Age was not worthy) the Lord *Ruſſel*.

Nor was the proof in Lord *Brandon*'s caſe leſs defective than the matter; for beſides the ſcandalous *Sexton*, who ſwore to deſigns againſt another King, there was but one witneſs in the eye of the law: he indeed is ſo far legal, as that he might be heard, being an *Approver (c)*; but no way credible, conſidering how far he had been drawn with his fetters about his heels, even to (*d*) contradict himſelf. The other by no means legal, being under an outlawry for High-Treaſon, unreverſed: For though the execution of that Judgment (for ſo in law it is) was pardoned by the King, yet the crime was by no means purged, to ſet him right as to fame; which though the Counſel offered to make good, they were not ſuffered to ſpeak to it: and yet the point is very *(e)* clear by ancient authorities, and confirmed by later, without any thing really to the contrary. Nay, farther, though beſides all theſe things, another matter was urged in arreſt of Judgment, upon which Judgment had *(f)* formerly been arreſted; yet, without enquiring whether the fact were true, or the Book law, that, with the reſt, was over-ruled, to come at the life of a perſon obnoxious to the Government, as ſome called themſelves. Such was Sir *Edward*'s great ſcrupulouſneſs and tenderneſs where the life of man was concerned.

He adds a ſcruple in a caſe before himſelf, and the other Uſurpers of the High-commiſſion-Court; but his ſingularity therein can be no excuſe for his acting at all upon a commiſſion apparently againſt the Statute; which took away not only the power of fining and impriſoning, which that Court illegally pretended to, but the ſpiritual authority which it really had: and ſuch a commiſſion it was, as never received countenance till the Act *(g)* long ſince repealed; which not only made *H.* VIII. Head of the Church, but gave him power, which he afterwards delegated to Lord *Cromwell*, (*V.* 31 *H.* VIII. *c.* 10.) to redreſs all errors, hereſies and abuſes, by ſpiritual authority.

Fourthly, I ſuppoſe it is by this time pretty evident, that Sir *Edward*'s crime will admit of no extenuation; but the aggravations are many, it appearing,

1. That he (*Acc. p.* 623.) and his brethren were the inventors of this diſpenſing Power, in ſuch extent as he contends for in the Print; but much more in his real reſolution.

2. That the error (*V. ib.*) was an error in that ſingle caſe, but of large and miſchievous conſequences: and if the King could diſpenſe with that Statute upon the reaſons given, and circumſtances appearing in Sir *Edw. Hales*'s caſe, others may well conclude from thence, that therefore he has a power to diſpenſe with all other Statutes, even ſuch as confer or veſt in any of the ſubjects any manner of intereſt whatſoever, in their lives, liberties, and eſtates, *Acc. p.* 623. And there being a conviction, and conſequently a diſability actually incurred before the diſpenſation, therefore, by reaſon of this caſe, the King may diſpenſe with ſuch Statutes where a precedent diſability is actually laid upon a man, as there is upon the Members of both Houſes, till they have taken the oaths and teſts preſcribed. Theſe are not conſequences which may flow from the heated imaginations of angry men, but ſuch as have warrant and foundation from their Judgment.

3. His ſo far undervaluing the wiſdom of the Nation, as to make the benefit of a law againſt the undue continuance of Sheriffs, equal, nay, go beyond what they could deviſe for the ſecurity of their religion; or rather, ſo to undervalue the holy religion, which I think he yet profeſſes, when however it would not come up to the point, according to the differences which himſelf receives. *Acc. p.* 618. ſpeaking of the Statute 23 *H.* VI. *c.* 1. He ſays, 'The recital in the preamble, and the whole purview, if compared with our Statute of 25 *Car.* II. *c.* 2. equals it in every 'particular, and in ſome goes beyond it: For the miſchiefs recited in this 'latter-Statute are only in theſe words, "For preventing dangers which "may happen from Popiſh Recuſants, and quieting the minds of his Ma"jeſty's good ſubjects:" The other, "For preventing the importable da"mage of the King and his People, by perjury, manſlaughter, and great "oppreſſion." Then he goes on to the purview, expreſs againſt *non obſtante's*, and creating a diſability: but, according to his uſual haſte, he ſtays not here to make the compariſon, but haſtens to his ſham reſolution, as has been ſufficiently evinced already. The queſtions here will be, 1. Whether the miſchiefs intended to be prevented are equal in both? 2. Admit they were equal in degree, whether they are in extent? Which if they are not, ſtill the reſolution, if real, will fail him; according to the difference which he himſelf receives, of *pro bono populi complicati*, and *ſingulorum populi*.

1. For the firſt, I ſuppoſe he thinks the Epithet *importable* gives the odds; as if Popery wanted an Epithet to repreſent it to Proteſtants, for what they ought to do their utmoſt to prevent; as if it did not carry in the belly of it perjuries, manſlaughters, and great oppreſſions, by wholeſale; or that miſchiefs more remote and accidental, as the continuance of Sheriffs, may habituate to corruption, and that occaſion the other fatal train, could equal the more immediate and certain conſequences, unleſs by good laws prevented, of *French* converſions, proceeding from fixed principles. But then to give Judgment to fruſtrate this neceſſary law, at a time when the Papiſts had a King of their own ſuperſtition to head them, is to make the King as much above the law as our ancient Lawyers tell us, the Law and his Court by way of eminence, that is, the great Council, or Parliament, are above him *(h)*.

2. As this proves the intereſt of the ſubject in the law about Sheriffs, to be neither equal, nor ſo immediate as in our Statute, there needs not many words to ſhew the difference of the extent: The peace only of particular Counties, and that by ſmall inſenſible degrees, is there concerned. Nay, admit the King had this power, and ſhould ſo violate that truſt which Sir *Edward* will have to be repoſed in him, (*Acc. p.* 620.) as to extend it to all Counties, where he puts in the Sheriffs, yet this could not affect all the People; becauſe there might be a retreat to *London*, *Middleſex*, and *Weſtmoreland*; in neither of which has it been pretended that the King had ſuch a power, till the late violence of ſome, and treachery of others, gave that unhappy inlet of perjury, manſlaughter, I may ſay murder and oppreſſion; before which, *London* was a perfect *Goſhen* in an *Egyptian* Kingdom.

3. But what can excuſe our Chief Juſtice's ſo apparent falſifying both Records and Law-books? Or if not, at leaſt, his ſhameful negligence in not going to the fountain-heads, but ſetting up the recitals of caſes againſt the caſes themſelves; and the extrajudicial opinions or arguments of Judges, nay the very annotations of Reporters, foreign to any matter in queſtion, againſt ſolemn reſolutions; which, either wilful falſifications or criminal negligence has occaſioned the anſwering objections with a caſe which never had a reſolution, but what he and his brethren gave, when it was brought in by head and ſhoulders, only to be a leading caſe to this.

4. He could not but know, that the caſe was faintly argued againſt Sir *Edward Hales*; either he, or the late *Empſon* and *Dudley*, having given the fees on both ſides: wherefore 'twas comical for the Chief-Juſtice to ſay, *that the Caſe appeared clear upon the argument*. I am ſure he is inexcuſable, that when cauſes of leſs conſequence, and of leſs dark learning uſed to be argued twice at leaſt; this was but once: And the learned Mr. *Wallop*, who could have ſet it in the trueſt light, was refuſed to be heard to it, though he required it.

5. Our Chief-Juſtice might eaſily have found, that the beginning of *non obſtante's* was within time of memory, which would not be enough to entitle the King to a prerogative: For as 'tis in *Plowden*, every prerogative contains a preſcription, for it reſts in uſage *(i)*; that is, ſuch as are not derived from known Grants of the People. And he might have learnt from that great man, whom he would fain draw to his ſide, That *Precedents are uſeful to decide Queſtions; but in ſuch Caſes as theſe, which depend upon fundamental principles, from which demonſtrations may be drawn, millions of Precedents are to no purpoſe (k)*.

Time of legal memory is well known to extend to the Reign of *R.* I. (*l*) And though *non obſtante's*, as I obſerved before, are complained of within that time, as early as 35 *H.* III. yet that diligent and faithful ſearcher into antiquity, Mr. *Prynne*, ſhews, That they were then made uſe of, only to revoke ſome indiſcreet grants or privileges, but not to elude, ſubvert, or diſpenſe with any penal Laws, or Acts of Parliament, till they were introduced by religious perſons, after the Statute of *Mortmain*, 7 *E.* I. to elude and fruſtrate the Act. And if this be true, I am ſure thus far there is no colour for the late reſolution; for they might have ſeen in Lord *Vaughan f.* 356. that the King in that caſe diſpenſes only with his own right, and concludes not the mean Lords.

Though ſucceſſive reſolutions of Judges are but evidences of the law, and ſuch as are to be examined and rectified by the conſtitution and fundamental maxims of the inherent rights and liberties of a free-born People; yet if Sir *Edward* had had the diligence to read what might have occurred on this ſubject, or the honeſty to hear it from others, he might have known, that it is far from being a ſettled point, that the King might diſpenſe with particular perſons, as to whatever is not prohibited by the law of God; and that his diſpenſation makes the thing prohibited lawful to be done by him that has it *(m)*. The farther we look back ſince this power has come in queſtion, the leſs does it ſeem allowed.

Edward III. *(n)* with the aſſent of that Council, which, as I obſerved before, was choſen in Parliament, had granted to merchants-denizens, for a time, the ſame liberty about ſtaple commodities which merchants-aliens had: though this was not by the King alone, and for the benefit of natives, yet the merchants, fearing that they might be impeached in time to come for their merchandize, which they ſo had paſſed by virtue of ſuch grants, foraſmuch as they were made out of Parliament, for their ſurety, obtained a ratification and confirmation in Parliament.

(a) Vid. 14 *Eliz. c.* 1. *Raſtal. f.* 411.

(b) L. *Ruſſel's Trial, f.* 57. *Sol.* "To conſpire to levy War is an Overt-Act to teſtify the deſign of the death of the King; and the error of my Lord *Coke* has poſſibly "miſled my Lord." This he goes to refute by the caſes of *Story* and Lord *Cobham*, which were not of levying War within the Kingdom, and beſides were expreſſed by the Overt-Act of Writing. Vid. 3 *Inſt. f.* 14. *Hales*'s Pleas of the Crown, *p.* 13. *Dyer*, *f.* 298. b. *Saunderſon*'s Hiſt. of K. *James*, *f.* 283.

(c) *Lib. Aſſiz.* 27. *pl.* 20. Of an Approver ſhared, ſays, *Il ne duiſt paſſer ſans eſtre duement purge, car tout ſont en male.*

(d) At Lord *Ruſſel*'s Trial, I am not certain whether I did hear ſomething about a Declaration, &c. *Trial. f.* 39. At Mr. *Corniſh*'s, *è contra.*

(e) That ſuch are not *probi & legales*, for Witneſſes or Juries, *vid.* 2. *Bulſt. f.* 144. *alias* 154. 1 *Brownlow. p.* 34. *part* 2. 47. *Roll's Ab. tit. Chal.* 657. *Brook tit. Teſmoins, penult. Fitzher. tit. Proceſs*, 208. *Dyer*, *f.* 34. a. *Owen*, *f.* 22. *Caſtlemain*'s Trial, *f.* 8. 11 *H.* IV. 41. b. *Godbolt* 288. *Forteſcue*, *p.* 60. b. *Fleta, lib.* 4. *c.* 8. *Bracton de Corona, cap.* 3. *p.* 118. b. *Roll's Ab. tit. Prer*, *f.* 222. Vid. *de eodem Baluzium, tom.* 1. *f.* 887. 2. 362.

(f) *Arundel's Caſe*, 6 *Rep. f.* 14. *(g)* 26 *H.* VIII. *c.* 1. repealed 1 & 2 *P. & M.*

(h) *Bracton*, *l.* 2. *c.* 16. *Rex habet Superiorem, Deum S. item legem per quam factus eſt Rex, item Curiam ſuam*, viz. *Comites, Barones, qui Comites dicuntur quaſi ſocii*, &c. *Fleta*, *l.* 1. *c.* 17. *p.* 17. 2. has *Superiores*. Which avoids the Cavil in the *Royal Apol. ed. Anno* 1684. *p.* 36. ſuppoſed to be Dr. *Aſhton*'s.

(i) *Plowden* of Mines, *f.* 322. 10. *(k)* *Vaughan. f.* 419. *Nota*, This was in a Caſe of leſs conſequence, the ſending Proceſs into *Wales*.

(l) *Brook Preſcrip. n.* 6. *Stat. Weſt.* 1. 3 *E.* I. *c.* 39. *Stat. de quo Warranto*, 18 *E.* I. *Prynne*'s *Animad. f.* 133.

(m) Vid. *è cont.* Dr. *Brady's Compleat Hiſt.* dedicated to King *James* II. *Pref.* All the Liberties and Privileges the People can pretend to, were the Grants and Conceſſions of the Kings of this Nation, and were derived from the Crown: Founded upon his ſuppoſed Proofs, that *W.* I. obtained this land by conqueſt, and governed it accordingly. Vid. *Brady*'s firſt book, *p.* 23. *in marg.* refuted in *Jus Anglorum.*

(n) V. *Roll's abr. tit. Prer. f.* 180. 34 *E.* III. *c.* 21.

But the *vexata quæſtio* (*a*) was about licenſing the ſhipping of wool elſewhere than at *Calais:* that the King might do this, the pretence was ſpecious. *Calais* was no part of the antient demeſne of the Crown, but a new acquiſition, whoſe intereſts the King ſeemed to have more abſolutely at his diſpoſal; according to the reſolution of our Judges, *anno* 1667, before the Houſe of Lords, who declared, That though the *Canaries* were the Dominion of the King of *Spain* (*b*), they were no part of the Dominion of *Spain*. And if Sir *Edward* had taken notice of Lord *Coke*, where he is againſt, as well as where he ſeems to favour him, he ought to have obſerved, 3 *Inſt. f.* 186. that one *Lyons*, a merchant, and Lord *Latimer*, were ſentenced in Parliament, for procuring of Licences and Diſpenſations for tranſporting of wool. And this they laid to the deſtruction of the ſtaple, and of the money of *Calais*, to the great damage of the King and Realm (*c*). Indeed the year after the Lord *Latimer*'s ſentence is remitted at the requeſt of the Commons, alledging that the charge againſt him was not true, not for defect of matter; 51 *E.* III. *n.* 75. So that here is a Judgment of the Houſe of Lords in point, againſt one of thoſe very caſes; upon which Court-Judges have ſince founded their diſtinction of *malum prohibitum*, and *malum in ſe: Acc. p.* 617. And it is an eaſy thing to know which ought to turn the ſcale.

After this, 37 *H.* VI. *f.* 4. it came to be a queſtion before all the Judges in the *Exchequer-Chamber*, Whether this offence, being pardoned, (which that the King might do after it was committed, has not been diſputed) the pardon, before an information brought, would defeat the informer of his ſhare? There the Court held, That if the ſuit were the party's, the pardon ſhould not bar him: But the ſole queſtion was, Whether the party was entitled to any ſuit, being the advantage was given to the diſcoverer, which he might have by a ſuggeſtion in the *Exchequer*, but the Statute gives no action (*d*)? However, this received no determination at that time.

But if the queſtion had then been of a diſpenſation, and whether that would bar the Informer's action given by Statute, can any man doubt but that they would have adjudged it could not; when, notwithſtanding a pardon, and that an caſe where an action was not expreſly given? Yet it was ſo doubtful, that they would not determine againſt the Informer. But that the diſpenſation would not have availed with them; or at leaſt, they would not have looked upon it to authorize what was prohibited by any Statute, appears from other paſſages there: as where it is ſaid (*e*), That in a recognizance of the peace, (which is not confined to one entered into at the requeſt of a ſubject) the King cannot pardon or releaſe, till the peace is broken. And where a man ought to repair a bridge, the King can pardon only for the fine due to himſelf: But however the party ſhall be obliged to repair the bridge, becauſe this is to the damage of all the People. And to the ſame purpoſe is that 3 *H.* VII. (*f*) that though the King may pardon, or free from a pecuniary mulct before the occaſion happen, yet he cannot pardon or diſcharge the treſpaſs itſelf: an inſtance is given in voluntary eſcapes. So far were they from believing that the King, in remitting the pecuniary mulct, could make the thing lawful: Nor could this in the leaſt be inferred from the other, becauſe, however, an Act may be made void or tortious. Indeed in the Reign of *R.* III. (2 *R.* III. *f.* 12.) whoſe character blemiſhes the Judgments of his time; it was held by all the Judges in the *Exchequer-Chamber*, that the King might licenſe the ſhipping of wool elſewhere than at the ſtaple; yet even they were not of opinion that the licence made the thing lawful, for then the diſcoverer could not have had his ſhare, which they agreed that he ought to have, and ſo the licence was only as far as it concerned the King. They alſo ſettled the other point, which before was a doubt (*g*), That a pardon before an information brought, would defeat the informer. But then the authority of the firſt point is ſuſpended by a doubt remaining before all the Judges, afterwards aſſembled upon a re-hearing of this cauſe, in a more ſettled time. Indeed they agreed the other, of an information after a pardon; but hitherto there is no manner of proof of any caſe, wherein the King by his diſpenſation could diſcharge the penalty given not only to himſelf, but alſo to an Informer, who has his action given by Statute. But for this we muſt take a leap downwards, as far as 13 *Jac.* I. which we may balance with the 7th of his Reign, when it is held by Lord *Coke*, 3 *Inſt.* 154. that where a Statute concerns the benefit of the King alone, he may diſpenſe with it by a *non obſtante:* And by the Court, *That where it concerns the benefit of the ſubject, the King cannot diſpenſe. Rolls's Ab. tit. Prer. f.* 179.

7. Whereas our Chief-Juſtice thinks, that a Statute's providing againſt *non obſtante's*, ſhews that the King could otherwiſe have diſpenſed with the Act by a *non obſtante*, *Acc. p.* 618. it is not only unconcluding, becauſe it might be no more than an argument of an abuſe of the law; but turns very ſtrong againſt him: For, admit the reſolution of the Judges, 2 *H.* VII. were as he contends, yet he, who makes ſo much of a conceſſion of the Commons of *England*, aſſembled in Parliament, *Acc. p.* 621. when he thinks it of his ſide, ought ſurely to yield, that the Judgment of King, Lords and Commons, is of uncontroulable authority. Wherefore, when not only one, but ſeveral Parliaments provide, that all *non obſtante's* ſhall be void, is it not plain that their Judgment was, that ſuch *non obſtante's* could not be ſet up by any reſolution of Judges? And for this we have the Judgment of King, Lords and Commons, and that of but late days, That even where a Grant is made to the King, where 'twill be ſaid he is ſolely entruſted for the publick good, yet it may be out of his power to defeat it by a *non obſtante*. This appears by the Statute 19 *Car.* II. *c.* 8. (*h*) which provides, *That no Letters Patent granted to any perſon, of exemptions from ſubſidies*, &c. *ſhall free them from the charges of any ſum granted by that Act: And all* non obſtante's *in Letters Patent, made, or to be made in bar of any Act or Acts of Parliament, for the ſupply or aſſiſtance of his Majeſty, are thereby declared to be void and of none effect.*

And even where Statutes have not expreſly provided againſt *non obſtante's*, though the Statutes were ſuch as reſtrain what many take to be the King's prerogative; yet if we receive the ſenſe of Lords and Commons, the King has no prerogative warranting *non obſtante's* to them, as appears by the articles againſt King *Richard* the Second (*i*); one of which is, *For that the King, contrary to the Laws and Wills of the Juſtices, ſuffered Sheriffs to continue longer than one Year*, &c.

This were enough to ſet aſide all pretences taken from *Calvin*'s caſe, though, as Sir *Edward Herbert* pleaſantly ſuggeſts, *Acc. p.* 619. it were reſolved there, That that was reſolved 2 *H.* VII. which was never mentioned till after the reſolution. Here is the authority of Lords and Commons in competition with that of mercenary Judges: And (*Acc. p.* 621.) if the conceſſions of the Commons, alone aſſembled in Parliament, are of weight with him, I know not why their denials ought not as well to be urged againſt him; which if we may do, not only the fictions and looſe reaſonings in *Calvin*'s caſe (*k*), but the main reſolution there, may be juſtly called mere Court-law. Such I am ſure it is, that the honeſt Houſe of Commons, 4 *Jac.* I. (*l*) would not bear it: and any one that reads the arguments of thoſe learned men who managed the conference with the Lords upon the queſtion of the union of the two Kingdoms, may eaſily ſee how inexcuſable the Judges of that time were, to proceed to the Judgment in *Calvin*'s caſe, after they had been ſo enlightened. Nor could they but know, that the then Parliament was broke up; becauſe they were not ſo complying as the Judges ſhewed themſelves both then and afterwards. But they ſecured their cuſhions by it, while Sir *John Bennet* (*m*), father of the preſent Lord *Oſſulſton*, loſt his in the Prerogative-Court, and had a ſwinging fine impoſed upon him into the bargain, ſeveral years after, upon pretence of extortion; but as I am well informed, the real ground was, his diſreliſhing Speech in Parliament upon this ſubject. 'Tis well known, ſome Princes uſed to have good memories that way. *Manet altâ mente repoſtum*, &c.

8. *Non obſtante's* having no other foundation than in the encroachments of Princes, and ſervility of Judges, eſpecially if we except caſes concerning the King alone; they ought not to be ſtrained to any new caſe. The advice of *Bracton* (*n*) will riſe up in judgment againſt ſuch men, who tells them, *If ſuch things never happened before, and the Judgment is without light from former Caſes, and difficult, let it be adjourned to the Great Court.* According to which, adjournments to enſuing Parliaments have been frequent in former days, when there were more learned Judges; and that as often for the weightineſs of the matter, as intricacy of the points.

9. But for the cloſing aggravation, *Acc. p.* 622. whereas our Chief-Juſtice denies all indirect means for procuring opinions, and ſtands upon his innocence, challenging the world to lay any thing of that kind to his charge; I think, by this time, few will the leſs ſuſpect him, becauſe of his aſſurance: if either threats or ſollicitations can be proved upon him, the world will judge either of them indirect means; and I am much miſinformed, if both cannot be juſtly charged.

If after all, he can excuſe himſelf without renouncing infallibility, *Acc. p.* 623. and making aſſeverations of keeping to the clear dictates of his conſcience, I muſt ſay, Judges in former ages have had hard luck, and been made examples to little purpoſe. King *Alfred* would loſe the reputation of his Juſtice, in hanging above thirty Judges (*o*); and Parliaments have been very barbarous to proceed againſt others as traitors, who yet, either were ſo ingenuous to confeſs their faults, or, at leaſt, not ſo provoking as to juſtify them.

It is well known in ſtory (*p*), that ſix Judges, and two of the King's Counſel at law, ſuffered for treaſon, upon a Parliamentary proſecution, 11 *R.* II. for delivering their opinions, *That they were to be puniſhed as traitors, who hindered the King from exerciſing his Sovereignty and Prerogative over a Statute, and an Ordinance and Commiſſion made in the foregoing Parliament* (*q*). The ſubſtance of their crime lay in aſcribing to the King a power to defeat the proviſions of the Parliament for the ſafety of the Nation; and is a direct precedent, at which our Judges ought to tremble. Nor can it avail them, that the expreſs words of the Statute 25 *E.* III. *c.* 2. do not condemn them, ſince that Act tranſmits common-law treaſons to the Judgment of Parliament: and the Statute 1 *Mar. c.* 1. leaves that power untouched. And who can doubt but ſuch a reſolution, and that juſtified in print, and publiſhed to the world, is an overt-act of treaſon, as it tends to the ſubverting the fundamental rights of Parliaments: Nor can they have any colour for aſking, with the Lord *Strafford*, *Where is the Buoy?* when they ſee ſo many ſhipwrecks to admoniſh them.

Nor ought Sir *Edward* to wonder at a treaſon againſt the Government, though not directly againſt the perſon of the King, his relatives, officers, or his coin; nor yet an actual levying of war within his Kingdom, or adhering to his enemies (*r*); for he may find among the Articles againſt the Lord *Kimbolton*, and others, exhibited *Anno* 1641, by his father, then Attorney-General,

"That they have traitorouſly endeavoured to ſubvert the very Rights "and Beings of Parliaments."

But ſince Sir *Edward* pleads conſcience for what he did, *Acc. p.* 623, and might have urged the authority of ſpiritual guides, who would make the ſcripture-notion of higher powers a ſufficient warrant for ſuch a Judgment; I ſhall conclude with the good Queen *Elizabeth*'s doctrine of the famous *Bilſon*, afterwards Biſhop of *Wincheſter* (*s*).

(*a*) *Nota*, This is one of the Caſes mentioned by *Fineux ante.* (*b*) Vid. 3 *Jac. c.* 6. forbidding Trade to the Dominions of *Spain.* (*c*) *Rot. Parl.* 50 *E.* III. *n.* 17, 24, 28.
(*d*) This is not rightly abridged by *Brook, tit. Charter de Pardon, n.* 24. 37 *H.* VI. *f.* 5. *adjournatur.*
(*e*) 37 *H.* VI. 46. V. 5 *E.* IV. *f.* 34. a. Where a Statute concerns only the King himſelf, which the King may chuſe to uſe at his Will, *&c.*
(*f*) 3 *H.* VII. *f.* 15. b. Chief-Juſtice *Huſſey* citing *Forteſcue.* (*g*) 1 *H.* VII. *f.* 2. b. & 3. a. (*h*) According to *Keble, c.* 7. but not printed there.
(*i*) *Vid.* the Stat. barely prohibitory. 28 *E.* III. *c.* 7. & 12 *E.* III. *c.* 9. V. *Knighton.* (*k*) See them cenſured in *Vaughan, f.* 227, 285, 401.
(*l*) *Moor*, a. *f.* 790 to 805. (*m*) *Vid.* his Cenſure. 4 *Inſt. f.* 336.
(*n*) 2 *Inſt. f.* 408. *l.* 1. *c.* 2. *Si autem talia nunquam prius evenerint, & obſcurum & difficile ſit eorum judicium, tunc ponantur judicia in reſpectum uſque ad Magnam Curiam.* Vid. 1 E. III. 7. b. 33 *H.* VI. 18. a. *C'eſt un Act de Parlement & nos volumus eſtre bien avis devant que nous adnullamus aſcun act fait en le Parlement, & peradventure le matter doit attender juſque ad prochein Parlement.*
(*o*) Vid. *Mirrour, a. p.* 296, to 300. (*p*) *Treſylian, Bealknappe.* V. *Vol.* 1. *p.* 1. (*q*) *Knighton, f.* 2726, 2727. *ib. f.* 2695. *Regaliam. Ib. f.* 2694.
(*r*) Vid. *Glanvil, p.* 1. *Crimen læſæ Majeſtatis, ut de nece vel ſeditione perſonæ Domini Regis vel Regni. Exact. Collect. ed. Anno* 1643. *p.* 35. V. *Dugdale's Chron.* Ser.
(*s*) *Bilſon of Chriſtian Subjection, p.* 280.

" By ſuperior powers ordain'd of God, we underſtand not only " Princes, but all politick States and Regimens; ſome where the " People, ſome where the Nobles have the ſame intereſt to the ſword " that Princes have in their Kingdoms: And in Kingdoms where Princes " bear rule by the ſword, we do not mean the Princes's private will " againſt his Laws, but his precept derived from his Laws, and agree- " ing with his Laws *."

XL. The Proceedings againſt Mr. SAMUEL JOHNSON; who was tried at the *King's-Bench* Bar, *Weſtminſter*, for High-Miſdemeanours (and found guilty of writing and publiſhing two ſeditious and ſcandalous Libels againſt the Government); on *Monday* the 21ſt of *June*, 1686. 2 *Jac.* II.

SAMUEL JOHNSON having been arraigned upon an Information for high miſdemeanours, in writing, printing and publiſhing two ſcandalous and ſeditious Libels, *&c.* and thereto pleading *Not Guilty*, was, by a rule of Court, brought again to the Court of *King's-Bench*, *Weſtminſter*, on *Monday*, *June* the 21ſt, in order to take his trial: when a Jury of Knights and Gentlemen of the County of *Surry* being ſworn, the Information was read; the ſubſtance of which was, " That " he, the Priſoner, had, in the Pariſh of *St. George*'s, *Southwark*, on the " the 25th of *May*, in the ſecond year of his Majeſty's reign, maliciouſly " and deſignedly publiſhed two pernicious, ſcandalous and ſeditious li- " bels, to raiſe and ſtir up ſedition and rebellion in his Majeſty's liege- " ſubjects, *&c.*" The title of one being, *An Humble and Hearty Addreſs to all the* Engliſh *Proteſtants in this preſent Army.* Which is as follows:

An Humble and Hearty Addreſs to all the Engliſh *Proteſtants in this preſent Army.*

Gentlemen,

NEXT to the duty which we owe to God, which ought to be the principal care of men, of your profeſſion eſpecially, becauſe you carry your lives in your hands, and often look death in the face: the ſecond thing that deſerves your conſideration, is the ſervice of your native Country, wherein you drew your firſt breath, and breathed a free *Engliſh* air. Now I would deſire you to conſider, how well you comply with theſe two main points, by engaging in this preſent ſervice.

Is it in the name of God, and for his ſervice, that you have joined yourſelves with Papiſts; who will indeed fight for the Maſs-book, but burn the Bible: and who ſeek to extirpate the Proteſtant Religion with your ſwords, becauſe they cannot do it with their own? And will you be aiding and aſſiſting to ſet up Maſs-houſes, to erect that Popiſh Kingdom of darkneſs and deſolation amongſt us, and to train up all our children in Popery? How can you do theſe things, and yet call yourſelves Proteſtants?

And then what ſervice can be done your Country by being under the command of *French* and *Iriſh* Papiſts, and by bringing the Nation under a foreign yoke? Will you help them to make forcible entry into the houſes of your countrymen, under the name of *Quartering*, directly contrary to *Magna Charta*, and the *Petition of Right*? Will you be aiding and aſſiſting to all the murders and outrages which they ſhall commit by their void commiſſions? Which were declared illegal, and ſufficiently blaſted by both Houſes of Parliament (if there had been any need of it), for it was very well known before, that a Papiſt cannot have a commiſſion, but by the law is utterly diſabled and diſarmed. Will you exchange your birth-right of *Engliſh* laws and liberties for martial, or club-law; and help to deſtroy all others, only to be eaten laſt yourſelves? If I know you well, as you are *Engliſhmen*, you hate and ſcorn theſe things. And therefore be not unequally yoked with idolatrous and bloody Papiſts: *Be valiant for the truth, and ſhew yourſelves men.*

The ſame conſiderations are likewiſe humbly offered to all the *Engliſh* Seamen, who have been the bulwark of this Nation againſt *Popery* and *Slavery*, ever ſince *Eighty-Eight.*

And the other, *viz. The Opinion is this, that Reſiſtance may be uſed, in caſe our Religion and Rights ſhould be invaded* †: " Tending to withdraw " them from their duty and allegiance, and to excite and ſtir up the ſol- " diers, *&c.* to mutiny and rebellion, *&c.*" After this, the Information was, by the King's Counſel, opened to the Jury, as to the nature and circumſtances, together with the evil conſequences that might attend ſuch bold and dangerous attempts; which being rendered largely and exactly, as to the particulars mentioned in the ſaid information, wherewith the Priſoner was charged, they proceeded to call their witneſſes to prove the fact.

And *Firſt*, Mr. *Belamy*, at the *Three Bruſhes* in *Southwark*, being ſworn, gave evidence, That coming acquainted ſome time ſince with the Priſoner, and about a fortnight before *Whitſuntide* laſt, diſcourſing with him, the ſecond of theſe Libels was mentioned: And ſoon after he ſent him a box with ſome rheams of them in it, to be diſperſed, and gave him notice that he had a ſecond Paper in the Preſs; and withal, a caution not to publiſh thoſe he had ſent before, till he had received that which proved to be the former Libel before-mentioned. And further, that about ſix or eight months before that, the Priſoner had ſent him other Libels to diſperſe: and being ſhewed the Libels mentioned in the Information, he depoſed, they were the ſame that had been ſent him. His man likewiſe gave evidence, That he had received a box nailed up, but could give no account of what was in it, as to particulars.

Ann Whitney, ſometime ſervant to the Priſoner, being ſworn, gave evidence, That by her maſter's or miſtreſs's direction, ſhe was not certain which, ſhe took a porter, and cauſed him to carry a box, wherein one of the Libels mentioned, *viz.* the ſecond, was incloſed to Mr. *Belamy*: And that ſhe had, by the like order, carried other papers looſe; ſome of which were the Addreſs, *&c.* And being aſked by the Priſoner, how ſhe knew that? Her reply was, That ſhe knew it, inſomuch that ſhe had read the title, and very well remembered it.

The Porter that carried the box gave evidence, That the maid had hired him to carry a box to the *Three Bruſhes*, and that ſhe went with him, and paid him according to agreement, and that he took it up in *Spital-fields*. After this, the meſſenger, who ſearched the Priſoner's lodging with the Right Honourable the Earl of *Sunderland*'s warrant, being ſworn, gave evidence, That he found a Paper in writing, upon a table or ſhelf, which appeared in Court to be part of the copy, or the ſame with the paper, entitled *The Opinion*, &c. he ſwearing, upon ſight thereof, that it was the ſame he found in the priſoner's lodging. Then was the Book of the Veſtry, or Pariſh affairs of *St. Paul*'s, *Covent-garden*, produced; wherein the Priſoner, ſometime paſt, had given an acquittance for money received, as an aſſiſtant Curate, *&c.* which being compared with the paper, ſeemed not to differ in the hand. But no other evidence appeared in that caſe, than that the Book had been always kept in the Veſtry, and for the moſt part under lock and key, and it being put to the priſoner, he did not greatly deny it. When for a further confirmation, *John Darby*, a Printer, and his wife, were ſworn: The former depoſing, That he had printed a book for the priſoner from a manuſcript, and that hand was very like that of the Libel produced in Court: but he had never ſeen him write, and therefore could not be poſitive that that manuſcript was his own hand.

As for his wife, her evidence was, that the priſoner paying her ſome money, ſhe had given him an acquittance; but that, as ſhe conceived, he wrote all but her name; for going up ſtairs, he ſoon returned with an acquittance, which ſhe ſubſcribed.

This being what materially was given in evidence for the King, the Priſoner had leave to make his defence: who after ſome diſcourſe, alledged, That he had been confined, and had not had opportunity to prepare for his defence, as not having leave to go to his Counſel. To which the Court replied, That he had leave upon the motion made on his behalf, to ſend for Counſel; and that they ought not to be refuſed coming to him. Then he urged ſeveral other matters, which being over-ruled by the Court, he proceeded to intimate, that he hoped, that ſeeing he was indicted for a ſeditious and ſcandalous Libel, *&c.* the Jury would conſider whether thoſe papers they had heard read, were ſo or no? But was told, that the Jury ought to conſider it only as to the matter of fact, whether he was guilty of writing or publiſhing them, *&c.*? and that the reſt lay in the breaſt of the Court to conſider. Thereupon he urged, That though they might be ſent, yet it was no publication, as it was laid in the indictment, becauſe the box was nailed. But being fully anſwered in that point, and looſe papers appearing likewiſe to be ſent, the Counſel for the King ſummed up their evidence to the Jury, none appearing on the behalf of the priſoner.

After which, the Court gave the charge, putting the Priſoner, as well as the Jury, in mind of the great miſchief that ſuch Libels might occaſion: And minded him likewiſe, that it was within a ſmall matter of High-Treaſon; and might have been raiſed to that degree, were not the laws, and thoſe who managed them, tender of life, *&c.*

After the charge was given, the Jury withdrew; and returning within a quarter of an hour, brought in the Priſoner guilty of the High Miſdemeanour.

Nov. 16, following, Mr. *Johnſon*'s ſentence was pronounced by Sir *Francis Withins*, as follows; To pay 500 marks to the King, and to lie in priſon till it was paid; to ſtand three times in the pillory; on the *Monday* following, in the *Palace-yard*, *Weſtminſter*; on *Wedneſday*, at *Charing-Croſs*; and the *Monday* after at the *Royal-Exchange*; and to be whipt by the common Hangman from *Newgate* to *Tyburn* ‡.

After Sentence was paſt upon him, in order to load him with the greater ignominy, the Courtiers, on pretence of reſpect to the Church, moved, That before the execution of the ſentence, he ſhould be degraded from the order of Prieſthood. This ought to have been done, according to the Canons, by his own Dioceſan, the Biſhop of *London*; but that Prelate was then under a ſuſpenſion himſelf, becauſe he would not obey the King's Orders to ſuſpend Dr. *Sharp*, now Archbiſhop of *York*, for preaching againſt Popery in his own Pariſh Church of *St. Giles's in the Fields*. Dr. *Carew*, Biſhop of *Durham*, Dr. *Sprat*, Biſhop of *Rocheſter*, and Dr. *White*, Biſhop of *Peterborough*, being then Commiſſioners for the dioceſe of *London*, in the place

* *Glanvil. Prol. Bracton, vol.* III. *c.* 9. *Fleta, lib.* 1. *c.* 17. *Forteſcue, c.* 9. *Mir. p.* 9.

† This is printed in Mr. *Johnſon*'s Works, *p.* 159, to 166, which being too long to inſert here, the Reader is referred to it.

‡ Mr. *Johnſon*, 1683, was tried on an Information, in the *King's-Bench*, for writing *Julian the Apoſtate*, and fined 500 marks, and committed Priſoner to the *King's-Bench* till he ſhould pay it; which they knew was the ſame with perpetual impriſonment, ſince he was not able to pay that ſum. Thus he was condemned and committed, to the great Joy of the Papiſts; when in him they ſaw the Laws of *England* condemned by the Judges, who ſtudy'd more to oblige the Court than to do their duty. *See ſome Memoirs of Mr.* S. Johnſon, *p.* 7. *in his Works.*

of the ſuſpended Biſhop, were appointed to degrade Mr. *Johnſon*; which they performed in the Chapter-houſe of St. *Paul*'s, where Dr. *Sherlock* and other Clergymen attended: but Dr. *Stillingfleet*, then Dean of St. *Paul*'s, refuſed to have any hand in it.

When they came to the formality of putting a Bible in his hand, and taking it from him again, he was much affected, and parted with it with difficulty, kiſſing it, and ſaying with tears, *that they could not however deprive him of the uſe and benefit of that ſacred Depoſitum.* It happened that they were guilty of an omiſſion, in not ſtripping him of his caſſock; which, as ſlight a particular as it might ſeem, render'd his degradation imperfect, and afterwards ſaved him his benefice.

On the 1ſt of *December*, 1686, the ſentence was put in execution; which Mr. *Johnſon* endured with as firm a courage, and as Chriſtian a behaviour as ever was diſcover'd on any ſuch occaſion: tho' at the ſame time he had a quick ſenſe of every ſtripe which was given him, with a whip of nine cords knotted, to the number of 317.

In the firſt Parliament after the Revolution, when the Houſe of Commons was preparing an Act of Indemnity, Mr. *Johnſon* was adviſed by his friends to get a clauſe put into it, that he might have his remedy at Law againſt ſuch as had been his illegal oppreſſors. They ſeemed to be ſenſible that they were obnoxious, and could not juſtify what they had done. About that time the Lord Biſhop of *Durham* gave Mr. *Johnſon* and his lawyer a meeting, and made his peace with him, to their mutual ſatisfaction.

Sir *Francis Withins*, who pronounced the Sentence againſt him, ſent a relation of Mrs. *Johnſon*'s to tell him a feign'd ſtory, that Sir *Francis* lay dangerouſly ill, and could not die in peace, unleſs Mr. *Johnſon* would forgive him: To which he reply'd, That he heartily forgave him what injury he had done to him. Some few days after, the ſame perſon brought Sir *Francis* to Mr. *Johnſon*, as he was walking in *Weſtminſter-hall*; where Sir *Francis* ſaluted him, and told him, *That his Chriſtian and kind anſwer had prov'd a reviving Cordial to him.* To which Mr. *Johnſon* reply'd, That he heartily forgave the injury done to himſelf; but as he had been an enemy to his country, he hoped he would be made accountable for it: it being a common ſaying with him, *That he was obliged to forgive his own enemies, but not the enemies of his Country.*

The Parliament taking Mr. *Johnſon*'s caſe into conſideration, reſolved, *June* 11, 1689, That the Judgment given againſt him in the *King's-Bench*, upon an information for a miſdemeanor, was cruel and illegal.

A Committee was at the ſame time appointed to bring in a Bill for reverſing that Judgment: and being alſo ordered to enquire how Mr. *Johnſon* came to be degraded, and by what authority it was done; Mr. *Chriſty*, the Chairman, ſome days after, reported his caſe to this purpoſe:

" That in *Trinity-Term*, 1686, an information was exhibited againſt " Mr. *Johnſon*, in the name of Sir *Robert Sawyer*, Attorney-General, for " writing and publiſhing a ſcandalous and ſeditious Libel, intitled, *An " humble and hearty Addreſs*, &c. That the ſame Term they forced him " to plead, got a Jury to find him guilty, and Sir *Francis Withins* pro- " nounced the following Sentence upon him: *To pay five hundred marks " to the King, and to lie in priſon till 'twas paid: To ſtand thrice in the pil- " lory, in the* Palace-yard, *at* Charing-croſs, *and at the* Old-Exchange: " *and to be whipt by the Common Hangman from* Newgate *to* Tyburn. That " the Judges then in Court, were the Lord Chief-Juſtice *Herbert*, Sir " *Francis Withins*, Sir *Robert Wright*, and Sir *Richard Holloway*. That " apprehending 'twould be a ſcandal to the Clergy to have ſo infamous a " puniſhment inflicted on a Miniſter, they deſired Mr. *Johnſon* might be " firſt degraded: In order to which, being a priſoner in the *King's-Bench*, " in the dioceſe of the Biſhop of *Wincheſter*, he was ſummoned to appear " the 20th of *November*, in the convocation-houſe of St. *Paul*'s, in the " dioceſe of *London*, his Living being within that dioceſe, and brought " thither by *Habeas Corpus:* where he found the Biſhops of *Durham*, *Ro- " cheſter*, and *Peterborough*, Commiſſioners to exerciſe the juriſdiction of " the Biſhop of *London*, during his ſuſpenſion; with ſome Clergymen, " and many Spectators. A Libel was exhibited againſt him, charging " him with great miſbehaviours, tho' none were ſpecified or proved. " That Mr. *Johnſon* demanded a copy of the Libel, and an Advocate, both " which the Biſhops denied, and immediately proceeded to ſentence, *That " he ſhould be declared an infamous perſon, that he ſhould be deprived of his " Rectory, that he ſhould be a mere Layman, and no Clerk, and be deprived of " all right and privilege of Prieſthood; that he ſhould be degraded thereof, " and of all veſtments and habits of Prieſthood.* Againſt which proceedings " Mr. *Johnſon* proteſted, as being againſt Law, and the 132d Canon; not " being done by his own Dioceſan. But his proteſtation was refuſed, as " was alſo his appeal to the King in *Chancery*.

" After which, they proceeded to degrade him, by putting a ſquare cap " on his head, and then taking it off: by pulling off his gown and girdle, " which he demanded as his proper goods, bought with his money, which " they promiſed to ſend him, but he could not get them till he paid twenty " ſhillings. Then they put a Bible into his hands, which he not parting " with readily, they took it from him by force. That on the 22d of *No- " vember*, the Judgment in the *King's-Bench* began to be executed with " great rigour and cruelty: that Mr. *Rouſe*, the Under-Sheriff, tore off " his caſſok on the pillory, and put a frize coat upon him: that he was " whipp'd with a whip of nine cords, knotted, which was ſhewed to the " Committee. That Mrs. *Johnſon* had alſo an Information exhibited " againſt her, for the like matter as that againſt her huſband.

" On all which, the Committee came to the following reſolutions; " which, on the report, were all agreed to by the Houſe; *That the Judg- " ment againſt Mr.* Johnſon *was illegal and cruel: That the Eccleſiaſtical " Commiſſion was illegal, and conſequently the ſuſpenſion of the Biſhop of* Lon- " don, *and the authority committed to the three Biſhops null and illegal. That " Mr.* Johnſon *not being degraded by his own Dioceſan, if he had deſerv'd " it, was illegal: That a Bill be brought in, to reverſe the Judgment, and " to declare all the proceedings before the three Biſhops null and illegal. And " that an Addreſs be made to his Majeſty, to recommend Mr.* Johnſon *to ſome " Eccleſiaſtical Preferment, ſuitable to his ſervices and ſufferings.*"

The Houſe likewiſe ordered, That in the ſaid Bill the proceedings upon the Eccleſiaſtical Commiſſion ſhould be declared void.

The Houſe preſented two Addreſſes to the King in behalf of Mr. *Johnſon:* But tho' his Majeſty was inclinable enough to have complied with their requeſt, Mr. *Johnſon* could never obtain any Church-Preferment. Mr. *Johnſon*, however, being a man of ſuch merit, did not paſs altogether without a reward; for the King gave him three hundred pounds a-year out of the *Poſt-office*, for his and his ſon's life; beſides a thouſand pounds in money, and likewiſe beſtowed a place of about a hundred pounds a-year on his ſon.

XLI. The Trial of *Rowland Walters*, *Dearing Bradſhaw*, and *Ambroſe Cave*, Gent. (for murdering of Sir *Charles Pymm*, Bart.) at the Seſſions held at the *Old-Bailey*, on *Friday* the firſt day of *June* 1688, before the Right Honourable Sir *John Shorter*, Knt. Lord-Mayor of the City of *London*, and Sir *Bartholomew Shower*, Knt. Recorder of the ſame City; together with others his Majeſty's Juſtices of the Peace for the City of *London*, and County of *Middleſex*.

Clerk. CRYER, make Proclamation.

Cryer. Oyes, Oyes, Oyes!

Clerk. Keeper of *Newgate*, bring the Priſoners to the Bar.

(Which was done).

Clerk. You the priſoners at the Bar, thoſe men whom you ſhall hear called, and perſonally appear, are to try between our ſovereign Lord the King, and you who are arraigned, upon your ſeveral lives and death: if you ſhall except againſt any one of them, you muſt ſpeak before they be ſworn.

Clerk. Cryer, call *Henry Dyer.*

The *Jurors* ſworn are as followeth:

Henry Dyer,	*Richard Chaſe,*	*John Hill,*
Giles Baggs,	*Samuel Burgeſs,*	*Obadiah Hickman,*
Matthew Jerman,	*William Villiers,*	*John Read,*
Timothy Waldoe,	*John Frith,*	*Francis Willis.*

Who were all ſworn.

Clerk. Cryer, count theſe, twelve good men and true.

Clerk. Cryer, make proclamation. *(Which was done).*

Clerk. *You Gentlemen of the Jury, look upon the Priſoners at the Bar, and hearken to their Charge; they ſtand indicted by the names of* Rowland Walters, Dearing Bradſhaw, *and* Ambroſe Cave, *Gents. for that they not having the fear of God before their eyes, but being inſtigated and ſeduced by the Devil, and their own wicked Hearts, on the fourth Day of* May, *in the fourth year of the reign of our ſovereign Lord King* James II. *in the Pariſh of St.* Nicholas Cole-Abby, *in and upon Sir* Charles Pymm, *Bart. feloniouſly, wilfully, and of their malice fore-thought, did make an aſſault; and that he the ſaid* Rowland Walters, *having then and there in his right-hand, a certain Rapier made of iron or ſteel, of the value of about* 5 s. *and him the ſaid Sir* Charles Pymm *in and upon the right ſide of him the ſaid Sir* Charles Pymm, *a little above the right pap, did ſtrike and thruſt as aforeſaid; giving him the ſaid Sir* Charles Pymm, *a little above the right pap, one mortal wound of the breadth of one inch, of the depth of ten inches: and that they the ſaid* Dearing Bradſhaw, *and* Ambroſe Cave, *were preſent, aiding, abetting, and aſſiſting him the ſaid* Rowland Walters, *in the perpetration of the ſaid wilful murder of him the ſaid Sir* Charles Pymm. *So that they three, the priſoners at the Bar, with malice fore-thought, did intentionally kill and deſtroy, and wilfully murder him the ſaid Sir* Charles Pymm, *againſt the peace of our Sovereign Lord the King, his Crown, and Dignity, and againſt the form of the Statute in that caſe made and provided. Upon this Indictment they have been arraigned, and have hereunto pleaded Not Guilty, and for their Trial, have put themſelves upon God and their Country, which Country you are. Your buſineſs is to enquire, whether they, or either of them committed this felony and murder as aforeſaid; if you find them, or either of them, guilty of the ſaid wilful murder, you are to enquire what goods and chattels they, or either of them, had at the time of the committing of the ſaid wilful murder; but if you find them not guilty, you are to ſay ſo; and hear your evidence.*

Mr. *Walters.* My Lord, I humbly deſire theſe Gentlemen may be tried before me.

Court. That cannot be, Mr. *Walters*, becauſe you are all three put into one Indictment.

Counſel for the King. My Lords, and you Gentlemen of the Jury, I am here retained a Counſel for the King, againſt the Priſoners at the Bar, who all three ſtand indicted for the murder of Sir *Charles Pymm*, Bart. in the Pariſh of St. *Nicholas Cole-Abby*, thruſting him through the body near the right pap, giving him a mortal wound, of which he then and there inſtantly died. The other two priſoners ſtand indicted for aiding, abetting, and aſſiſting him the ſaid *Walters* in the ſaid murder.

Another

Another Counſel for the King. My Lords, this Murder fell out on the fourth day of *May* laſt, after this manner, *viz.* The ſaid Sir *Charles Pymm*, one Mr. *Mirriday*, Mr. *Neale*, and Sir *Thomas Middleton*, and others, dined at the *Swan-Tavern* upon *Fiſh-ſtreet-hill*; after they were come into the houſe they went up ſtairs; after which the Priſoners at the bar came into the houſe, and took another room to dine of beef and other things. But one of Sir *Charles*'s company deſired to have a plate of it; upon which Mr. *Cloudſley* told them ſome Gentlemen had beſpoke it for dinner; but he ſaid he would get them a plate of it, which was ſent up, and ordered to be reckoned into Mr. *Walters* the priſoner's bill. After dinner they drank their healths, and returned them thanks for their beef; and towards the evening Sir *Charles Pymm* and his friends came down ſtairs, and met the priſoners at the bottom, and Mr. *Cave* aſked them how they liked the beef that was ſent up? upon which one in the company anſwered, and told them, They did not ſend it, for they had paid for it. Upon which farther words aroſe, and Mr. *Bradſhaw* drew his ſword, and fell upon Sir *Charles Pymm*; but he got out into the ſtreet. After which Mr. *Walters* came forth, and plucked Sir *Charles Pymm* by the arms, and forced him to fight with him, ſaying, Here is my hand, and here is my ſword; and as ſoon as he was in the ſtreet, he received this mortal wound, and ſo fell down dead. After this, Mr. *Walters* took him by the nape of the neck, and daſh'd his head upon the ground, and cried out, *God damn you, you are dead:* and ſaid farther, *Let the ſword alone in his body.* My Lord, this ſhall be proved to be done without any manner of provocation; and if ſo, I hope you, Gentlemen of the Jury, will find him guilty of wilful murder.

Clerk. Call Mr. *Mirriday*, Mr. *Neale*, Mr. *Palms*, and Mr. *Bridges*. (*Who were ſworn.*)

Mr. *Mirriday.* My Lord, on the fourth day of *May* laſt, on a *Friday*, Sir *Charles Pymm*, myſelf, and theſe Gentlemen here in Court, came to dine at the *Swan-Tavern* in *Old Fiſh-ſtreet*. We aſked for meat, and Mr. *Cloudſley*, the man of the houſe, told us, we might have fiſh, for he had no meat, but what was beſpoke by Mr. *Walters* and his company. We deſired him to help us to a plate of it, if it might be got, which we had brought up ſtairs; after dinner we drank the Gentlemen's healths that ſent it, and returned them thanks for it. A while after Sir *Thomas Middleton* went away, and about an hour after that, or thereabouts, Sir *Charles Pymm* and the reſt of us came down to go away; and when we were in the entry, Mr. *Cave* met us, and aſked Sir *Charles* how he liked the beef that was ſent up; who anſwered, We did not know you ſent it, for we have paid for it. Then the boy that kept the bar told us, that he did not reckon it in the bill; upon which Mr. *Cave* ſeemed to take it ill: But, my Lord, I cannot be poſitive whether Mr. *Bradſhaw* and Mr. *Palms* were at any words. Then I took Mr. *Cave* to one ſide into the entry, and he thought that I had a mind to fight him, but I did what I could to make an end of the quarrel. [*Upon which the Court highly commended Mr.* Mirriday.]

Court. This was in the entry, but where was Sir *Charles Pymm?*

Mr. *Mirriday.* He was then in the entry.

Court. Where was Mr. *Walters?*

Mr. *Mirriday.* He was at the door, my Lord; but I cannot ſwear poſitively to any particular paſſage as to the murder; but Mr. *Walters* called Sir *Charles Pymm* rogue, and gave him very ill words, and I ſaw him take him by the neck, and forced his head downwards, and ſaid, *God damn him, he is dead*, to the beſt of my remembrance, my Lord. Then, I took Sir *Charles* up in my arms, and pulled the ſword out of his body, and then Mr. *Walters* ſaid, *God damn him, let it ſtay in his guts, or in his body*, or words to that effect.

Court. Was Mr. *Cave* or Mr. *Bradſhaw* at the place where Sir *Charles* fell?

Mr. *Mirriday.* No, my Lord, they were in the entry ſcuffling there.

Court. What came of Mr. *Walters* afterwards?

Mr. *Mirriday.* My Lord, he ſtay'd a little till I had pulled the ſword out of his body, then he ran away.

Court. Did they draw their ſwords in the entry?

Mr. *Mirriday.* I cannot tell that?

Court. Did you ſee them draw their ſwords?

Mr. *Mirriday.* I cannot ſay Sir *Charles Pymm*'s ſword was drawn, but I ſaw Mr. *Walters* draw his ſword in the ſtreet.

Court. Do you know whether Mr. *Walters* was wounded or no?

Mr. *Mirriday.* I do not know that, for I did not ſee the wound given.

Court. Mr. *Walters*, will you aſk him any queſtions?

Mr. *Walters.* Yes, my Lord: Mr. *Mirriday*, what did you ſay to Sir *Charles Pymm* in the Fiſh-monger's ſhop? Did you not ſay, Go, and fight him, and I will be your Second?

Mr. *Mirriday.* My Lord, I do not remember one word of that.

Court. Mr. *Mirriday*, were you in any Fiſhmonger's ſhop?

Mr. *Mirriday.* Yes, my Lord, I was there; but I do not remember one word between Mr. *Walters* and Sir *Charles*, and, as I hope for ſalvation, I ſaid no ſuch thing; and that's all I have to ſay.

Clerk. Cryer, call Mr. *Neale.*

Mr. *Neale.* My Lord, I went and met with theſe Gentlemen that dined with us at the aforeſaid Tavern, and we had fiſh and two beef marrow-bones, and a plate of beef for dinner; and when we came down to go away, theſe Gentlemen met us, and ſaid, *God damn you, how did you like the beef?* which raiſed a quarrel among us; but immediately, after I thought it was all over, I ſaw Mr. *Walters* run Sir *Charles Pymm* thorough.

Court. Was his ſword drawn?

Mr. *Neale.* Yes both of their ſwords were drawn.

Court. Where was Mr. *Bradſhaw?*

Mr. *Neale.* I cannot tell where he was directly: but, my Lord, I heard Sir *Charles Pymm* ſay nothing to Mr. *Walters.*

Clerk. Cryer, call Mr. *Palms.*

Mr. *Palms.* My Lord, after the reckoning was paid, we came down ſtairs, and called for a coach, and becauſe it rained, there was none to be had; and theſe Gentlemen followed us into the entry, and ſo words to the ſame purpoſe as aforeſaid paſſed between them; after which, I met Mr. *Bradſhaw*, and we fell out in the Fiſhmonger's ſhop.

Court. Who began?—Mr. *Palms.* I know not, I cannot remember that.

Court. Were you not in drink?

Mr. *Palms.* My Lord, we drank nine or ten bottles among ſix of us; after which Mr. *Bradſhaw* and I drew our ſwords, and then Mr. *Mirriday* came and took him away from me into the entry, and in the mean time, while we were talking in the entry, the buſineſs was done.

Court. Were your ſwords put up again?

Palms. I had put up mine.

Counſel for the King. Did you take notice of what paſſed between Mr. *Walters* and Sir *Charles Pymm?*

Mr. *Palms.* I heard nothing of high words.

Court. Yes, yes, it was all about the beef.

Clerk. Cryer, call for Mr. *Preſland*, the Bar-keeper.

Preſland. My Lord, I made the bill for the reckoning.

Court. Did you put the beef into the bill?

Preſland. No, I did not; when they came down ſtairs, the coach was fetch'd for them, *viz.* for Sir *Charles Pymm* and his company, and the reckoning was paid. When Sir *Charles Pymm* and the reſt of his company came down into the entry, Mr. *Walters* came out of the room, &c. and I heard them argue about their dinner, and they came to me, and aſked me what was to pay for beef, and I told them nothing.

Court. Did you ſee the man killed?

Preſland. My Lord, I did not ſee him killed, not I.

Court. Who was it that quarrelled with the coachman?

Preſland. My Lord, Mr. *Neale* quarrelled with the Coachman about his ſtaying: the Coachman refuſed going with him, becauſe his Horſes were hot.

Clerk. Cryer, call Mr. *Brummidge.*

Mr. *Brummidge.* My Lord, between eleven and twelve a-clock in the morning on the fourth of *May* laſt, Sir *Charles Pymm* came to Mr. *Cloudſley*'s door in a coach, and aſked him what he might have for dinner; who told him that he might have a mullet and ſome ſmelts, and I ſold a mullet to Mr. *Cloudſley:* ſo Sir *Charles* went to the *Exchange*, and I ſaw no more of him till I ſaw him kill'd. While I was in the houſe, came in one Mr. *Allen* and others, to enquire for Sir *Charles Pymm*, and Mr. *Cloudſley* told them that he had beſpoke a dinner, and was gone to the *Exchange*, *viz.* a mullet and ſome ſmelts; but one of the Gentlemen deſired a bit of the beef that was at the fire, ſo Mr. *Cloudſley* ſaid he would get a plate for him. So I went to the door, and the Coachman came, and his horſes being hot, he deſired to go away becauſe it rain'd; but Mr. *Neale* put his foot-boy into the coach, and the Coachman after pulled his Boy out of the coach, and drove away. And after that, I ſaw Mr. *Cave* and others come to the door, and joſtled each other into the next ſhop, and were at very high words; and ſo afterwards they went into the entry again, and Sir *Charles Pymm* and Mr. *Walters* came out without the door, the latter of which ſaid, *Here is my hand, and here is my ſword*; but they returned both in again into the Tavern, and within two minutes came out again, and I ſaw Mr. *Walters* thruſt Sir *Charles Pymm* through his back.

Court. Did you ſee him do any thing to him after he was down?

Mr. *Brummidge.* No, my Lord, I did not.

Court. Did you not ſay, that *Walters* went over the kennel, and drew his ſword, and ſtood upon his guard, and then you ſay, that you ſaw Sir *Charles Pymm* come out with his ſword drawn; Was his ſword drawn?

Mr. *Brummidge.* I did not ſee him draw it; but it was drawn.

Court. Where did he receive his wound?

Brummidge. Within a foot of the kennel; I was but a little way off, but I did not ſee him beat his head againſt the ground.

Clerk. Cryer, call Mr. *Fletcher.*

Mr. *Fletcher.* My Lord, on *Friday* in the evening on the fourth of *May*, I was going by the Tavern-door about ſeven a-clock at night, and I heard a noiſe, and a talking of going to the other end of the town to be merry: and turning myſelf back to hearken further, I ſaw Mr. *Walters* come out of the door and draw his ſword, and Sir *Charles Pymm* came out, and drew his ſword; and preſently Mr. *Walters*'s ſword was through Sir *Charles Pymm*'s body almoſt a foot; and he fell down crinkling immediately; and when he was down, I ſaw Mr. *Walters* hit him in the kennel, and take him by the nape of the neck, and after cried, *God damn him, let the ſword ſtick in his body*; and afterwards I ſaw Mr. *Mirriday* pull the ſword out of his body.

Court. Did you ſee Mr. *Bradſhaw* there when Sir *Charles* fell?

Mr. *Fletcher.* No, my Lord, I ſaw none there but Mr. *Walters* and Sir *Charles*, they were out of doors, and the reſt were in the entry.

Mary White and *Sarah Webb* were called, who could give little or no evidence as to matter of fact, as concerning the death of Sir *Charles*; and being timorous, could not ſee what they might have ſeen.

Clerk. Cryer, call Mr. *Allen.*

Mr. *Allen.* I know but very little of the matter, but that there was a plate of beef ſent up to us, but we knew not from whence it came, till afterwards the Drawer brought us word that the Gentlemen below had ſent it up; after which, we drank their healths, and returned them thanks for it. After which, I went to the Coffee-houſe hard by, and ſat about half an hour, and preſently heard a cry of murder, and I came down, and ſaw Sir *Charles Pymm* lying with a wound in his body, and another in his head, but I did not know who it was, not then; but I aſked who did this buſineſs, and exhorted the people to take them as ſoon as they could.

Court. I think you ſaid that Mr. *Bradſhaw*'s ſword was drawn?

Mr. *Allen.* Yes, it was, but I believe that he did not know that Sir *Charles Pymm* was kill'd.

Mrs. *Sheepwaſh* was called, but could depoſe nothing material.

Court. Mr. *Walters*, you have been here indicted, together with Mr. *Bradſhaw* and Mr. *Cave*, for the murder of Sir *Charles Pymm*, Knt. and Bart. you have heard what charge hath been laid againſt you, which hath been a very ſtrong one, and now it behoves you to make your defence as well as you can.

Mr. *Walters.* My Lord, I was no way the occaſion of the quarrel; when I came thither, I aſked for ſome meat, and having not eaten all the day before, we had a piece of beef, of which Sir *Charles Pymm* and his company had ſome, who afterwards drank our healths, as I was informed. For my part, my Lord, I never ſaw the Gentleman before in my days: my Lord, I am very ſorry it ſhould be my misfortune to kill him in the quarrel. Sir *Charles Pymm* aſked me, ſaying, *God damn you, Sir, what have you to do to meddle?* I went preſently, my Lord, to a Fiſh-

a Fiſhmonger's, where Mr. *Mirriday* was, and Sir *Charles Pymm* came, and Mr. *Mirriday* ſaid to him, Sir *Charles*, *Damn you*, *Sir*, *go and fight him*, *and I will be your Second*. And preſently they came upon me, and I drew my ſword in my own defence, and he ran me eight inches into the thigh, and at the ſame paſs, I had the misfortune, my Lord, to run him into the body.

Court. Would you aſk Mr. *Mirriday* any queſtion?

Walters. Yes, my Lord. Mr. *Mirriday*, did you ſee me ſtrike Sir *Charles*'s head upon the ground?

Mirriday. No, Sir, I did not ſee that; neither did I ſay any ſuch thing in the Fiſhmonger's ſhop, as to bid Sir *Charles* fight you.

Clerk. Cryer, call *Matthew Perin*.

Perin. My Lord, all that I ſaw of the buſineſs was, that when the Coachman was called to the door, Mr. *Neale* came and threatened him if he did not ſtay; then Mr. *Cave* and Mr. *Bradſhaw* were in the entry, and I heard them diſcourſe about beef; and ſome of them ſaid, You give us beef, and make us pay for it; and there was anſwer made, they were Raſcals that ſaid ſo, for they did not. There was one of the Gentlemen in our ſhop hearing of it, ſaid, Let me come to him, I will fight him.

Court. Do you know the man?

Perin. No, I do not know who it was.

Mr. *Walters.* I was wounded at the ſame time, my Lord.

Court. That is admitted of.

Mr. *Walters.* Let him be aſked, whether I beat the head againſt the ground.

Perin. No, my Lord, I did not ſee him do that.

Court. He had a wound, the queſtion is how he came by it; whether he might not fall upon it himſelf, it was a ſlanting wound?

Mr. *Walters.* Pray, my Lord, let Sir *Charles*'s ſword be ſeen, all blood. [But that gave no ſatisfaction on either ſide.]

Court. Mr. *Bradſhaw*, what have you to ſay for yourſelf?

Mr. *Bradſhaw.* My Lord, I was there, but I know nothing of the death of Sir *Charles Pymm*, nor how he came by it; there were ſome words aroſe amongſt us, and I deſired them to ceaſe, for fear a further quarrel ſhould enſue upon it.

Court. Mr. *Cave*, what have you to ſay?

Mr. *Cave.* I know no more of the matter than this Gentleman ſaith: I ſaw not Sir *Charles Pymm* killed.

Clerk. Cryer, make proclamation.

Cryer. All people are commanded to keep ſilence upon pain of impriſonment.

Then Mr. Baron *Jenner* ſumm'd up the evidence as followeth:

Baron *Jenner.* Gentlemen of the Jury, you have three perſons indicted, *viz.* Mr. *Walters*, Mr. *Bradſhaw* and Mr. *Cave*, for murdering Sir *Charles Pymm*, Bart. and have had ſeveral witneſſes called for the King, againſt the priſoners at the Bar; the firſt of which was Mr. *Mirriday*; and he gives you this account, and 'tis all that each and every one gives, and it agrees on all ſides; and he tells you, that all thoſe Gentlemen were to dine at Mr. *Cloudſley*'s, at the *Swan-Tavern* in *Old Fiſh-ſtreet*; and that they were there at dinner, it is very plainly prov'd. And being there, it ſeems that ſome of thoſe Gentlemen had beſpoke a fiſh-dinner, ſome fleſh, and had ſome, *viz.* a plate of beef; and he tells you alſo, that when dinner was over, ſome words did ariſe concerning the reckoning, and that one of the companies were got down ſtairs in the entry, where a further quarrel did ariſe. Mr. *Mirriday* tells you further, that Mr. *Bradſhaw* and he quarrelled, ſo there was a ſcuffle in the entry; after which things were pretty well quieted there: in comes Mr. *Walters* and Sir *Charles Pymm*, and while Mr. *Mirriday* was ſecuring the firſt quarrel, they, *viz.* Sir *Charles Pymm* and Mr. *Walters* were got out at the door, and Sir *Charles* was ſtooping down, and Mr. *Walters* was puſhing upon his neck and throwing him down.

So ſaid Mr. *Mirriday*, and when he went to take the ſword out of his body, he ſaw him a dying man.

The next evidence was Mr. *Neale*, and he obſerves to you, that one of the Gentlemen did ſay, that the quarrel was not intended againſt them; and he gives an account of the ſtory, how that it was about the beef; how that Sir *Charles* was run through by *Walters*, but he did not ſee him knock his head againſt the ground.

Mr. *Palms* gives the like account, and ſaith, that whilſt they were a ſcuffling in the entry, Sir *Charles* was kill'd at the door.

The next evidence is the Drawer, who tells you of a ſquabble that Mr. *Neale* had with the Coachman at the door, and how that there was left four of the Gentlemen behind, and that the Coachman was unwilling to wait becauſe it rained, his horſes being hot, they might catch cold; whereupon he put his foot-boy into the coach, and threatened the Coachman if he went away: this was before they fell out about the meat.

The next evidence was one Mr. *Brummidge* the Fiſhmonger, he gives the ſame account, how that a quarrel was amongſt them, and how that Mr. *Walters* was on one ſide of the kennel, and Sir *Charles Pymm* on the other ſide, and there they ſtood with their ſwords drawn; and as ſoon as they came cloſe, they wounded each other, and Sir *Charles Pymm* was kill'd; but he did not ſee his head knock'd againſt the ground.

Comes *Fletcher*, my Lord Mayor's Officer, and he tells you, that he was going by the door home into *Bread-ſtreet*, and he ſees a man that was wounded ſtooping down; and he ſwears that Mr. *Walters* took him by the nape of his neck, and knock'd his head againſt the ground, and heard him ſwear, *Let the ſword ſtick in him.* *Sarah Webb* and another woman ſpeak it to be in the like manner; and one of them talks of Mr. *Walters*'s pulling Sir *Charles Pymm* out of the entry before he would come out.

Laſt of all, Gentlemen, here was Mr. *Allen*, one of their company, who went away to the Coffee-houſe, and hearing murder cried out, he came and found Sir *Charles Pymm* kill'd, and quite dead. This, Gentlemen, is the evidence that you have heard as near as I can give it you.

Now, for the priſoner Mr. *Walters*, he would have you believe, as if Sir *Charles* had ſtruck him before he drew his ſword; but he has not proved it: likewiſe ſpeaks of Mr. *Fletcher*, but he does not remember that Sir *Charles Pymm* ſtruck him before he drew: but ſo it was, Gentlemen, there was a quarrel, in which that honourable and worthy Gentleman, Sir *Charles Pymm*, loſt his Life.

Now for Mr. *Bradſhaw*, he confeſſeth that there was a quarrel; but he ſaith, that he did not know when or how Sir *Charles Pymm* was killed; and for Mr. *Cave*, I do not find any thing objected againſt him, nor either of them.

Now, Gentlemen, I muſt tell you what the Law is in this caſe: Firſt of all, to begin with Mr. *Walters*, ſo as it fares with Mr. *Walters*, ſo you may be guided to deal with the other two. Now it hath not been made appear by any of the evidence that you have heard, that there was any premeditated malice between them, for they were never in company before, and knew not each other; ſo that there could be no manner of malice from him in particular.

The next ſtep, Gentlemen, is, here is nothing that can impute a general malice upon Mr. *Walters*, for if I had no deſign to kill a man, and kill another with whom I do not quarrel, that cannot be any premeditated malice; but I rather think that there was a little heat of wine amongſt them: and this whole action was carried on by nothing elſe but by a hot and ſudden frolick, and I am very ſorry that it ſhould fall upon ſuch a worthy Gentleman as he was. And if there was no malice premeditated, then he can be found guilty of nothing but Manſlaughter; and as for the other two, they muſt be totally acquitted. If I have err'd in the ſumming up of theſe evidences, or miſtaken myſelf in any point, here are my Brothers to help me.

Then the Gentlemen of the Jury withdrew for about the ſpace of half an hour, and returned into Court upon a ſcruple of conſcience; one amongſt them ſpoke to the Court as followeth:

Juryman. My Lord, we are not ſatisfied in our conſciences concerning the death of Sir *Charles Pymm*; we find in it malice fore-thought; becauſe after he had run the ſword through his body, he was not ſatisfied with that, but muſt knock his head againſt the ground; ſo we do take it, that the ſaid Sir *Charles Pymm* was maliciouſly murdered.

Mr. Juſtice *Allibone.* Gentlemen of the Jury, I ſhall endeavour to direct you in this caſe, and tell you what the Law ſaith, That it cannot reach a man's life, where no prepenſe malice is proved; that there is none proved, appears very plain to me, and I hope alſo to you, becauſe it hath been proved that thoſe Gentlemen, *viz.* the priſoners at the Bar, and the deceaſed, had never been in company before.

Gentlemen, you are upon your oaths to ſerve the King as Jurymen; and I, as a Judge, am upon my oath to try the cauſe as well on the behalf of the living as the dead. So that upon the whole matter, Gentlemen, this can be called nothing elſe but a ſtorm, an ungoverned ſtorm that ſuch men are ſubject to; ſo that it does not reach precedent malice, but ſubſequent paſſion; which ſad paſſion was continued to that height, that Sir *Charles Pymm* in the midſt of it loſt his life.

Then the Jury went out again for about a quarter of an hour; and returning, brought in Mr. *Walters* guilty of manſlaughter; but the other two were acquitted.

THE END OF THE SEVENTH VOLUME.

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